No. 56, 1955.]

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.

ACT

To consolidate the laws relating to procedure and evidence in criminal proceedings and matters incidental thereto.

(*Afrikaans text signed by the Governor-General.*)
(*Assented to 22nd June,* 1955.)

ARRANGEMENT OF SECTIONS.

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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:—

Definitions.

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

(i) "charge" includes any indictment or summons; (i)
(ii) "counsel" includes an attorney in proceedings before a superior court in which such attorney has the right of audience; (ii)
(iii) "court" in relation to any matter means the judicial authority which under this Act or any other law has jurisdiction in respect of that matter and includes a magistrate holding a preparatory examination under Chapter VI; (viii)
(iv) "criminal proceedings" includes a preparatory examination held under Chapter VI; (xx)
(v) "day" (or "day time") when used in contradistinction to "night" (or "night time") means the space of time between sunrise and sunset; (iii)
(vi) "inferior court" means a magistrate's court, a court of a native commissioner, a court of a special justice of the peace, and includes any court (other than a superior court) upon which criminal jurisdiction is conferred by law, but does not include a court of a native chief or native headman; (x)

(vii) "justice" means any person appointed or exercising functions as a justice of the peace under any law; (xxii)

(viii) "magistrate" includes an additional or an assistant magistrate; (xi)

(ix) "Minister" means the Minister of Justice; (xii)

(x) "money" includes all coined money whether current in the Union or not, and all bank-notes, bank-drafts, cheques, orders, warrants, or any other authority whatever for the payment of money; (iv)

(xi) "night" (or "night time") when used in contradistinction to "day" (or "day time") means the space of time between sunset and sunrise; (xiv)

(xii) "offence" means an act or omission punishable by law; (xiii)

(xiii) "peace officer" includes any magistrate or justice; a sheriff or a deputy sheriff; any policeman; the superintendent, assistant superintendent, or a warder of any prison or gaol; an immigration officer; any officer appointed or assigned under any law for the management of any location, native village or native hostel and his assistants; any duly appointed inspector of any native location or mission reserve established under any law; any duly appointed inspector for the supervision and control of the residence of natives upon private property; any manager or superintendent of an emergency camp established by a local authority under any law relating to the prevention of illegal squatting and his assistants; any pass officer and any person authorized in terms of any law relating to the control of natives in urban areas to demand the production of documents under such law; any inspector of native labourers appointed under any law relating to native labour; a chief or headman, or acting chief or headman appointed in terms of any law; (xxiii)

(xiv) "person" and "owner" when used in relation to property include the State; (xvi)

(xv) "policeman" includes any commissioned officer, non-commissioned officer, constable or trooper of a police force established under any law or of any body of persons carrying out under any law the powers, duties and functions of a police force in the Union, and "police" has a corresponding meaning; (xvii)

(xvi) "premises" includes any land, building or structure, or any vehicle, conveyance, ship or boat; (xv)

(xvii) "prescribed" means prescribed under this Act; (xxi)

(xviii) "private prosecutor" means any public body or person who in terms of section *eleven* or *twelve* has the right to prosecute in respect of any offence; (xviii)

(xix) "public prosecutor" includes any person delegated generally or specially by the attorney-general under this Act; (xix)

(xx) "rules of court" means the rules made under section *three hundred and ninety*; (ix)

(xxi) "superior court" means a provincial or local division of the Supreme Court and includes a special court constituted under the provisions of Chapter VIII; (vii)

(xxii) "this Act" includes any regulations or rules of court or forms made or prescribed thereunder; (vi)

(xxiii) "valuable security" includes any document which is the property of any person, and which is the evidence of the ownership of any property or of the right to recover or receive any property. (v)

Application of several provisions of this Act to inferior and superior courts.

2. (1) The provisions of every Chapter of this Act, except Chapters VI, VIII, IX and XX, shall, unless any such provision is clearly applicable only to proceedings in a superior court, apply to all criminal proceedings in an inferior court.

(2) The provisions of every Chapter of this Act, except Chapter VI, shall, unless any such provision is clearly applicable only to proceedings in an inferior court, apply to all criminal proceedings in a superior court.

CHAPTER I.

Criminal Jurisdiction of Courts.

Jurisdiction of superior courts in respect of the trial of offences.

3. The jurisdiction of any superior court in respect of the trial of any person charged with any offence shall be as prescribed in the law relating to the constitution and jurisdiction of that court: Provided that whenever a person has been committed for trial or for sentence in respect of any offence, the superior court within whose area of jurisdiction such person was so committed shall have jurisdiction to try or sentence such person in respect of such offence notwithstanding that such offence was committed outside such area, and such jurisdiction shall be held concurrently with any other superior court within whose area of jurisdiction such offence has been committed.

Jurisdiction of inferior courts in respect of the trial of offences.

4. The jurisdiction of any inferior court in respect of the trial of any person charged with any offence (whether as to the nature of the offence, the area within which it is alleged to have been committed, and the maximum punishment which may be imposed therefor, the review of and appeals against convictions and sentences of such court and the manner of enforcing the process, orders and sentences of such court) shall be as prescribed in the law relating to the constitution, powers and jurisdiction of that court.

CHAPTER II.

Prosecution at the Public Instance.

Attorney-General.

Prosecution of offenders by attorneys-general under control of Minister.

5. (1) The Governor-General shall, subject to the laws relating to the public service, appoint, for each province an attorney-general, who shall have authority to prosecute in the name of Her Majesty the Queen, in any court in his province, any person charged with any offence in regard whereto any court in his province has jurisdiction, and he may perform all functions relating to the exercise of that authority: Provided that (subject to the provisions of sub-section (3)) the attorney-general appointed for the province of the Cape of Good Hope shall not exercise any such authority or perform any such functions within the area of jurisdiction of the Eastern Districts Local Division of the Supreme Court.

(2) The Governor-General shall, for the area of jurisdiction of the said division, appoint, subject to the laws relating to the public service, a solicitor-general, who shall have authority to prosecute in the name of Her Majesty the Queen in any court in the said area, any person charged with any offence in regard whereto any court in that area has jurisdiction, and he may perform all functions relating to the exercise of that authority.

(3) The Governor-General may, by proclamation in the *Gazette*, withdraw any portion of the province for which an attorney-general has been appointed, from his authority under this Act or under any other law, and place it under the authority of the attorney-general appointed for another province or of the solicitor-general, or withdraw any portion of the area for which the solicitor-general was appointed, from his authority under this Act or under any other law, and place it under the authority of an attorney-general, and thereupon the portion so placed under the authority of the officer in question shall, for the purpose of the exercise of that authority, be deemed to form part of the original area for which he was appointed.

(4) Every attorney-general and the solicitor-general shall exercise their authority and perform their functions under this Act or under any other law subject to the control and directions of the Minister who may, if he thinks fit, reverse any decision arrived at by an attorney-general or the solicitor-general and may himself in general or in any specific matter exercise any part of such authority and perform any such function.

(5) The Minister may, subject to the laws relating to the public service appoint—

(*a*) in respect of each province, one or more deputy attorneys-general; and

(*b*) in respect of the area of jurisdiction of the Eastern Districts Local Division of the Supreme Court, a deputy solicitor-general,

who may, subject to the control and directions of the attorney-general concerned or the solicitor-general, as the case may be, do anything which may be lawfully done by the attorney-general or the solicitor-general, as the case may be.

(6) The persons who are, upon the date upon which this section comes into operation, holding office as attorney-general and solicitor-general, respectively, shall after that date, be deemed to have been appointed as such under this section.

(7) Whenever the expression "attorney-general" is used hereafter in this Act in relation to any matter, it shall denote the attorney-general or the solicitor-general having jurisdiction in the area where that matter is to be dealt with.

Prosecution by attorney-general in person or by appointed substitute.

6. The attorney-general may personally, or by any other person delegated by him, appear at any preparatory examination held under Chapter VI, or conduct any prosecution before any court.

Person presiding over any court may appoint prosecutor in certain cases.

7. If through any cause whatsoever the person appointed to conduct a prosecution before any court or to appear at a preparatory examination is unable to act or if no person has been so appointed, the officer presiding over such court or examination shall, by writing under his hand designate some fit and proper person to conduct that prosecution, or, as the case may be, to appear at that preparatory examination.

Attorney-General's power of stopping prosecutions.

8. The attorney-general may, at any time before conviction, stop any prosecution commenced by him or by any other person charged with the prosecution of criminal cases; but, in the event of the accused having already pleaded to the charge, he shall be entitled to a verdict of acquittal in respect of that charge.

Attorney-General may order liberation of certain persons committed to prison.

9. (1) The attorney-general may order the liberation of any person committed to prison for further examination, sentence or trial.

(2) Any order in writing setting forth that the attorney-general sees no grounds for prosecuting the person named therein and signed by him, shall be a sufficient warrant for the liberation of that person.

Local Public Prosecutor.

Powers and duties of local public prosecutor.

10. (1) A public prosecutor attached to an inferior court shall, as the representative of the attorney-general and subject to his instructions, prosecute in that inferior court, in the name of Her Majesty the Queen, in respect of all offences which that inferior court has jurisdiction by law to try.

(2) Criminal proceedings instituted in any inferior court by any local public prosecutor may be continued by any other public prosecutor.

CHAPTER III.

PRIVATE PROSECUTIONS.

Private prosecution where attorney-general declines to prosecute.

11. In any case in which the attorney-general declines to prosecute for an alleged offence—

(*a*) any private person who proves some substantial and peculiar interest in the issue of the trial arising out of some injury which he individually suffered in consequence of the commission of the said offence; or

(*b*) a husband, if the said offence was committed against his wife; or

(*c*) the legal guardian or curator of a minor or lunatic, if the said offence was committed against his ward; or

(*d*) the wife or child or, if there is no wife or child, any of the next of kin of any deceased person, if the death of such person is alleged to have been caused by the said offence,

may, subject to the provisions of sections *fourteen* and *fifteen* prosecute in any court competent to try the said offence, the person alleged to have committed it.

Public bodies and certain other persons have right of private prosecution.

12. Any public body or any person on whom the right to prosecute in respect of any offence is expressly conferred by law, may prosecute in any court competent to try the said offence, the person alleged to have committed it.

Private prosecutor may apply to court for warrant.

13. Whenever any private prosecutor desires to prosecute for any offence any person for whose liberation from prison any warrant has been issued by the attorney-general, such private prosecutor may apply to the superior court within whose area of jurisdiction the offence is alleged to have been committed, or, in case such court is not then in session, to any judge thereof, for a warrant for the further detention or, if he is on bail, for the detention of such person and such court or judge shall make such order as to it or him seems right under the circumstances.

Certificate of attorney-general that he declines to prosecute.

14. No private prosecutor referred to in section *eleven* shall obtain the process of any court for summoning any person to answer any charge, unless such private prosecutor produces to the officer authorized by law to issue such process, a certificate signed by the attorney-general that he has seen the statements or affidavits on which the charge is based and declines to prosecute at the public instance; and in every case in which the attorney-general declines to prosecute he shall, at the request of the person intending to prosecute, grant the certificate aforesaid.

Recognizances to be entered into by private prosecutor.

15. No private prosecutor referred to in section *eleven* shall take any proceedings under the right conferred upon him by this Chapter until he—

(*a*) has, if the prosecution is in a superior court, deposited the sum of fifty pounds or entered into a recognizance in the sum of fifty pounds with two sufficient sureties in the sum of twenty-five pounds each, to be approved by the court in which the proceedings are to be instituted, as security that he will prosecute the charge against the accused to a conclusion without delay; and

(*b*) has in any prosecution given security, in such amount and in such manner as the court may direct, that he will pay the accused such costs incurred by him in respect of his defence to the charge, as the court before which the case is tried may order him to pay.

Failure of private prosecutor to appear on day of trial.

16. (1) If the private prosecutor does not appear on the day appointed for the trial of any accused, the charge or complaint against that accused shall be dismissed unless the court has reason to believe that the private prosecutor was prevented from being present by circumstances beyond his control, in which case it may adjourn the hearing of the case to some future date.

(2) In case of any such dismissal as aforesaid, the accused shall not be liable to be prosecuted again on the same charge by any private prosecutor, but no such dismissal shall prevent the attorney-general, or a public prosecutor on the instructions of the attorney-general, from thereafter prosecuting the accused at the public instance.

Mode of conducting private prosecutions.

17. A private prosecution shall, subject to the provisions of this Act, be proceeded with in the same manner as if it were a prosecution conducted at the public instance, save that all costs and expenses of the prosecution shall be paid by the person prosecuting, subject to any order that the court may make when the prosecution is finally concluded.

Power of attorney-general to intervene in private prosecutions.

18. The attorney-general or the local public prosecutor may, in any case of a prosecution at the instance of a private prosecutor, apply by motion to any court before which the prosecution is pending, to stop all further proceedings in the case, in order that a prosecution for the offence concerned may be instituted or continued at the public instance; and such court shall, in every such case, make an order in terms of the motion.

Private prosecutor to pay certain prescribed fees.

19. The registrar or clerk of the court shall, in every prosecution at the instance of a private prosecutor, demand and receive the prescribed fees for the service of any criminal summons or subpoena or the execution of any warrant of arrest or other criminal process.

Expenses of accused acquitted in a private prosecution.

20. (1) Where a person prosecuted at the instance of a private prosecutor is acquitted, the court in which the prosecution was brought, may order the private prosecutor to pay to the person prosecuted the whole or any part of the expenses (including the costs both before and after committal) incurred by him in connection with the prosecution.

(2) Where the court is of the opinion that a private prosecution was unfounded and vexatious, it shall award to the person prosecuted on his request such costs as it may think fit.

CHAPTER IV.

Arrests.

Without Warrant.

Arrest and verbal order to arrest for offences committed in the presence of judges, magistrates and justices.

21. (1) Any judge of a superior court or any magistrate or justice in whose presence an offence is committed, may himself arrest the offender or verbally authorize others so to do.

(2) The persons so authorized shall follow the offender if he flee, and may arrest him out of the presence of such judge, magistrate, or justice.

Powers of peace officers to arrest without warrant.

22. (1) Any peace officer may, without warrant, arrest—

(*a*) any person who commits any offence in his presence;

(*b*) any person whom he has reasonable grounds to suspect of having committed an offence mentioned in the First Schedule;

(*c*) any person whom he finds attempting to commit an offence or clearly manifesting an intention so to do;

(*d*) any person having in his possession any implement of housebreaking, and not being able to account satisfactorily for such possession;

(*e*) any person in whose possession anything is found which it is reasonably suspected is stolen property or property dishonestly obtained, and who is reasonably suspected of having committed an offence with respect to such thing;

(*f*) any person who obstructs him in the execution of his duty, or who has escaped or attempts to escape from lawful custody;

(*g*) any person reasonably suspected of being a deserter from Her Majesty's armed forces, or from the defence forces of the Union;

(*h*) any person who has been concerned in, or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been concerned in any act committed at any place outside the Union, which if committed in the Union would have been punishable as an offence, and for which he is, under any law relating to extradition or fugitive offenders or otherwise, liable to be apprehended or detained in custody in the Union;

(*i*) any person being or loitering in any place by night under such circumstances as to afford reasonable grounds for believing that he has committed or is about to commit an offence;

(*j*) any person reasonably suspected of committing or having committed an offence under any law governing the making, supply, possession or conveyance of intoxicating liquor or of habitforming drugs or the possession or disposal of arms or ammunition;

(*k*) any person reasonably suspected of being a prohibited immigrant in the Union or in any province, for the purpose of any law regulating entry into or residence in the Union or any province;

(*l*) any person found in any gambling house or at any gambling table, the keeping or visiting whereof is in contravention of any law for the prevention or suppression of gambling or games of chance;

(*m*) any person reasonably suspected of being or having been in unlawful possession of stock or produce, as defined in any law relating to the prevention of theft of stock or produce.

(2) Whenever it is provided in any law that the arrest of any person may be made by a police officer or constable or other official without warrant, subject to conditions or to the existence of circumstances in that law set forth, an arrest by any peace officer, without warrant or order may be made of such person, subject to those conditions or the existence of those circumstances.

(3) A peace officer may call upon—

(*a*) any person whom he has power to arrest;
(*b*) any person reasonably suspected of having committed an offence; and
(*c*) any person who may, in his opinion, be able to give evidence in regard to the commission or suspected commission of any offence,

to furnish such peace officer with his full name and address.

(4) If any such person fails on such demand to furnish his full name and address, the peace officer making the demand may forthwith arrest him, and if any such person on such demand furnishes to such peace officer a name or address which such peace officer upon reasonable grounds suspects to be false, such person may be arrested and detained for a period not exceeding twelve hours until the name and address so furnished have been verified.

(5) Any person who, when called upon under the provisions of sub-section (3) or (4) to furnish his name and address, fails to do so or furnishes a false or incorrect name and address, shall be guilty of an offence and liable on conviction to a fine not exceeding thirty pounds or to imprisonment for a period not exceeding three months.

Arrest without warrant by officers empowered to execute criminal warrants.

23. Any officer, other than a peace officer, empowered by law to execute criminal warrants may, without warrant, arrest—

(*a*) any person who commits any offence in his presence;
(*b*) any person whom he has reasonable grounds to suspect of having committed an offence mentioned in the First Schedule;
(*c*) any person whom he finds attempting to commit an offence, or clearly manifesting an intention so to do.

Arrest without warrant by private persons.

24. (1) Any private person may, without warrant, arrest—

(*a*) any person who commits or attempts to commit in his presence an offence mentioned in the First Schedule;
(*b*) any person who to his knowledge recently committed an offence mentioned in the First Schedule;
(*c*) any person whom he has reasonable grounds to suspect of having committed an offence mentioned in the First Schedule;
(*d*) any person whom he believes on reasonable grounds to have committed any offence and to be escaping from and to be freshly pursued by a person whom such private person believes on reasonable grounds to have authority to arrest that person for that offence;
(*e*) any person whom he is by any law authorized to arrest without warrant in respect of any offence specified in that law;
(*f*) any person whom he sees engaged in an affray.

(2) Any private person who may, without warrant, arrest any person referred to in paragraph (*a*) or (*b*) of sub-section (1), may forthwith pursue that person and any other private person to whom the purpose of the pursuit has been made known, may join and assist therein.

(3) The owner of any property on or in respect of which any person is found committing an offence, and any person authorized thereto by such owner, may, without warrant, arrest the person so found.

Arrest without warrant of persons attempting to dispose of stolen property.

25. Where anyone may, without warrant, arrest another for committing an offence, he may also arrest without warrant any person who offers to sell, pawn, or deliver to him any property which, on reasonable grounds, he believes to have been acquired by such person by means of any such offence.

Arresting person to state cause of arrest.

26. Whenever a person arrests any other person without warrant, he shall forthwith inform the arrested person of the cause of the arrest.

Procedure after arrest without warrant.

27. (1) Any person arrested without warrant shall, as soon as possible, be brought to a police station or charge office and detained until a warrant is obtained for his further detention upon a charge of any offence or until he is released by reason that no charge is to be brought against him; and unless so released he shall as soon as possible be brought before a judicial officer upon a charge of any offence: Provided that a person so

arrested without warrant shall not be so detained for a period longer than forty-eight hours unless a warrant for his further detention is obtained.

(2) Nothing in this section shall be construed as modifying the provisions of Chapter VII or of any other law, whereby a person under detention may be released on bail.

With Warrant.

Warrant of apprehension by judge, magistrate or justice.

28. (1) Any judge of a superior court or any magistrate or justice may issue a warrant for the arrest of any person or for the further detention of a person arrested without a warrant on a written application signed by the attorney-general or by the local public prosecutor or any commissioned officer of police, setting forth the offence alleged to have been committed and that, from information taken upon oath, there are reasonable grounds of suspicion against that person, or upon the information to the like effect of any person made on oath before the judge or magistrate or justice issuing the warrant: Provided that no magistrate or justice shall issue any such warrant, except where the offence charged is alleged to have been committed within his area of jurisdiction, or except where the person against whom the warrant is issued is, at the time when it is issued, known, or suspected on reasonable grounds, to be within the area of jurisdiction of that magistrate or justice.

(2) A warrant referred to in sub-section (1) may be issued on a Sunday as on any other day and shall remain in force until it is cancelled by the person who issued it, or until it is executed.

(3) When a warrant is issued for the arrest of a person who is being detained by virtue of an arrest without a warrant, such warrant of arrest shall have the effect of a warrant for his further detention.

Execution of warrants.

29. (1) Every peace officer shall obey and execute every warrant of arrest.

(2) A peace officer or other person arresting any person by virtue of a warrant under this Act shall, upon demand of the person arrested, produce the warrant to him, notify to him the substance thereof, and permit him to read it.

(3) A person arrested by virtue of a warrant under this Act shall, as soon as possible, be brought to a police station or charge office, unless any other place is expressly mentioned in the warrant as the place to which such person shall be brought, and he shall thereafter be brought as soon as possible before a judicial officer upon a charge of the offence mentioned in the warrant.

Telegram stating issue of warrant authority for execution thereof.

30. (1) A telegram from any officer of any court or from any peace officer, stating that a warrant has been issued for the arrest of any person, shall be sufficient authority to any peace officer for the arrest and detention of that person until a sufficient time, not exceeding fourteen days, has elapsed to allow of the transmission of the warrant to the place where such person has been arrested or is being detained, unless the discharge of such person be previously ordered by a judge of a superior court: Provided that any such judge may, upon cause shown, order the further detention of any such person for a period to be stated in such order, but not exceeding twenty-eight days from the date of the arrest of such person.

(2) Nothing in this section shall be construed as derogating from the provisions of this Act or of any other law whereby a person so arrested may be released on bail.

Arresting the wrong person.

31. (1) Any person authorized to execute a warrant of arrest, who arrests a person, believing in good faith and on reasonable and probable grounds that he is the person named in the warrant, shall be protected from responsibility to the same extent and subject to the same provisions as if the person arrested had been the person named in the warrant.

(2) Any person called on to assist the person making such arrest and believing that the person in whose arrest he is called on to assist is the person for whose arrest the warrant has been

issued and every gaoler who is required to receive and detain such person shall be protected to the same extent and subject to the same provisions as if the arrested person had been the person named in the warrant.

Irregular warrant or process.

32. Any person acting under a warrant or process which is bad in law on account of a defect in substance or in form apparent on the face of it, shall, if he in good faith and without culpable ignorance or negligence believes that the warrant or process is good in law, be protected from responsibility to the same extent and subject to the same provisions as if the warrant or process were good in law, and ignorance of the law shall in such case be an excuse: Provided that it shall be a question of law whether the facts of which there is evidence may or may not constitute culpable ignorance or negligence in his so believing the warrant or process to be good in law.

Tenor of warrant.

33. A warrant issued under this Chapter shall be to arrest the person described therein and to bring him before a judicial officer as soon as possible upon a charge of an offence mentioned in the warrant.

General.

Private persons may be called upon to assist in the arrest of any person.

34. (1) Every male inhabitant of the Union between the ages of sixteen and sixty years shall, when called upon by any policeman to do so, assist such policeman in making any arrest which by law such policeman is authorized to make, of any person charged with or suspected of the commission of any offence, or assist such policeman in retaining the custody of any person so arrested.

(2) Any such inhabitant who, without sufficient excuse, refuses or fails so to assist any policeman when called upon to do so, shall be guilty of an offence and liable on conviction to a fine not exceeding twenty pounds or to imprisonment for a period not exceeding one month.

Breaking open of doors after failure in obtaining admission for the purpose of arrest or search.

35. Any peace officer or private person who by law is authorized to arrest any person known or suspected to have committed any offence, may break open for that purpose the doors and windows of, and enter and search, any premises in which the person whose arrest is required, is known or suspected to be: Provided that no peace officer or private person shall act under this section unless he has previously failed to obtain admission after having audibly demanded the same and notified the purpose for which he seeks to enter such premises.

Arrest—how made, and search thereon of person arrested.

36. (1) Any person authorized to make an arrest shall, in making an arrest, actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

(2) Any person arresting any other person under the provisions of this Chapter, may search such person and shall place in safe custody all articles (other than necessary wearing apparel) found on him.

(3) Whenever a woman is searched on her arrest, the search shall only be made by a woman and shall be made with strict regard to decency and if there is no woman available for such search who is a member of the police or is a prisons officer, the search may be made by any woman specially named for the purpose by a peace officer.

Resisting arrest.

37. (1) Whenever any person authorized under this Act to arrest or assist in arresting any person who has committed or is on reasonable grounds suspected of having committed any offence mentioned in the First Schedule, attempts to arrest any such person and such person flees or resists and cannot be arrested and prevented from escaping by other means than by killing the person so fleeing or resisting, such killing shall be deemed in law justifiable homicide.

(2) Nothing in this section shall authorize the killing of a person who is not accused or suspected of having committed an offence mentioned in the First Schedule.

Power to retake on escape.

38. If a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and arrest him or cause him to be pursued and arrested in any place in the Union.

Penalties for escape or aiding escape from lawful custody other than from a prison, etc.

39. (1) Any person who, having been arrested and being in lawful custody but not having yet been lodged in any prison, gaol, police-cell, or lock-up, escapes or attempts to escape from such custody shall be guilty of an offence and liable on conviction to the penalties prescribed in section *twenty-seven* of the Prisons and Reformatories Act, 1911 (Act No. 13 of 1911).

(2) Any person who rescues or attempts to rescue from lawful custody any other person who has been arrested but is not yet lodged in any prison, goal, police-cell or lock-up, or who aids such other person to escape, or in an attempt to escape, from such custody, or who harbours or conceals or assists in harbouring or concealing him, knowing him to have so escaped, shall be guilty of an offence and liable on conviction to the penalties prescribed in section *thirty* of the Prisons and Reformatories Act, 1911.

Saving of other powers of arrest.

40. Nothing in this Chapter contained shall be construed as removing or diminishing any authority expressly conferred by any other law to arrest, detain, or put any restraint upon, any person.

Saving of civil rights.

41. Nothing in this Chapter contained shall be construed as removing or diminishing any civil right or liability of any person in respect of a wrongful or malicious arrest.

CHAPTER V.

SEARCH WARRANTS, ENTRY UPON PREMISES, SEIZURE AND DETENTION OF PROPERTY CONNECTED WITH OFFENCES, AND CUSTODY OF WOMEN UNLAWFULLY DETAINED FOR IMMORAL PURPOSES.

Search warrants.

42. (1) If it appears to a judge of a superior court, a magistrate or a justice on complaint made on oath that there are reasonable grounds for suspecting that there is upon any person or upon or at any premises or in any receptacle of whatever nature within his jurisdiction—

(*a*) stolen property or anything in respect of which any offence has been, or is suspected on reasonable grounds to have been committed, whether within the Union or elsewhere; or

(*b*) anything in respect of which there are reasonable grounds for believing that it will afford evidence as to the commission, whether within the Union or elsewhere, of any offence; or

(*c*) anything in respect of which there are reasonable grounds for believing that it is intended to be used for the purpose of committing any offence,

he may issue a warrant directing any policeman named therein or all policemen to search such person, premises or receptacle and any person found in or upon such premises, and to seize any such thing if found, and to take it before a magistrate to be dealt with according to law.

(2) Any such warrant shall be executed by day, unless the judge, magistrate or justice, by the warrant, specially authorizes it to be executed by night in which case it may be so executed and in the searching of any woman the provisions of sub-section (3) of section *thirty-six* shall *mutatis mutandis* apply.

(3) Any warrant referred to in this section may be issued and executed on a Sunday as on any other day.

Search by police without warrant.

43. (1) If a policeman believes on reasonable grounds that the delay in obtaining a search warrant would defeat the object of the search, he may search, without warrant, any person, premises, other place, vehicle or receptacle of whatever nature and any person found in or upon such premises, other place or vehicle for any such thing as is mentioned in section *forty-two*

and may seize such thing if found and take it before a magistrate: Provided that in the searching of any woman the provisions of sub-section (3) of section *thirty-six* shall *mutatis mutandis* apply.

(2) Any search under sub-section (1) shall, as far as possible, be made in the day time and in the presence of two or more respectable inhabitants of the locality in which the search is made.

Powers of police to enter premises.

44. (1) If it appears to a judge of a superior court, a magistrate or justice on complaint made on oath that there are reasonable grounds for believing—

(*a*) that the internal security of the Union or the maintenance of law and order is likely to be endangered by or in consequence of any meeting which is being or is about to be held in or upon any premises; or

(*b*) that an offence has been or is being or is likely to be committed or that preparations or arrangements for the commission of any offence are being or are likely to be made in or upon any premises,

he may issue a warrant directing a policeman named therein or all policemen to enter the said premises at any reasonable time for the purpose of carrying out such investigations and of taking such reasonable steps as such policeman or policemen may consider necessary for the preservation of the internal security of the Union or the maintenance of law and order or for the prevention of the commission of any offence, and for the purpose of searching such premises or any person in or upon such premises for anything which such policeman or policemen may have reasonable grounds for suspecting to be in or upon such premises or upon such person and as to which he or they may have reasonable grounds for believing that it will afford evidence as to the commission of any offence or that it is intended to be used for the purpose of committing any offence, and to seize any such thing, if found, and to take it before a magistrate.

(2) If any policeman believes on reasonable grounds that the delay in obtaining a warrant under sub-section (1) would defeat the objects of such a warrant, he may himself at all reasonable times, enter the premises concerned without warrant and there carry out such investigations and take such reasonable steps as he may consider necessary for the preservation of the internal security of the Union or the maintenance of law and order, or for the prevention of the commission of any offence, and if he has reasonable grounds for suspecting that there is in or upon the said premises or upon any person in or upon the said premises anything as to which there are reasonable grounds for believing that it will afford evidence as to the commission of any offence or that it is intended to be used for the purpose of committing any offence, he may without warrant search such premises or such person for any such thing and may seize such thing if found and take it before a magistrate.

(3) Whenever any policeman in the investigation of any offence or alleged offence has reasonable grounds for believing that there is upon any premises any person who is able to give evidence in relation to the commission of that offence, he may without warrant enter the said premises for the purpose of interrogating the said person and for taking a statement from him.

(4) Any policeman may use such force as may be necessary to obtain entry to any premises which he is authorized to enter in terms of sub-section (1), (2) or (3) or to overcome any resistance offered against his entry thereto, and may, if necessary, for that purpose break open any door or window of such premises: Provided that no policeman shall act under this sub-section unless he has previously failed to obtain admission after having audibly demanded the same and notified the purpose for which he seeks to enter such premises: Provided further that nothing in this sub-section or sub-section (3) contained shall authorize a policeman to enter the private dwelling of any person for the purpose referred to in sub-section (3), except with the consent of the occupier of that dwelling.

(5) If a woman is searched under any of the provisions of this section, the provisions of sub-section (3) of section *thirty-six* shall *mutatis mutandis* apply.

(6) Any person who wilfully obstructs, resists or hinders a policeman in the execution of any duty or the exercise of any

power under this section, shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred pounds or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

Penalty for wrongful search.

45. (1) Any person who under colour of the provisions of section *forty-three* or *forty-four*, wrongfully and maliciously or without reasonable cause applies for, obtains or acts upon any warrant, or wrongfully and maliciously or without reasonable cause exercises the powers of search conferred by the said sections, shall be guilty of an offence and liable on conviction to a fine not exceeding fifty pounds, and shall also be liable to pay to the person lawfully in occupation of the premises or other place when the same was searched, such sum by way of damages, not exceeding one hundred pounds, as the court convicting him may award on the application of such occupier.

(2) Nothing in sub-section (1) contained shall be construed as depriving any aggrieved person of the right to elect any other remedy allowed by law in lieu of the remedy under that sub-section.

Search for stolen stock, liquor, habit-forming drugs, arms and ammunition or explosives.

46. (1) If any justice or any policeman holding a rank or post designated by the Minister from time to time for any particular area for the purposes of this section by notice in the *Gazette*, has reason to suspect that any stolen stock or produce, as defined in any law relating to the theft of stock or produce, is upon any premises or that any substance or article has been placed upon any premises or is in the custody or possession of any person upon any premises, in contravention of a provision of any law relating to intoxicating liquor, habit-forming drugs, arms and ammunition or explosives, he may at any time enter upon and search such premises and search any person thereupon or thereat, or grant written authority to any person applying therefor, to make such entry and search.

(2) Any person in lawful occupation of any land shall in respect of any premises upon that land be entitled to exercise the powers conferred by sub-section (1) upon a justice.

(3) Any person who, under colour of this section, wrongfully and maliciously or without reasonable cause applies for, obtains, or acts upon any such written authority, or wrongfully and maliciously or without reasonable cause exercises the powers of search conferred by this section, shall be guilty of an offence and liable on conviction to a fine not exceeding fifty pounds and shall in addition to such penalty be liable to pay to the person lawfully in occupation of the premises when the same was searched, such sum by way of damages, not exceeding one hundred pounds, as the court convicting him may award.

(4) Nothing in sub-section (3) contained shall be construed as depriving an aggrieved person of the right to elect any other remedy allowed by law in lieu of the remedy under that sub-section.

Judge or magistrate may order seizure of books or documents in possession of any person.

47. (1) If it appears from information on oath that any person is in possession of any book of account, or document, or any other thing whatsoever which is required in evidence in any criminal proceedings, whether within the Union or elsewhere, any judge of a superior court or any magistrate or other judicial officer may issue an order directing the officer to whom such order is addressed to take possession of such book or document or thing and to hand it over to such person as may be named in such order, and thereupon such officer may lawfully execute such order.

(2) Any person who resists or hinders, or aids, incites, or encourages any other person to resist or hinder, such officer in executing the order shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred pounds.

Seizure of counterfeit coin, etc.

48. If any person finds in any place whatever or in the possession of any person without lawful authority or excuse—

(*a*) any counterfeit coin or any forged bank-note or bank-note paper;

(*b*) any tool, instrument, or machine, adapted and intended for making any such counterfeit coin or forged bank-note or bank-note paper;

(*c*) any filings or clippings of gold or silver, or any gold or silver in bullion, dust, solution, or any other state which may be suspected on reasonable grounds to have been obtained by dealing with any current gold or silver coin in such a manner as to diminish its weight,

the person who finds the same may seize the article or articles found and take the same forthwith before a magistrate to be dealt with according to law.

Seizure of vehicle or receptacle used in connection with certain offences.

49. (1) On the arrest of any person on a charge of an offence mentioned in Part I of the Second Schedule, the person making the arrest may seize any vehicle or receptacle in the possession or custody of the arrested person at the time of the arrest and used in the conveyance of or containing any article or substance in connection wherewith the said offence is alleged to be or to have been committed.

(2) The Governor-General may from time to time by proclamation in the *Gazette* remove from, or add to Part I of the Second Schedule any offence mentioned in the proclamation.

Disposal of property seized.

50. (1) When on the arrest of any person on a charge of an offence relating to property, the property in respect of which the offence is alleged to have been committed is found in his possession or when anything is seized or taken under the provisions of this Act, the person making the arrest or, as the case may be, the person seizing or taking the thing shall forthwith take the property or thing before a magistrate.

(2) Whenever anything is so seized or taken, marks of identification shall when practicable be placed thereon by the person seizing or taking it at the time of the seizure or taking or as soon thereafter as can conveniently be done.

(3) The magistrate may cause the property or thing so seized or taken to be detained in such custody as he may direct till the conclusion of a summary trial or of any examination that may be held in respect of it; and if any person is committed for trial for any offence committed with respect to the property or thing so seized or taken, or for any offence committed under such circumstances that the property or thing so seized or taken is likely to afford evidence at the trial, the magistrate may cause it to be further detained for the purpose of its production in evidence at such trial.

(4) At the conclusion of the summary trial or, as the case may be, if the attorney-general declines to prosecute, the magistrate shall direct that the thing be returned to the person from whose possession it was taken, unless he is authorized or required by law to dispose of it otherwise.

(5) If the thing so seized or taken is anything forged or counterfeit or is of such a nature that a person who has it in his possession without lawful authority or excuse shall be guilty of an offence, then if any person is committed for trial for any offence committed with respect to it or committed under such circumstances as aforesaid and is convicted, the court before which he is convicted, or in any other case any judge or magistrate, may cause it to be defaced or destroyed or, if of any value, sent to the Treasury as soon as it appears that it will not be required, or further required, in evidence against the person who had it in his possession.

(6) If the thing was so seized or taken in respect of an offence committed or suspected on reasonable grounds to have been committed in a country or territory outside the Union, the magistrate may, on application and on being satisfied that such offence is punishable in such country or territory by death or by imprisonment for a period of twelve months or more or by a fine of one hundred pounds or more, order such thing to be delivered to a member of a police force established in such country or territory who may thereupon remove it from the Union.

(7) Whenever the thing so removed from the Union is returned to the magistrate, or whenever the magistrate has refused to order the thing to be delivered as aforesaid, he shall cause such thing to be returned to the person from whose possession it was taken, unless he is authorized or required by law to dispose of it otherwise.

Weapons seized under search warrants.

51. (1) If any weapon believed to be dangerous to the public peace is seized under a search warrant, it shall be kept in safe custody in such place as the magistrate directs unless the owner of the weapon proves to the satisfaction of the magistrate that it was not kept for any purpose dangerous to the public peace.

(2) Any person from whom any such weapon is so taken may, if the magistrate upon whose warrant it was seized, refuses upon application made for that purpose to restore it, apply to a judge of a superior court having jurisdiction, for the restoration of such weapon. Ten days' notice of such application shall be given to the magistrate, and such judge shall make such order for the restoration or safe custody of such weapon as, upon such application, appears to him to be proper.

Forfeiture of goods bearing forged trade or false merchandise marks.

52. (1) If goods or things in respect or by means of which it is suspected that an offence relating to the forgery of trade marks or fraudulent marking of merchandise has been committed, are seized under a search warrant and brought before a magistrate, such magistrate shall determine summarily whether the same are not forfeited under the laws relating to the forgery of trade marks or fraudulent marking of merchandise.

(2) If the owner of any goods or things which, if the owner thereof had been convicted, would be forfeited under the laws aforesaid, is unknown or cannot be found, an information or complaint may be laid by a public prosecutor of the district in which the goods or things are seized for the purpose only of enforcing such forfeiture and the magistrate of that district shall cause a notice to be published in the *Gazette* and in a newspaper circulating in the district stating that, unless cause is shown to the contrary at the time and place named in the notice, such goods or things will be declared forfeited.

(3) At such time and place the magistrate may, unless the owner or any person on his behalf or other person interested in the goods or things shows cause to the contrary, declare such goods or things or any of them forfeited.

Women detained for immoral purposes.

53. (1) If it appears to a magistrate on complaint made on oath by a parent, husband, relative or guardian of a woman or girl, or any other person who, in the opinion of the magistrate, is acting in good faith in the interest of a woman or girl, that there are reasonable grounds for suspecting that such woman or girl is unlawfully detained for immoral purposes by any person in any place within the magistrate's jurisdiction, he may issue a warrant directed to a peace officer and authorizing him to search for such woman or girl and when found to take her to, and detain her in, a place of safety until she can be brought before a magistrate; and the magistrate before whom she is brought may cause her to be delivered up to her parents, husband, relatives or guardians, or otherwise deal with her as the circumstances may permit and require.

(2) The magistrate issuing the warrant may, by the warrant, direct any person accused of so unlawfully detaining the woman or girl to be arrested and brought before him or some other magistrate having jurisdiction.

(3) A woman or girl is deemed to be unlawfully detained for immoral purposes if she—

(*a*) being under the age of sixteen years, is detained for those purposes whether against her will or not; or

(*b*) being of or over the age of sixteen years and under the age of twenty-one years, is, for those purposes, detained against her will or against the will of her father or mother or of any other person who has the lawful care or charge of her; or

(*c*) being of or above the age of twenty-one years, is, for those purposes, detained against her will,

and a woman or girl shall be deemed to be detained for immoral purposes if she is detained by any person in order that she may be unlawfully carnally known by any man, whether a particular man or not.

(4) A peace officer authorized by warrant under this section to search for a woman or girl may enter, if need be, by force any premises specified in the warrant and may remove the woman or girl therefrom.

(5) The warrant shall be executed by the peace officer mentioned therein and such peace officer shall, unless the magistrate otherwise directs, be accompanied by the parent, husband, relative, guardian or other person by whom the complaint is made, if such person so desires.

CHAPTER VI.

PREPARATORY EXAMINATIONS.

Accused to be committed for trial by a magistrate before trial in superior court.

54. No person shall be tried in any superior court for any offence unless he has been committed for trial by a magistrate, whether or not the committal was on the direction of the attorney-general under the powers conferred upon him by paragraph (*c*) of sub-section (1) of section *seventy-nine*, for or in respect of the offence charged in the indictment: Provided that—

(*a*) in any case in which the attorney-general declines to prosecute, a superior court or any judge thereof may, upon the application of any person who in terms of section *eleven* or *twelve* is competent to prosecute in respect of that offence, direct any magistrate to take a preparatory examination against the accused or order any person to be committed for trial whether any preparatory examination has been held against such person or not;

(*b*) an accused shall be deemed to have been committed for trial for or in respect of the offence charged in the indictment, if the evidence given before the magistrate contain an allegation of any fact upon which the accused might have been committed for trial upon the charge named in the indictment notwithstanding that the magistrate committed him for an offence other than that charged in the indictment or for an offence not known to the law;

(*c*) an accused who is in custody when brought to trial or who appears for trial in pursuance of any recognizance entered into before any magistrate, shall be deemed to have been duly committed for trial upon the charge stated in the indictment unless he proves the contrary.

Securing Presence of Accused.

Summons to appear at preparatory examination.

55. If requested thereto by a public prosecutor who has decided to institute a preparatory examination against a person who is not in custody, the clerk of the court to which that public prosecutor is attached shall issue a summons, requiring the said person to appear before the magistrate of such court for the purpose of undergoing a preparatory examination, and shall deliver such summons to the person who is to serve it in terms of sub-section (2) of section *fifty-six*.

Contents of summons.

56. (1) A summons referred to in section *fifty-five* shall be directed to the accused, and shall state the nature of the offence which he is alleged to have committed and the day and time when and place where he must appear.

(2) Every summons shall be served by a person authorized to serve criminal process upon the accused to whom it is directed, either by delivering it to him personally, or, if he cannot conveniently be found, by leaving it for him at his place of business, or usual or last known place of abode, with an inmate thereof.

(3) The service of any such summons may be proved by the testimony upon oath of the person effecting the service, or by his affidavit or by due return of service under his hand.

If a juvenile is summoned, his parent or guardian must appear with him.

57. (1) When a person under the age of nineteen years is summoned as aforesaid, the person who serves the summons shall serve a copy thereof upon a parent or the guardian of the person summoned, if he can be found in the area of jurisdiction of the magistrate who is to hold the preparatory examination, and to the copy so served shall be attached a notice warning the said parent or guardian to attend the preparatory examination on the date and at the time at which and at the place where

the person summoned is required to appear, and to remain in attendance during the preparatory examination or if the preparatory examination is converted into a summary trial, during the trial.

(2) When a parent or guardian has been warned as aforesaid, the commissioner of child welfare for the district in which the preparatory examination is to be held may, on the application of the said parent or guardian, exempt him in writing from the obligation to comply with the said warning and when a commissioner of child welfare has granted such an exemption, he shall send a copy thereof to the clerk of the magistrate's court for the district in which the preparatory examination is to be held, who shall submit it to the magistrate who is to hold that examination.

(3) If the parent or guardian of a person under the age of nineteen years against whom a preparatory examination is held, has not received a notice mentioned in sub-section (1), the magistrate holding the preparatory examination may at any time during that examination direct any person to warn a parent or the guardian orally to attend the preparatory examination and to remain in attendance as aforesaid or to serve such a warning in writing upon a parent or the guardian.

(4) If a parent or guardian who has been warned as aforesaid and who has not been exempted under sub-section (2) fails to attend on the date and at the time appointed or to remain in attendance during the preparatory examination or trial on that day and on any day to which the examination or trial may be adjourned, the magistrate presiding at the preparatory examination or trial may issue a warrant for the arrest of that parent or guardian and may also order him to pay a fine not exceeding five pounds or to be imprisoned for a period not exceeding one month. The magistrate may on good cause shown remit any penalty imposed under this sub-section.

Magistrates before whom Preparatory Examinations may be held.

When offence committed on the boundaries of districts or on a journey or on a train.

58. (1) Where an offence is committed on the boundary or boundaries of two or more magisterial districts or within the distance of two miles beyond any such boundary or boundaries, the preparatory examination may be held in any of the said districts.

(2) Where an offence is committed in or upon any vehicle employed on any journey or on board any vessel employed on any voyage within the territorial waters of the Union, or on a journey upon any river within or forming the boundary of any part of the Union, the preparatory examination may be held in any magisterial district through the territorial waters adjoining which, or through any part whereof or on or within the distance of two miles beyond the boundary whereof such vehicle or vessel has passed in the course of the journey or voyage during which the offence was committed.

(3) Where an offence is committed upon any train, the preparatory examination may be held in any magisterial district in any part whereof such train has travelled.

Districts in which preparatory examination may be held.

59. (1) A preparatory examination may be held in any magisterial district within which the offence in question was committed or within which any act or ommission or event which is an element of the offence has taken place or in which the accused was arrested or is in custody or at any place determined by the attorney-general and agreed to by the accused. Any such determination and agreement shall be noted by the magistrate on the record.

(2) Where the accused is charged with theft, or with obtaining by any offence, any property, the preparatory examination may be held in any magisterial district within which any part of the property so stolen or obtained by any such offence is found in his possession.

(3) Where the accused is charged with an offence which involves the receiving of any property by him, the preparatory examination may be held in any magisterial district within which he has any part of the property in his possession.

(4) Where the facts show that an accused charged with an offence counselled or procured the commission thereof or after the commission thereof harboured or assisted the offender, the preparatory examination may be held in any magisterial district within which the preparatory examination in the case of the principal offender might be held.

(5) Where the accused is charged with kidnapping, child-stealing or abduction, the preparatory examination may be

held in the magisterial district in which the kidnapping, child-stealing or abduction took place or in any magisterial district through or in which he conveyed or concealed or detained the person kidnapped, stolen or abducted.

(6) In any case not falling within any of the preceding provisions of this section, the attorney-general may direct that the preparatory examination shall be held in any district of the province or area for which he holds office.

(7) In case of any doubt or dispute as to the magisterial district in which a preparatory examination should be held or of an objection on the part of the accused to the holding of such examination in any particular district or where more than one offence is alleged to have been committed by the accused but in different districts, the matter shall be referred to the attorney-general, who may direct in which district a preparatory examination or preparatory examinations shall be held, and his direction shall be conclusive and not subject to appeal to any court.

(8) Where an accused is charged with having committed any offence in the area of jurisdiction of one attorney-general and also any offence in the area of jurisdiction of any other attorney-general, and any evidence admissible at the trial of the accused for the one offence is also admissible at his trial for the other offence, or if the same witness or witnesses will be required to give evidence in support of each charge, the preparatory examination may be held in either such area, and thereupon the attorney-general having jurisdiction in the area wherein the preparatory examination in respect of all the offences is being or was held, may deal with any matter relating to any such offence as if all the offences had been committed within his area of jurisdiction, and the magistrate holding such preparatory examination shall have jurisdiction to deal with any matter relating to such examination and to deal with the case on a remittal to him by the attorney-general under section *seventy-nine*, as if all the offences had been committed within his district.

(9) If in any case referred to in sub-section (8) the attorneys-general concerned have any doubt whether any two or more such charges should be inquired into at one preparatory examination or as to the magisterial district in which such examination should be held, the matter shall be referred to the Minister who may direct that two or more of, or all such charges shall be inquired into at one preparatory examination or at two or more preparatory examinations, and where any such examination shall be held. The Minister's direction shall be conclusive and not subject to appeal to any court.

(10) No proceedings instituted in terms of sub-section (8) shall be vitiated merely by reason of the fact that no evidence of the commission of the one offence was adduced to prove the commission of any other offence, or that the same witness or witnesses did not give evidence in support of each of two or more charges.

Procedure at Preparatory Examination.

Commencement of preparatory examination.

60. (1) When the accused is before a magistrate having jurisdiction, whether voluntarily or after being summoned or arrested with or without a warrant for any offence, and the local public prosecutor or other person charged with the prosecution of criminal cases has decided to institute a preparatory examination against the accused, the magistrate shall proceed, in the manner hereinafter described, to enquire into the charges against the accused.

(2) At any stage after the commencement of a preparatory examination any person suspected of having committed or having taken part in the commission of the offence in respect of which the preparatory examination was instituted may be joined with the accused, and thereupon the preparatory examination of the accused and such person shall proceed jointly: Provided that the evidence given by any witness before such joinder shall be read over to such person and if he or his representative requests the magistrate holding the preparatory examination to recall any such witness for the purpose of being cross-examined, the magistrate shall recall him and if necessary shall direct that he be subpoenaed to reappear before him, for the purpose of being cross-examined by the said person or his representative, and re-examined by the public prosecutor.

Access of public to preparatory examination.

61. Subject to the provisions of section *seventy* a preparatory examination shall be held at a place appointed under section *two* of the Magistrates' Courts Act 1944, (Act No. 32 of 1944), for the holding of a magistrate's court (including a periodical court and a detached court) and shall be open to the public: Provided that—

(*a*) a preparatory examination against a person who is or against two or more persons jointly who are all under the age of nineteen years, shall be held in a building or room (if a suitable one is available) other than that in which criminal proceedings against persons over that age are ordinarily conducted;

(*b*) no person other than an accused and his attorney or counsel and other than a parent or the guardian or a person *in loco parentis* of an accused who is a minor or of a minor who is giving evidence, shall be present at a preparatory examination referred to in paragraph (*a*) unless his presence is necessary in connection with that examination or unless the magistrate holding the examination has authorized him to be present;

(*c*) no person under the age of nineteen years other than an accused shall be present at any preparatory examination except while he is actually giving evidence thereat or unless the magistrate holding the examination has authorized him to be present.

Irregularities not to affect the proceedings.

62. No irregularity or defect in the substance or form of the summons or warrant or in the manner of arrest, and no variance between the charge contained in the summons or warrant and the charged contained in the information, or between either and the evidence adduced on the part of the prosecution at the preparatory examination, shall affect the validity of any criminal proceedings at or subsequent to the examination: Provided that if it appears to the magistrate that the accused has been deceived or misled by any such variance, he may adjourn the examination to some future day and in the meantime may remand the accused in custody or release him on bail as hereinafter provided.

Procedure where trial in inferior court has been converted into a preparatory examination.

63. Whenever any inferior court has stopped the summary trial of an accused under the powers conferred by the law governing such court, and the proceedings have thereupon been converted into a preparatory examination, it shall not be necessary for the magistrate to recall any witness who has already given evidence at that trial, but the magistrate's record of the evidence so given certified by him to be correct, or, if such evidence was recorded in shorthand writing or by mechanical means, any document purporting to be a transcript of the original record of the said evidence and purporting to have been certified as correct under the hand of the person who transcribed it, shall, for all purposes whatsoever, have the same force and effect and shall be admissible in evidence in the same circumstances as the evidence given in the course of a preparatory examination in the manner provided in section *sixty-four*: Provided that if it appears to the magistrate that it may be in the interests of justice to have a witness already examined, recalled for further examination, then such witness shall be summoned and examined accordingly and the evidence given by him shall be recorded in the same manner as other evidence given at a preparatory examination.

Evidence at preparatory examination to be on oath.

64. (1) All the evidence at a preparatory examination shall, except when an oath is by law dispensed with, be taken upon oath, or by affirmation where such is allowed by law, and every witness, before giving his evidence, shall make oath, or affirmation, as the case may be, before the magistrate before whom he is to be examined that in the whole of his evidence he will tell the truth, the whole truth and nothing but the truth and each witness shall be examined apart from the others.

(2) Subject to the proviso to sub-section (2) of section *sixty* and to sections *sixty-five* and *eighty-three*, the evidence given by a witness at a preparatory examination shall be given in the presence of the accused, shall be recorded and shall (except where it was recorded in shorthand writing or by mechanical means), be read over to the witness who gave it or read by such witness, and if such evidence was recorded in shorthand writing or by mechanical means, such record shall be transcribed and

any document purporting to be a transcription of the original record of the said evidence and purporting to have been certified as correct under the hand of the person who transcribed such evidence, shall *prima facie* be equivalent to such original record.

(3) The accused or his representative may cross-examine any such witness and thereupon the public prosecutor may re-examine him.

(4) Any evidence given under section *eighty-three* in the absence of the accused may be read over to him at the preparatory examination and shall be deemed to have been given at that examination and thereupon the proviso to sub-section (2) of section *sixty* shall apply.

(5) If a preparatory examination is held in respect of a charge that the accused committed or attempted to commit any indecent act towards another person or committed or attempted to commit any act for the purpose of procuring or furthering the commission of an indecent act towards or in connection with any other person, or that the accused committed or attempted to commit extortion or a statutory offence of demanding from any person some advantage which was not due and by inspiring fear in such person's mind, compelling him to render such advantage, no person shall at any time publish by radio or in any document any information relating to the said preparatory examination or any information disclosed thereat, unless the magistrate holding the preparatory examination, after having consulted the person against or in connection with whom the offence charged is alleged to have been committed (or if he is a minor, his guardian), consents in writing to such publication.

(6) No person shall at any time publish in any manner described in sub-section (5) the name, address, school, place of occupation or any other information likely to reveal the identity of any person under the age of nineteen years against whom any preparatory examination is being or has been held: Provided that, subject to the provisions of sub-section (5), if the Minister or if the magistrate who holds or held the preparatory examination is of the opinion that such publication would be just and equitable and in the interest of any particular person, he may by order dispense with the prohibition of this sub-section to such an extent as may be specified in the order.

(7) Any person contravening sub-section (5) or (6) shall be guilty of an offence and liable on conviction to a fine not exceeding fifty pounds or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

Recording of evidence in absence of accused.

65. If it is proved after a preparatory examination has commenced that the accused has absconded and that there is no immediate prospect of arresting him, or if the accused conducts himself in such a manner that the preparatory examination cannot, in the opinion of the magistrate, properly proceed in the presence of the accused, the magistrate may, on the instructions of the attorney-general, examine in the absence of the accused, any witness produced on behalf of the prosecution and record his evidence.

Accused at the close of examination in support of the charge to be cautioned that he is not obliged to make any statement.

66. (1) After the examination of the witnesses in support of the charge in the presence of the accused, the magistrate shall ask the accused what, if anything, he desires to say in answer to the charge against him, and, at the same time, caution him that he is not obliged to make any statement but that what he says may be used in evidence against him.

(2) The accused may then, or at any later stage of the examination, make any statement or give evidence on oath and every statement so made or evidence so given shall be taken down in writing in so far as it may be relevant to the charge and after being read over to him shall be signed by him if he is willing to sign it, and also by the magistrate, and shall be received in evidence before any court upon its mere production without further proof unless it is shown that the statement or evidence was not in fact made or given, or that the signatures or marks thereto are not in fact the signatures or marks of the person whose signatures or marks they purport to be.

(3) Before or after the accused's statement, if any, is made as aforesaid he may call and examine witnesses in his defence

and, either before or after the examination of any such witness, may himself give evidence on oath.

(4) Nothing in this section contained shall prevent the magistrate from hearing further evidence for the prosecution after hearing any evidence given by or on behalf of the accused, or from re-opening the examination.

Saving as to admissions.

67. Nothing in this Chapter contained shall prevent any prosecutor from tendering as evidence any admission or confession or other statement made or any evidence given by the accused which under Chapter XIV, would be admissible in evidence against him.

Discharge of accused when no sufficient case is made out.

68. (1) As soon as a preparatory examination has been concluded, the magistrate shall, if upon the whole of the evidence he is of opinion that no sufficient case is made out to put the accused upon his trial, discharge him; and in that case any recognizances taken in respect of the charge shall become void unless the attorney-general directs, within twenty-eight days, as hereinafter provided, that the accused be committed for trial or that he be tried before the court of a regional division or that a further examination be held.

(2) Notwithstanding that the accused has been so discharged, a warrant for his arrest may, upon information on oath, other than that recorded at the preparatory examination, be issued on the instructions of the attorney-general by a person empowered under Chapter IV to issue warrants of arrest, and upon the arrest of the accused a preparatory examination as to the offence charged against the accused shall be commenced afresh.

(3) Nothing in this section shall prevent a magistrate from discharging an accused at an earlier stage of a preparatory examination if for reasons recorded by the magistrate he considers the charge to be groundless.

Admission of previous convictions by accused at conclusion of preparatory examination.

69. (1) As soon as a preparatory examination has been concluded, the prosecutor shall, if he has information or reasonable grounds for believing that the accused has previously been convicted of any offence, transmit direct to the attorney-general particulars of the alleged previous conviction.

(2) If the attorney-general determines, under the provisions of section *seventy-nine*, to indict the accused for trial in a superior court, for any offence disclosed by the evidence taken at the preparatory examination, he may direct any magistrate of the district in which the accused is in custody, or if the accused is on bail, any magistrate of the district in which the accused was committed for trial or sentence, or with the consent of the accused, any other magistrate, to re-open the preparatory examination for the purpose of ascertaining whether the accused admits that he was previously convicted as aforesaid.

(3) (*a*) The magistrate shall, in accordance with the attorney-general's directions, re-open the preparatory examination and shall inform the accused of the particulars of the alleged previous conviction and shall call upon him to admit or deny that he was so previously convicted.

(*b*) If the accused admits that he was so previously convicted, his admission shall be reduced to writing, and signed by him if he is willing to sign it, and also by the magistrate.

(*c*) No person except the magistrate, the public prosecutor, the accused, his legal adviser and the necessary escort of the accused shall be present at any proceedings taken by the magistrate under this sub-section.

(4) Copies of any admission or denial by the accused made under this section shall be transmitted as soon as possible to the attorney-general.

(5) Due care shall be taken by every officer that no information relative to any alleged previous conviction of the accused is disclosed to any person, save as provided in this section, until evidence of such previous conviction is tendered as in Chapter XVI is provided.

Special Powers and Duties of Magistrate on Preparatory Examination.

Discretionary powers of the magistrate.

70. A magistate holding a preparatory examination may—

(*a*) adjourn the examination to any place within or outside his jurisdiction if, through the inability, from illness or other cause, of the accused or a witness to attend at a place where the magistrate usually sits or if, from any other reasonable cause, it appears desirable to do so;

(*b*) if it appears to him to be in the interests of good order or public morals or of the administration of justice, direct that the preparatory examination shall be held behind closed doors or that, with such exceptions as he may direct, females or minors or the public generally or any class thereof shall not be present thereat, and if a preparatory examination is to be held or is being held in respect of a charge referred to in sub-section (5) of section *sixty-four*, the magistrate may, at the request of the person against or in connection with whom the offence charged is alleged to have been commited, or if he is a minor, at the request of that person or of his guardian, whether made in writing before the commencement of the preparatory examination or orally at any time during the preparatory examination, direct that every person whose presence is not necessary in connection with the preparatory examination or any person or class of person mentioned in the request, shall not be present thereat;

(*c*) direct that, while any person under the age of nineteen years is giving evidence, no person other than a person whose presence at the preparatory examination is necessary and other than a parent or the guardian or a person *in loco parentis* of the witness or of an accused who is a minor and other than an attorney or counsel of an accused, shall be present thereat;

(*d*) regulate the conduct of the examination in any way which may appear to him desirable and which is not inconsistent with the provisions of this Act or of any other law;

(*e*) if it appears in the course of the examination that the magistrate's court of the district in which the examination is held, has jurisdiction to deal summarily with the offence which is the subject of the examination, and that it is desirable to try the accused summarily, with the consent of the prosecutor and the accused, stop the examination and place the accused on trial for that offence before such court, and the evidence already taken at the examination, shall thereupon be deemed to have been recorded as evidence at such trial: Provided that either the prosecutor or the accused may require any person who has given evidence at the examination to be recalled for further examination: Provided further that, if the accused so requests, any evidence already taken at the examination shall be read to him.

(*f*) if he is of opinion that a person under the age of nineteen years against whom the preparatory examination is held, is a child in need of care within the meaning of that expression as defined in section *one* of the Children's Act, 1937 (Act No. 31 of 1937), and that it is desirable to deal with him in terms of sections *twenty-eight* and *twenty-nine* of that Act, with the consent of the prosecutor at any stage of the examination before committing the accused for trial or sentence, stop the proceedings and order that the child be brought before a children's court mentioned in section *four* of the said Act and be dealt with under the said sections *twenty-eight* and *twenty-nine*.

The prosecutor and magistrate conducting preparatory examination to make local inspection and to cause post-mortem and other examinations to be made.

71. The magistrate who conducts a preparatory examination and the prosecutor shall make or cause to be made any local inspections which the particular circumstances of the case may render necessary; and, in any case of homicide or of serious injury to the person of any individual, to cause the dead body, or the person injured, to be examined by a registered medical practitioner or, if no registered medical practitioner is available, by the best qualified person available, who shall complete

and sign a written statement of the appearances and facts observed on such examination.

All articles to be used in evidence at the trial to be labelled for identification and to be kept in safe custody.

72. The magistrate who conducts a preparatory examination shall cause all documents and any other articles whatsoever, exhibited by the witnesses in the course of the examination and likely to be used in evidence at the accused's trial, to be inventoried and labelled or otherwise marked and shall cause all such documents and articles to be kept in safe custody until the trial.

Copy of record of preparatory examination to be sent to attorney-general.

73. (1) The magistrate shall, as soon as possible after the conclusion of a preparatory examination held by him, transmit a copy of the record thereof to the attorney-general for his consideration.

(2) If the prosecution was instituted at the instance of a private prosecutor, the attorney-general shall, if he declines to prosecute at the public instance, transmit such copy to that private prosecutor together with such a certificate as is mentioned in section *fourteen*.

Committal of Accused.

Committal of accused for trial.

74. (1) When it appears to a magistrate upon the conclusion of a preparatory examination that there is sufficient reason for putting the accused on trial for any offence, the magistrate shall commit the accused for trial by such a court of competent jurisdiction as the attorney-general may decide, and shall by warrant commit him to a gaol, there to be detained till brought to trial for the offence or till released on bail or liberated in due course of law.

(2) A warrant issued under sub-section (1) shall set forth clearly the offence with which the accused is charged.

(3) A magistrate may make an order of committal or discharge although part of the examination was conducted by another magistrate.

(4) Nothing in this section contained shall be construed as modifying the provisions of section *ninety-six* of the Prisons and Reformatories Act, 1911 (Act No. 13 of 1911).

Committal of accused for sentence.

75. (1) If an accused when making a statement in terms of section *sixty-six* states that he is guilty of the charge, then the magistrate shall, except where the charge is one of treason, murder or rape, further say to him the words following or words to the like effect: "Do you wish the witnesses again to appear to give evidence against you at your trial? If you do not you will now be committed for sentence instead of being committed for trial".

(2) If the accused in answer to such a question states that he does not wish the witnesses again to appear to give evidence against him, his statement shall be taken down in writing and read to him and shall be signed by the magistrate and by the accused, and shall be kept with the evidence of the witnesses and sent to the attorney-general.

(3) In any such case as is referred to in sub-section (2) the magistrate shall, instead of committing the accused for trial, commit him for sentence by such a court of competent jurisdiction as the attorney-general may decide, and the magistrate shall by warrant commit him to a gaol there to be detained until the sittings of such court or until he is admitted to bail or liberated in due course of law.

Committal by magistrate where offence committed in district other than his own.

76. In any case in which an accused is committed for trial or sentence or further examination for any offence by a magistrate of a district other than the district within which the offence is alleged to have been committed, the said magistrate may by warrant commit the accused either to a gaol in the district in which the offence is alleged to have been committed or to any other gaol.

Removal of accused from gaol of one district to that of another.

77. The magistrate of any district shall, on an application to that effect signed by the attorney-general, issue a warrant for the removal of any accused detained on a criminal charge under any warrant within the gaol of that district to the gaol of any other district specified in the application for detention therein for further examination, trial, or sentence or until liberated or removed therefrom in due course of law.

Committal for further examination.

78. (1) Where sufficient grounds do not appear for at once committing the accused for trial or for discharging him, and it appears to the magistrate probable that further evidence may become available, the magistrate may by warrant commit the accused for a period not exceeding fourteen days, for further examination.

(2) A committal for further examination may, if necessary, take place more than once upon sufficient cause appearing to the magistrate and such cause shall be expressed in the warrant of recommitment.

(3) Every warrant of commitment for further examination shall specify the time when the accused is again to be brought before the magistrate for examination: Provided that the magistrate may, with the consent of the accused, proceed with the examination before the expiration of the period mentioned in the warrant.

Consideration of Preparatory Examination by Attorney-General.

Powers of attorney-general.

79. (1) After considering the preparatory examination transmitted to him as aforesaid, the attorney-general may—

(*a*) decline to prosecute the accused and shall thereupon cause his decision to be transmitted to the magistrate, who, if the accused is in custody, shall cause him to be liberated forthwith, or if he is not in custody, shall inform him of the attorney-general's decision; or

(*b*) if the magistrate has committed the accused for trial or sentence, indict the accused for trial before a superior court, or, except where the preparatory examination was held by the court of a regional division, give directions for the trial of the accused before the court of the regional division having jurisdiction in the place where the preparatory examination was held on a charge of any offence disclosed by the evidence taken at the preparatory examination, and shall inform the magistrate accordingly; or

(*c*) (i) even if the magistrate has discharged the accused, indict the accused for trial before a superior court on a charge of any offence disclosed by the evidence taken at the preparatory examination and direct the magistrate so to commit the accused for trial if, in the attorney-general's opinion, the accused ought to have been so committed or, except where the preparatory examination was held by the court of a regional division, give directions for the trial of the accused before the court of the regional division having jurisdiction in the place where the preparatory examination was held;

(ii) in either of the cases mentioned in sub-paragraph (i) order the magistrate to issue a warrant for the re-arrest of the accused if he has been discharged from custody, or direct that the recognizances shall remain in operation if the accused has been admitted to bail or give such other directions in respect of further proceedings against the accused as the attorney-general may think right and determine; or

(*d*) unless the offence charged is treason, murder or rape, or the preparatory examination was held by the court of a regional division, remit the case to be dealt with under its ordinary jurisdiction, by the magistrates' court of the district in which the preparatory examination was held; or

(*e*) unless the offence charged is treason, murder or rape, or the preparatory examination was held by the court of a regional division, remit the case to be dealt with by the magistrates' court of such district, under any increased jurisdiction conferred upon such court by any law governing magistrates' courts or by any other law; or

(*f*) in any case in which a person has been committed for sentence under section *seventy-five* unless the offence charged is treason, murder or rape, or the preparatory

examination was held by the court of a regional division, remit the case to be dealt with by the magistrates' court of such district, either under its ordinary jurisdiction or under any increased jurisdiction conferred upon such court by any law governing magistrates' courts or by any other law; or

(*g*) direct the magistrate to re-open the preparatory examination and take further evidence generally or in respect of any particular matter; or

(*h*) take such measures and give such directions for the trial of the accused before a competent court as he may deem most expedient.

(2) The attorney-general in remitting any case to a magistrates' court shall state specifically whether he remits the case under paragraph (*d*), (*e*) or (*f*) of sub-section (1) of this section and shall also state specifically whether he remits the case to be dealt with under the ordinary jurisdiction of the magistrates' court or under any increased jurisdiction aforesaid.

General.

How remitted cases to be dealt with.

80. Any case remitted to a magistrate's court under any provision of section *seventy-nine* shall be tried by such court in all respects in accordance with the relevant provisions of Chapters X to XVIII inclusive, and also in accordance with and subject to the law governing such court; and any conviction, and any sentence imposed in respect thereof shall be subject to review or appeal as prescribed by such law.

Persons committed for trial or sentence entitled to copy of evidence.

81. An accused who is committed for trial or sentence for any offence, may demand from the person who has the lawful custody thereof a copy of the evidence given at the preparatory examination, upon which he has been so committed and of his own statement or evidence (if any) and such person shall within a reasonable time of such demand and, unless counsel has been assigned by the court to defend the accused *pro deo*, upon payment of a reasonable amount not exceeding nine pence for each folio of one hundred words, deliver such a copy to the accused or his attorney or agent: Provided that, if such demand be not made before the day appointed for the commencement of the trial of the person on whose behalf such demand is made, such person shall not be entitled to have such a copy, unless the judge presiding at the trial is of opinion that such copy may be made and delivered without delay or inconvenience to the trial: Provided further that such judge may, if he thinks fit, postpone the trial by reason of such copy not having been previously had by the accused.

Persons under trial may inspect evidence without charge at trial.

82. Every accused shall be entitled at the time of his trial to inspect, without the payment of any fee, all the evidence, or a copy thereof, which has been taken, and the statement made or evidence given by the accused at the preparatory examination.

Power of magistrate to take evidence as to alleged offence in cases where the actual offender not known or suspected.

83. (1) A magistrate may, at any time upon the request of the local public prosecutor, require the attendance before him of any person who is likely to give material evidence as to any alleged offence, whether or not it be known or suspected who the person is by whom the offence has been committed.

(2) The provisions of sections *two hundred and six, two hundred and seven, two hundred and nine, two hundred and eleven, two hundred and twelve* and *two hundred and nineteen* shall apply in respect of persons required to attend and give evidence under this section: Provided that the examination of such persons may be conducted in private at any place appointed by the magistrate for that purpose.

Access to accused by friends and legal advisers.

84. (1) The friends and legal advisers of an accused shall have access to him, subject to the provisions of any law relating to the management of prisons or gaols.

(2) An accused is, while the preparatory examination is being held, entitled to the assistance of his legal advisers.

True copy of warrant of commitment to be furnished to prisoners under a penalty of fifty pounds.

85. Where an accused is committed for trial or sentence, he may demand a true copy of the warrant from the officer who has the lawful custody thereof or keeper of the gaol in which he is detained, who shall be liable to pay by way of penalty a sum not exceeding fifty pounds if he refuses to give such copy within six hours after it is demanded by the accused or his legal adviser, which penalty shall be recoverable by civil proceedings at the suit of the accused.

Application of provisions relating to a district to a regional division.

86. The provisions of this Chapter relating to a district established under the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), shall apply *mutatis mutandis* to any regional division established under the said Act, in regard to preparatory examinations held by the court of a regional division under section *ninety-three* of the said Act.

CHAPTER VII.

Bail.

Before conclusion of Preparatory Examination.

Bail before conclusion of examination in the magistrate's discretion.

87. (1) No accused against whom a preparatory examination has been instituted shall before the issue of the warrant for his committal for trial or sentence be entitled to be released on bail: Provided that the magistrate may in his discretion, except where the offence is treason or murder, release the accused on bail before the preparatory examination is concluded.

(2) If an accused released on bail before the preparatory examination is concluded, does not appear at the time and place mentioned in the recognizance, the magistrate may declare the recognizance forfeited, adjourn the examination, and issue a warrant for his arrest.

After Conclusion of Preparatory Examination.

Accused entitled to be admitted to bail if committed for trial or sentence in respect of certain offences.

88. Every person committed for trial or sentence in respect of any offence, except treason or murder, is entitled as soon as the warrant of committal for his trial or sentence is issued, to be released on bail: Provided that—

(*a*) where any person has been committed for trial or for sentence upon a charge of any such offence, the magistrate to whom application for bail is made, may, if he has reason to believe that notwithstanding any conditions of a recognizance, such person is not likely to appear as required or to comply with any condition imposed (without prejudice to such person's rights under section *ninety-seven*) refuse to admit him to bail;

(*b*) where any person has been committed for trial upon a charge of rape, the magistrate to whom application for bail is made, may (without prejudice to such person's rights under section *ninety-seven*) refuse to admit him to bail; and

(*c*) where a woman has been committed for trial upon a charge of having murdered her newly born child or where a person under sixteen years of age has been committed for trial on a charge of murder, the magistrate to whom application for bail is made, may admit such woman or person to bail.

Verbal application at the time of committal to be admitted to bail.

89. An accused may at the time of his committal apply verbally to the magistrate or judge granting the warrant of committal, to be immediately released on bail.

After committal application to be made in writing to the magistrate who granted the warrant or the magistrate of the district wherein the accused is in custody or any judge of a superior court.

90. (1) An accused may at any time subsequent to his committal make written application to the magistrate who granted the warrant of committal or to the magistrate within whose district he is in custody, or to the superior court having jurisdiction or to any judge thereof, to be released on bail: Provided that where the committal is on a warrant issued by a superior court or any judge thereof, the accused may apply for bail only to such superior court or to one of the judges thereof.

(2) A written application for bail shall be by way of petition and shall be accompanied by a copy of the warrant of committal or by an affidavit that a copy is refused.

Magistrate to determine whether the offence is bailable and fix the bail within twenty-four hours.

91. (1) A magistrate to whom an application for bail is made under section *ninety* shall, within twenty-four hours thereafter if the offence is bailable by him, give his decision thereon and, if the application is granted, fix the amount of the bail.

(2) In determining whether the offence for which the accused has been committed is bailable or not by him, the magistrate shall take the charge against the accused as he finds it on the face of the warrant of committal.

Refusal of bail where doubt exists in regard to degree or quality of offence.

92. Where in the case of an injury to any person doubt exists in regard to the degree or quality of the offence committed by the accused by reason of the fact that it is uncertain whether the person injured will die or recover, the judge or magistrate to whom application is made for bail by or on behalf of the accused, may refuse to grant the application until all danger to the life of the person injured is at an end.

Conditions of recognizance.

93. (1) The recognizance which shall be taken on the release of an accused on bail after the conclusion of the preparatory examination, shall be taken by the court, judge or magistrate (as the case may be) either from the accused alone or from the accused and one or more sureties in the discretion of the court, judge, or magistrate according to the nature and circumstances of the case.

(2) The conditions of the recognizance shall be—

(*a*) that the accused shall at any time within a period of twelve months from the date of the recognizance appear at and undergo any further examination which the magistrate or the attorney-general may consider desirable or appear to answer any indictment that may be presented, or charge that may be made, against him in any competent court for the offence with which he is charged;

(*b*) that he shall attend during the hearing of the case and to receive sentence; and

(*c*) that he shall accept service of any summons to undergo further examination or any indictment or charge, notice of trial, or summons thereon or any other notice under this Act at a certain and convenient place within the Union chosen by him and specified in the recognizance.

(3) The court, judge or magistrate aforesaid may further add to the recognizance any condition which it or he may deem necessary or advisable in the interests of justice, as to—

(*a*) times and places at which and persons to whom the accused shall personally present himself;

(*b*) places where he is forbidden to go;

(*c*) prohibition against communication by the accused with witnesses for the prosecution; or

(*d*) any other matter relating to his conduct.

(4) The recognizance shall continue in force notwithstanding that for any reason, when the trial takes place, no verdict is then given, unless the indictment or charge is withdrawn.

On failure of accused to appear at trial, recognizance to be forfeited.

94. If upon the day appointed for the hearing of any criminal trial it appears by the return of the proper officer or by other sufficient proof that a copy of the indictment and notice of trial, or in case of a remittal to a magistrate's court, the summons or charge, has been duly served, and the accused does not appear after his name has been called three times in or near the court premises, the prosecutor may apply to the court for a warrant for the arrest of the accused, and may move the court that the accused and his sureties (if any) be called upon their recognizance, and, in default of his appearance, that the recognizance be then and there declared forfeited; and any such declaration of forfeiture shall have the effect of a judgment on the recognizance for the amounts therein specified against the accused and his sureties respectively.

In Cases Tried by Inferior Courts.

Power to admit to bail, nature of bail and provision in case of default.

95. (1) When a criminal trial before an inferior court is adjourned or postponed and the accused remanded in custody, the court may, in its discretion release the accused on bail in the manner hereinafter provided.

(2) (*a*) When an inferior court releases an accused on bail under this section, a recognizance shall be taken from the accused alone or from the accused and one or more sureties, as the court may determine, regard being had to the nature and circumstances of the case.

(*b*) The conditions of the recognizance shall be that the accused shall appear at a time and place to be specified in writing and as often as may be necessary thereafter within a period of six months, until final judgment in his case has been given, to answer the charge of the offence alleged against him or the charge of any other offence which may appear to the attorney-general or the local public prosecutor to have been committed by the accused.

(3) The court may further add to the recognizance any condition which it may deem necessary or advisable in the interests of justice, as to—

(*a*) times and places at which and persons to whom the accused shall personally present himself;
(*b*) places where he is forbidden to go;
(*c*) prohibition against communication by the accused with witnesses for the prosecution; or
(*d*) any other matter relating to his conduct.

General for all Criminal Proceedings.

Excessive bail not to be required.

96. The amount of bail to be taken in any case shall be in the discretion of the court, judge, magistrate or officer presiding over an inferior court to whom the application to be admitted to bail is made: Provided that no person shall be required to give excessive bail.

Appeal to superior court against refusal of bail.

97. (1) Whenever an accused considers himself aggrieved by the refusal of any magistrate or of an inferior court to release him on bail or by such magistrate or court having required excessive bail or having imposed unreasonable conditions, he may appeal to the superior court having jurisdiction, or, in case such court is not then sitting, to any judge thereof against such refusal or excessive bail.

(2) The superior court to which or judge to whom an appeal is made under sub-section (1) may make such order on the appeal as to it or him in the circumstances of the case seems just.

Power of superior court to admit to bail.

98. A superior court having jurisdiction in respect of any offence may at any stage of any proceedings taken in any court in respect of that offence, release the accused on bail, whether the offence is or is not one of the offences referred to in section *eighty-eight.*

Insufficiency of sureties.

99. If, through mistake, fraud, or otherwise, insufficient sureties have been accepted or if they afterwards become insufficient the court, judge, magistrate or other judicial officer who granted the bail, may issue a warrant of arrest directing that the accused be brought before it or him and may order him to find sufficient sureties and on his failing so to do, may commit him to prison.

Release of sureties.

100. (1) Any of the sureties for the attendance and appearance of an accused released on bail may at any time apply to the court, judge, magistrate or judicial officer before whom the recognizance was entered into, to discharge the recognizance either wholly or so far as relates to the applicants.

(2) On such application being made the court, judge, magistrate or other judicial officer shall issue a warrant of arrest directing that the accused be brought before it or him.

(3) On the appearance of the accused pursuant to the warrant or on his voluntary surrender, the court, judge, magistrate or other judicial officer shall direct the recognizances to be discharged either wholly or so far as it relates to the applicants and shall call upon the accused to find other sufficient sureties and, if he fails to do so, may commit him to prison.

Render in court.

101. The sureties for the attendance and appearance of an accused released on bail may bring the accused into the court at which he is bound to appear during any sitting thereof and then, by leave of the court, render him in discharge of the recognizance at any time before sentence, and thereupon the accused shall be committed to a gaol there to remain until

discharged by due course of law; but such court may release the accused on bail for his appearance at any time it deems fit.

Sureties not discharged until sentence or discharge of the accused.

102. The pleading or conviction of an accused released on bail as aforesaid shall not discharge the recognizance which shall remain in force for his appearance during the trial and until sentence is passed or he is discharged, but the court may commit the accused to a gaol upon his trial or may require new or additional sureties for his appearance for trial or sentence (as the case may be) notwithstanding such recognizance, and such committal shall discharge the sureties.

Death of surety.

103. When a surety to a recognizance dies before any forfeiture has been incurred, his estate shall be discharged from all liability in respect of the recognizance, but the accused may be required to find a new surety.

Person released on bail may be arrested if about to abscond.

104. Whenever an accused person has been released on bail under any of the provisions of this Chapter, any magistrate may, if he sees fit, upon the application of any peace officer and upon written information on oath by such officer that there is reason to believe that the accused is about to abscond in order to evade justice, issue his warrant for the arrest of the accused and, upon being satisfied that the ends of justice would otherwise be defeated, commit him, when arrested, to a gaol until his trial.

Deposit instead of recognizance.

105. (1) (*a*) When any person is required by any court, judge, magistrate or judicial officer to enter into recognizances with or without sureties under any of the provisions of this Act, such court, judge, magistrate or judicial officer may, except in the case of a bond for good behaviour, instead of causing such recognizances to be entered into, permit him or some person on his behalf to deposit a sum of money or Government securities to such amount as the court, judge, magistrate or judicial officer may fix.

(*b*) Conditions in writing shall be made, in respect of such a deposit of money or securities, of the same nature as the conditions prescribed by this Chapter in respect of recognizances, and all the provisions of this Chapter prescribing the circumstances in which recognizances taken from the accused alone shall be forfeited, his arrest if about to abscond, and remission of forfeited bail, shall apply *mutatis mutandis* in respect of any such deposit of money or securities.

(2) (*a*) If a person is charged with any offence other than an offence specified in Part II of the Second Schedule, any policeman holding a rank or post designated by the Minister from time to time for the purposes of this section by notice in the *Gazette*, may at a police station or police post, at any time when no judicial officer is available, release such person on bail if he or any other person on his behalf deposits with such policeman, such sum of money as the policeman may fix, or furnishes to such policeman such security in lieu of bail as the latter deems sufficient.

(*b*) The provisions of sub-section (1) as to conditions, forfeiture and remission of forfeited bail shall *mutatis mutandis* apply in connection with a deposit of money or security given under this sub-section.

Provision in case of default in the conditions of recognizance.

106. If it appears to the court, judge, magistrate or other judicial officer concerned that default has been made in any condition of a recognizance taken before it or him, or if it appears to the court, judge, magistrate or other judicial officer before which or whom an accused person has to appear in terms of any recognizance entered into before another court, judge, magistrate or judicial officer, that default has been made in any condition of such recognizance, such court, judge, magistrate or other judicial officer may—

(*a*) issue an order declaring the recognizance forfeited, and such order shall have the effect of a judgment on the recognizance for the amounts therein named

against the person admitted to bail and his sureties respectively;

(*b*) issue a warrant for the arrest of the person admitted to bail and afterwards, upon being satisfied that the ends of justice would otherwise be defeated, commit him, when so arrested, to a gaol until his trial.

Remission of bail.

107. The Minister or any person acting under his authority, may in his discretion remit any portion of any amount forfeited under this Chapter and enforce payment in part only.

Release of juvenile offenders without bail.

108. (1) When a person under the age of nineteen years is charged with any offence other than treason, murder or rape, any court which, or any magistrate or policeman who may under any provision of this Chapter release the said person on bail may, instead of releasing him on bail, or instead of detaining him—

(*a*) release him without bail and warn him to appear before a court or magistrate at a time and on a date then fixed by the court, magistrate or policeman; or

(*b*) release him without bail to the care of the person in whose custody he is and warn that person to bring him or cause him to be brought before a court or magistrate at a time and on a date then fixed as aforesaid; or

(*c*) place him in a place of safety (as defined in section *one* of the Children's Act, 1937), pending his appearance or further appearance before a court or magistrate, or until he is otherwise dealt with according to law.

(2) Any person who, having been warned in terms of paragraph (*b*) of sub-section (1), fails without reasonable excuse (the burden of proof of which shall be upon him) to act in accordance with that warning shall be guilty of an offence and liable on conviction to a fine not exceeding ten pounds or in default of payment of that fine, to imprisonment for a period not exceeding one month.

CHAPTER VIII.

TRIAL BEFORE SUPERIOR COURT WITHOUT A JURY.

Crimina cases to be tried by a judge without a jury.

109. (1) In any criminal case pending before a superior court—

(*a*) in which the Minister has in terms of section *one hundred and eleven* directed that the accused shall be tried by a judge without a jury; or

(*b*) in which the Minister has not so directed and the accused has not in terms of section *one hundred and thirteen*, and in accordance with the provisions of that section, demanded to be tried by a judge and a jury,

the accused shall, subject to the provisions of section *one hundred and twelve*, be tried by a judge of the Supreme Court without a jury and as hereinafter in this section provided.

(2) The judge presiding at the trial may summon to his assistance any person who has, or any two persons who have, in the opinion of the judge, 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: Provided that if the accused is to be tried upon a charge of having committed or attempted to commit treason, murder, rape or sedition or in any case in which the Minister has given a direction under section *one hundred and eleven*, the judge shall summon to his assistance two assessors as aforesaid.

(3) Before the trial the said judge 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 judge and no assessor shall have a voice in any such decision;

(*b*) the presiding judge may adjourn the argument upon any such matter or question as is mentioned in para-

graph (*a*) and may sit alone for the hearing of such argument and the decision of such matter or question;

(*c*) whenever the presiding judge 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 judge, in which case the decision or finding of such judge shall be the decision or finding of the court if there is a difference of opinion;

(*e*) it shall not be incumbent on the court to give any reasons for its decision or finding on any matter under paragraph (*d*).

(4) If any such assessor is not a person in the full-time employment 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 the Minister in consultation with the Minister of Finance, may determine.

(5) The provisions of this Act relating to trials by a superior court shall, in so far as they can be applied, apply to any trial without a jury under this section.

Incapicity of assessor.

110. (1) If at any time during a trial in respect of which the presiding judge was not in terms of the proviso to sub-section (2) of section *one hundred and nine* obliged to summon assessors to his assistance, any assessor dies or becomes in the opinion of the judge incapable of continuing to act as assessor, the judge may, if he thinks fit, direct that the trial shall proceed without such assessor.

(2) Where the judge has given a direction in terms of sub-section (1) the trial shall proceed as if the said assessor had not been called by the judge to his assistance.

(3) If at any time during a trial in respect of which the presiding judge was in terms of the proviso to sub-section (2) of section *one hundred and nine* obliged to summon assessors to his assistance, one of the assessors dies or becomes in the opinion of the judge incapable of continuing to act as assessor, the judge may if he thinks fit, with the consent of the accused and the prosecutor, direct that the trial shall proceed without such assessor.

(4) Where the trial proceeds in pursuance of a direction given in terms of sub-section (3) the decision of the court shall, notwithstanding anything in paragraph (*d*) of sub-section (3) of section *one hundred and nine* contained, be unanimous.

(5) If the judge does not direct as provided in sub-section (1) or (3) or where the court is unable, as required by sub-section (4), to agree on a decision on any charge in the indictment, the provisions of sub-section (2) of section *one hundred and forty-nine* shall *mutatis mutandis* apply.

(6) If the court is unable, as required by sub-section (4), to agree on a decision on any charge in the indictment, and the person accused is again tried on such charge, then the judge and the assessor who were members of the court which failed to agree as aforesaid shall not be competent to be members of any subsequent court constituted to try the accused on such charge.

Minister may direct trial by judge without a jury in certain cases.

111. When a person committed for trial is or two or more persons jointly committed for trial are to be tried before a provincial or local division of the Supreme Court upon an indictment charging him or them with having committed or attempted to commit an offence—

(*a*) under Chapter I of the Riotous Assemblies and Criminal Law Amendment Act, 1914 (Act No. 27 of 1914); or

(*b*) under section *thirty-three* of the Atomic Energy Act, 1948 (Act No. 35 of 1948); or

(*c*) relating to illicit dealing in or illegal possession of precious metal or precious stones; or

(*d*) relating to the supply of intoxicating liquor to natives or coloured persons; or

(*e*) relating to insolvency; or

(*f*) in connection with which facts relating to "prescribed material" as defined in section *one* of the Atomic Energy Act, 1948, may have to be considered; or
(*g*) in connection with which facts may have to be considered, for the proper understanding of which an expert knowledge of bookkeeping, accounts, geology, mineralogy or metallurgy may be necessary; or
(*h*) towards or in connection with a non-European if the accused or any of the accused is a European or towards or in connection with a European, if the accused or any of the accused is a non-European,

or with such an offence together with any other offence, the Minister may, by a notification on or attached to the notice of trial, direct that the trial take place before a judge without a jury.

Special criminal courts for the trial of certain offences.

112. (1) Whenever an attorney-general decides to indict an accused upon a charge of treason, sedition or public violence, or of an attempt, conspiracy or incitement to commit such an offence, and is of opinion that, if the accused were tried by a jury, the ends of justice are likely to be defeated, he shall state in writing to the Minister such his opinion and the facts upon which it is based and specify the offence for which he proposes to indict the accused.

(2) (*a*) The Governor-General may thereupon constitute a special criminal court to sit at any place in the Union at which the accused might otherwise have been tried before a provincial or local division of the Supreme Court for such offence.
(*b*) Such special criminal court shall have jurisdiction to try without a jury any charge for an offence referred to in sub-section (1) which may be made in the indictment lodged by the attorney-general in respect of the accused, and to sentence the accused, if convicted of such an offence, to any punishment that may by law be imposed therefor.

(3) (*a*) A special criminal court shall consist of at least two and not more than three judges of the Supreme Court and the decision of the court shall be unanimous.
(*b*) The Minister shall designate an officer in the public service or a judge's clerk to act as registrar of such court.

(4) (*a*) The constitution of such special criminal court shall be notified in the *Gazette*, together with the names of the members thereof, the name and official address of the registrar thereof, and the date on which and the place at which it will commence its sittings.
(*b*) At any time after the constitution of the court is so notified, the attorney-general may lodge with the registrar thereof any such indictment aforesaid.

(5) Save as is otherwise in this section provided, the provisions of this Act relating to a trial by a superior court shall apply *mutatis mutandis* in respect of the trial of an accused by a special criminal court: Provided that if a special criminal court is unable, as required by paragraph (*a*) of sub-section (3), to agree on a decision on any charge in the indictment, and the accused is again tried on such charge, then no judge who was a member of the court which failed to agree as aforesaid shall be competent to be a member of any subsequent special criminal court constituted to try the accused on such indictment.

(6) At the conclusion of every session of a special criminal court, the registrar thereof shall transmit the records of the proceedings of that session to the registrar of the provincial division of the Supreme Court of the province in which the special criminal court held its sittings, and such records shall thereupon become records of that provincial division.

CHAPTER IX.

TRIAL BY JURY.

Certain criminal cases to be tried by a judge and a jury of nine men.

113. (1) Any person who is committed for trial for any offence by a magistrate and who—

(*a*) verbally at the conclusion of the preparatory examination; or
(*b*) by written notice to the magistrate of the district in which the preparatory examination was held, within

three weeks from the date upon which he is committed for trial; or

(*c*) if before the said period of three weeks has elapsed, notice is served upon him that he will be tried upon an indictment before a provincial or local division of the Supreme Court, by written notice to the said magistrate within seven days after the service of such notice,

demands to be tried by a judge and a jury, shall, if he is indicted for trial for any offence before a superior court, but subject to the provisions of sections *one hundred and eleven* and *one hundred and twelve*, be tried by a judge of the Supreme Court and a jury of nine men of whom not less than seven shall determine the verdict: Provided that if two or more persons are charged jointly on the same indictment, no such demand shall be effective unless made by all such persons.

(2) The magistrate who commits any person for trial shall upon conclusion of the preparatory examination inform the person committed for trial that if he is indicted for trial before a superior court he shall have the right, subject to the provisions of sections *one hundred and eleven* and *one hundred and twelve*, to be tried by a judge and jury, provided he demands to be tried by a judge and jury in accordance with the provisions of and within the periods prescribed by sub-section (1), and shall record upon the record of the preparatory examination the fact that he has so informed the person committed for trial, and any such record shall be conclusive proof that the person was so informed.

Jurors.

Qualification of jurors.

114. Every European male person over the age of twenty-five and under the age of sixty-five years who is a registered parliamentary voter in the Union and who is not exempted by the provisions hereinafter contained or by any other law, shall be qualified and liable to serve as a juror on any jury empanelled for any criminal trial within the jury district in which such person resides.

Exemption from serving as jurors.

115. (1) The following persons shall be exempt from serving as jurors:

(*a*) Ministers and members of the Executive Council;

(*b*) judges of the Supreme Court;

(*c*) members of either House of Parliament or of a provincial council or of a provincial executive committee;

(*d*) any officer of Parliament or of a provincial council;

(*e*) ministers of religion;

(*f*) advocates and attorneys duly admitted and actually practising, articled or managing clerks to attorneys, and enrolled agents in the magistrates' courts;

(*g*) medical practitioners, dentists, chemists and druggists, duly registered as such and actually practising;

(*h*) persons who are serving or actually undergoing training in any land, sea or air force under the laws relating to the defence of the Union and members of any police force;

(*i*) members of the public service;

(*j*) deputy sheriffs and sheriffs' officers;

(*k*) college professors and lecturers, school inspectors and school teachers;

(*l*) masters of vessels and pilots;

(*m*) persons continuously employed in any public railway, tramway, electrical works, waterworks or sewerage works or in connection with a hospital;

(*n*) persons actually engaged as editors of, or reporters for newspapers;

(*o*) persons accredited in the Union as consuls;

(*p*) persons in the service of Her Majesty the Queen in any of her Governments;

(*q*) persons incapacitated by deafness, blindness or other permanent infirmity for service on a jury;

(*r*) secretaries of divisional councils;

(*s*) municipal councillors;

(*t*) heads and sub-heads of municipal departments;

(*u*) traffic police in the employ of a local authority.

(2) Any person who claims to be exempted under this section by means of a document which he knows to be false in any material particular shall be guilty of an offence and liable on conviction to a fine not exceeding fifty pounds.

Jury Districts and Jury Lists.

Jury districts.

116. (1) Every electoral division, as delimited from time to time in accordance with the provisions of sections *thirty-eight* to and including *forty-three* of the South Africa Act, 1909, in which the court house is situate where a superior court is to be held for the trial of criminal cases, shall be a jury district: Provided that where an electoral division extends beyond the boundaries of the magisterial district in which such a court house is situate, the jury district shall comprise only those polling districts in the said electoral division which are situate wholly within the magisterial district: Provided further that if no polling district is situate wholly within such magisterial district, the polling district within which such a court house is situate, shall be the jury district: Provided further that if the Minister is of opinion that the area of any jury district is unduly large, he may by notice in the *Gazette* excise from the jury district one or more polling districts, and thereupon the jury district shall comprise only those polling districts which have not been so excised.

(2) If the Minister is of opinion that the area of any jury district is not large enough he may, notwithstanding anything to the contrary in sub-section (1) contained, by notice in the *Gazette* add to that jury district any polling district adjoining such jury district and such polling district shall thereupon form part of such jury district.

Jury lists.

117. (1) Any jury list which is in operation for any jury district immediately prior to the date of commencement of this Act shall remain in operation until replaced by a new list furnished for that jury district in terms of sub-section (2).

(2) Within three months from the date upon which a voters' list prepared after every general registration of voters comes into operation under sub-section (3) of section *eight* of the Electoral Consolidation Act, 1946 (Act No. 46 of 1946), in respect of any electoral division which comprises a jury district or within which a jury district is situate, the Chief Electoral Officer shall furnish the magistrate of the magisterial district within which that jury district is situate with a copy of the voters' list for European male persons for the said electoral division, from which have been removed the names of all persons who on the aforesaid date were under the age of twenty-five or over the age of sixty-five years and of all persons not registered as resident within the jury district.

(3) Any list furnished in terms of sub-section (2) shall be the jury list for the jury district in respect of which it has been so furnished and shall come into operation forthwith and shall remain in operation until replaced by a new list furnished for that jury district in terms of sub-section (2).

(4) Whenever by reason of the fact that a superior court is to be held for the trial of criminal cases at a place where such a court has not previously since the date of commencement of this Act been held, a jury district comes into existence, the Chief Electoral Officer shall within one month of the date upon which that jury district comes into existence, furnish the magistrate of the magisterial district within which that jury district is situate, with a copy of the voters' list for European male persons which has under section *eight* of the Electoral Consolidation Act, 1946, been prepared at the last preceding general registration of voters for the electoral division which comprises that jury district or within which that jury district is situate and from which have been removed the names of all persons who on the lastmentioned date were under the age of twenty-five or over the age of sixty-five years and of all persons not registered as resident within that jury district.

(5) Any list furnished in terms of sub-section (4) shall be the jury list for the jury district in respect of which it has been so furnished and shall come into operation forthwith and shall remain in operation until replaced by a new list furnished for that jury district in terms of sub-section (2).

(6) A jury district shall for the purposes of this section be deemed to be situated within the magisterial district within which the court house is situate where the superior court is

to be held for the trial of criminal cases, notwithstanding that that jury district is not situate wholly within that magisterial district.

Transmission of jury list to sheriff.

118. Upon receipt of any list furnished to him in terms of section *one hundred and seventeen*, the magistrate shall transmit it to the sheriff or deputy-sheriff concerned who shall summon the jurors whose names are included in that list at the times and in the manner hereinafter provided.

Summoning of Jurors.

Sheriff to summon jury for criminal sessions.

119. (1) Not more than fourteen and not less than seven days before the day on which a jury will be required for the trial of criminal cases in a superior court, the sheriff or his deputy shall summon twenty-seven jurors or such greater number as the attorney-general may direct: Provided that—

(*a*) if upon a date not more than twenty-eight days before the day upon which a jury will be so required the attorney-general is satisfied that at least twenty-seven jurors will be required as aforesaid, he may authorize the sheriff or his deputy to commence forthwith with the summoning of jurors;

(*b*) if within a period of twenty-eight days before the day appointed for the trial of criminal cases in a superior court and before twenty-seven jurors have been summoned to attend that court, the attorney-general is satisfied that not more than two cases will be tried in such court before a jury and that in no such case will more than three persons be tried jointly, he may direct the sheriff or his deputy to summon only twenty-one jurors to attend that court, or if more than twenty-one jurors have already been summoned, direct that no further jurors be summoned;

(*c*) if at any time not more than twenty-one days before the day appointed as aforesaid the attorney-general is satisfied that no jury will be required to try any case in that court, he shall direct that no jurors or no further jurors shall be summoned to attend that court and if any juror has already been summoned, he shall take such steps as he may consider necessary to cancel the summons.

(2) The names of the jurors to be so summoned shall be taken from the jury list of the jury district wherein the superior court is to be held.

(3) Any of the said jurors may be summoned to attend upon any day on which the criminal sessions of the court is held.

(4) Any juror actually serving on a jury in any case must continue to serve until the jury has given its verdict or until the jury is discharged by the court, notwithstanding that the period for which he has been summoned to attend has expired.

Mode of summoning jurors.

120. The sheriff or his deputy shall summon or cause to be summoned a juror by leaving with the juror or, in case he is absent from his usual place of abode, by leaving with some responsible adult person in occupation thereof, a notice under the hand of the sheriff or his deputy requiring such juror's attendance in court and at a place and on a day and hour stated therein.

Return of services to be made to registrar.

121. The officer summoning jurors shall make a return under his hand to the registrar of the court of the manner in which each summons was served or shall attend before the court and verify it under oath.

Mode of drawing names of jurors to be summoned and directions to be observed.

122. In drawing the names of jurors to be summoned for service, the sheriff or his deputy shall observe the following directions:

(*a*) he shall place in a box cards of equal size containing the numbers corresponding to the numbers opposite the names of jurors on the jury list, except the jurors referred to in paragraph (*f*) and those who, according to the particulars contained in the said list, are clearly exempt from serving as jurors in terms of section *one hundred and fifteen*;

(*b*) he shall, after shaking the box to distribute the cards therein, draw out of the box singly a number of cards equal to the number of jurors required to be summoned;

(*c*) after the cards are drawn he shall refer to the corresponding numbers in the jury list and, if it be found that the names of two or more persons nearly related or connected or residing upon the same property or employed in the same business are both or all drawn he shall lay aside the cards corresponding to the names of all but one of such persons separately, and draw out others and shall so proceed until the requisite number of jurors be obtained;

(*d*) if before or after the issue or service of notices requiring the persons drawn to attend as jurors he discovers that any person whose name has been so drawn is dead, absent, or unable from sickness or any infirmity or other sufficient cause to attend, or if any such person satisfies him that he is in terms of section *one hundred and fifteen* exempt from serving as a juror, he shall draw other cards to make up the deficiency and summon the jurors whose names are so drawn: Provided such jurors shall be given the requisite number of day's notice;

(*e*) he shall prepare a list of the names of the persons so drawn and summoned and forward it to the registrar of the court in which the said persons are required to serve as jurors;

(*f*) the cards bearing the numbers corresponding to the names of persons who have served as jurors at any criminal sessions of any court during the preceding two years shall be kept separate until all the cards bearing the numbers corresponding to the names of persons who have not so served, are drawn;

(*g*) when all the cards are drawn, the cards bearing the numbers corresponding to the names of persons who have performed their rota of service as jurors shall be returned to the box to be again drawn from and returned in like manner.

Drawing of names by deputy-sheriff.

123. When the drawing of names of jurors is made by a deputy-sheriff the following provisions shall apply:

(*a*) the deputy-sheriff shall, by notice posted on or near the principal door of the court-house of the magistrate, appoint a day, not less than four days after the date of posting of the notice, on which he will attend in the court-house at a time between the hours of nine o'clock in the morning and noon and stated in the notice, for drawing the names of the jurors;

(*b*) such drawing shall take place publicly in the presence of the magistrate or any assistant magistrate or any clerk to the magistrate or any justice of the peace;

(*c*) as each card is drawn the deputy-sheriff shall refer to the corresponding number in the jury list and read aloud the name designated by such number and shall make a list of the names so drawn;

(*d*) such list shall be signed by the deputy-sheriff and by the magistrate, assistant magistrate, magistrate's clerk or justice of the peace in whose presence such list was made;

(*e*) such list shall be preserved by the deputy sheriff until one month after the sitting of the court to which it relates, and if the sheriff concerned does not during that month require it to be transmitted to him, the list may be destroyed.

Miscellaneous Provisions as to Jurors.

Want of qualification of juror not to affect verdict.

124. No verdict in any case shall be open to objection or shall be in any way affected by reason of the fact that any juror was not qualified to serve or was exempted from serving as a juror, nor by reason of any juror having been summoned from outside the limits of the jury district nor by reason of any error, informality or omission with respect to the jury list.

Failure to obey summons to serve as juror.

125. (1) If any person who has been duly summoned under any provision of this Chapter to attend before any court to serve as a juror, fails to attend pursuant to the summons or, after his name has been three times called, in, or about the precincts of the court premises, fails to answer to his name, or,

after his appearance, wilfully absents himself during the sittings of the court or after any adjournment thereof before the jury is discharged from attendance, the court may impose upon him such fine as it thinks fit.

(2) The court may at any time during the sittings remit any fine imposed under sub-section (1).

(3) If any fine so imposed is not paid or remitted before the close of the sittings, the registrar of the court shall issue a writ for the recovery of the fine as if the order imposing it were a judgment of the court.

Penalty for illegally excusing juror from service.

126. If any deputy-sheriff or sheriff's officer directly or indirectly accepts any money or other reward or promise of money or other reward to excuse any person from serving or from being summoned as a juror, he shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred pounds or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

Allowances for jurors.

127. (1) The Minister may, in consultation with the Minister of Finance, prescribe a tariff of allowances which shall be payable to any person summoned to attend before any superior court as a juror in a criminal case.

(2) Any tariff prescribed under sub-section (1) may differentiate between persons according to the distance which they have to travel to attend the court to which they are summoned.

Challenging of Jurors in Court.

Accused to be informed of his right to challenge.

128. When an accused person is to be tried by a jury, the proper officer of the court shall inform him in open court that the persons whose names are to be called are the jurors to be sworn for his trial and shall further inform him that, if he desires to challenge any of them, he must do so before they are sworn.

Challenging whole panel of jurors.

129. (1) (*a*) Both the accused and the prosecutor may challenge the whole panel of jurors on the ground of partiality, fraud or wilful misconduct on the part of the sheriff or his deputy by whom the panel was returned, but on no other ground.

(*b*) The objection shall be made in writing and shall state that the person returning the panel was guilty of partiality, fraud or wilful misconduct, as the case may be.

(2) If partiality, fraud or wilful misconduct, as the case may be, is denied, the court shall decide whether the ground of challenge is true or not, and if it finds that it is true, or if the party who has not challenged the panel admits that the ground of challenge is true, the court shall direct a new panel to be returned.

(3) If the accused desires to object to the whole panel of jurors he must do so before any juror is sworn for his trial.

Challenging jurors.

130. The prosecutor or the accused may in each case challenge three jurors without assigning any cause, and may, in addition, challenge any number of jurors for any of the following causes, that is to say—

(*a*) that the juror is not qualified by law to serve as juror;

(*b*) that the juror is not impartial as between the prosecution and the accused;

(*c*) that the juror is related within the fourth degree of consanguinity or affinity to the accused or to a person who, if the attorney-general had not prosecuted, would have been entitled to prosecute;

(*d*) that the juror has been convicted, whether in the Union or elsewhere, of treason, murder, rape, theft, fraud, perjury, forgery, fraudulent insolvency, or of any offence for which he has been sentenced to imprisonment without the option of a fine for a period of three months or more, unless he has received a free pardon for such offence;

(*e*) that the juror is unable to read and write one or other of the official languages.

Time for challenging.

131. A juror may be challenged at any time before he has been sworn but not afterwards.

Joint trials.

132. If two or more persons are jointly charged, they or any two or more of them may either join in their challenges in which case the persons who so join shall have only as many challenges as a single person would be entitled to, or each may make his challenges in the same manner as if he were charged alone, in which case he may, at the option of the prosecutor, be tried alone.

Determination of causes of challenge.

133. If at any time it becomes necessary to ascertain the truth of any matter alleged as cause for challenge the facts shall be tried by the court.

Summoning of persons to complete a jury in certain circumstances.

134. (1) Whenever as the result of the challenging of jurors the panel has been exhausted and a complete jury is not available, the court may upon the request of the prosecutor order the sheriff or other proper officer either verbally or in writing forthwith to summon such number of persons whether qualified jurors or not as the court directs in order to make a full jury, and such persons may, if necessary, be summoned by word of mouth.

(2) The names of the persons so summoned shall be added to the panel for the purposes of the trial and the said persons shall be subject to challenge in the same manner and for the same causes as the persons whose names appear in the original panel, except that they shall not be challenged on the ground merely that they are not qualified to serve as jurors.

(3) The court may in its discretion, instead of exercising the powers conferred on it by sub-section (1), adjourn any further proceedings in the case for such period as may be necessary and direct the sheriff or other proper officer to summon such number of qualified persons as may be necessary to complete the jury and all persons so summoned shall attend the court at such time as may be required by the sheriff or such proper officer and in such case the provisions of this Chapter relative to notice to jurors shall not apply.

Procedure after Jury Empanelled.

Jury to be sworn and informed of the charge.

135. (1) The jury shall be sworn to give a true verdict according to the evidence upon the issues to be tried by them.

(2) (*a*) If a juror refuses or is unwilling to be sworn, the court may permit him to make a solemn affirmation which shall be of the same force and effect as if the person making it had taken the oath in the customary form.

(*b*) Any reference in this Act to a juror having been sworn shall include a reference to a juror who has made a solemn affirmation under this sub-section.

(3) When the jury have been sworn the proper officer of the court shall inform them of the charge or charges set forth in the indictment and of their duty as jurors upon the trial.

Discharge of juror by the court.

136. If, before or after a juror has been sworn, it appears to the court from his own statement that he is not impartial as between the prosecution and the accused or that, for any other reason, he ought not to be allowed or required to serve as a juror in the case, the court may, before any evidence is given, without discharging the whole of the jury, discharge that particular juror and direct another juror to be sworn in his place.

Juror may be examined as a witness.

137. If a juror is personally acquainted with any relevant fact, he shall inform the judge thereof, whereupon he may be sworn, examined and cross-examined in the same manner as any other witness or the judge may discharge him as incapable in which event the provisions of sub-section (3) of section *one hundred and forty-nine* shall apply.

Duties of Judge.

138. (1) It is the duty of the judge on a trial by jury—

(*a*) to decide all questions of law arising in the course of the trial, and especially all questions as to the relevancy of facts which it is proposed to prove, and the admissibility of evidence or the propriety of questions asked by or on behalf of the parties and, in his discretion, to prevent the production of inadmissible evidence, whether it is or is not objected to by the parties;

(*b*) to decide upon the meaning and construction of all documents given in evidence at the trial;

(*c*) to decide upon all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given;

(*d*) to decide whether any question which arises is for himself or for the jury to decide and upon this point his decision shall bind the jury.

(2) The judge may, if he thinks proper, in the course of his summing up, comment upon any question of fact or upon any question of mixed law and fact relevant to the proceedings.

Jury to consider verdict.

139. After the judge has instructed the jury they shall consider their verdict and, if necessary, they may retire for that purpose.

Duties of jury.

140. It is the duty of the jury—

(*a*) to decide which view of the facts is true and to return the verdict which under such view ought, according to the direction of the judge, to be returned;

(*b*) to determine the meaning of all technical terms, other than terms of law, and words used in an unusual sense, whether they occur in documents or not;

(*c*) to decide all questions which, according to law, are deemed questions of fact;

(*d*) to decide whether general indefinite expressions do or do not apply to particular cases unless such expressions refer to legal procedure or unless their meaning is to be ascertained according to law, in either of which cases it is the duty of the judge to decide their meaning.

Special verdict.

141. (1) In any case in which it appears to the judge that the question whether the accused ought or ought not to be convicted of an offence, or that the proper punishment to be imposed upon conviction, depends upon some specific fact or facts, the judge may require the jury to find specially as to the existence or non-existence of such fact or facts, and shall apply the law to the facts so found and enter judgment accordingly which judgment shall have the same effect as a verdict of the jury.

(2) When the accused is tried upon a charge of murder' the judge shall require the jury to state, if they find the accused guilty of murder, whether, in their opinion, there are any extenuating circumstances, and if they state that in their opinion there are extenuating circumstances, he may require them to specify those circumstances; Provided that any failure to comply with the requirements of this sub-section shall not affect the validity of the verdict or any sentence imposed as a result thereof.

General verdict on charge of defamation.

142. Notwithstanding anything contained in section *one hundred and forty-one*, the jury may, on the trial of a person charged with the unlawful publication of defamatory matter, give a general verdict of guilty or not guilty.

Jury not to separate.

143. (1) After the jury have been sworn and the charge has been stated to them by the proper officer, they shall not, except as hereinafter provided, separate until they have given their verdict or are discharged by the judge.

(2) If the jury desire to withdraw for the purpose of considering their verdict, they shall be kept by an officer of the court in some convenient private place apart by themselves until the majority prescribed in section *one hundred and thirteen* are agreed upon the verdict or until the jury have been discharged by the judge; and the said officer shall be sworn that he will suffer none to have access to them or to speak to or have communication with them except by leave of the judge, and that he will not speak to them himself, except to ask whether they are agreed upon the verdict or to communicate between them and the judge.

(3) The judge may, in his discretion, permit the jury to separate before considering their verdict for such period during any adjournment of the trial as the judge may think fit.

(4) (*a*) If any person disobeys the directions referred to in this section he may be punished summarily as for contempt of court.

(*b*) The validity of the proceedings shall not be affected by any such disobedience but, if the fact is discovered before the verdict is given, the judge may, if he is of opinion that such disobedience is likely to prejudice the fair trial of the accused, discharge the jury and direct that a fresh jury be sworn during the same session of the court or he may adjourn the trial.

Verdict to be given in open court.

144. (1) (*a*) When the jury have agreed on their verdict, the foreman shall inform the judge in open court and in the presence of the jury and the accused what their verdict is and such verdict shall thereupon be recorded by the proper officer of the court.

(*b*) The jury shall either pronounce a general verdict of "guilty" or "not guilty", or a special verdict finding the facts of the case, and in the event of such a special verdict, the judge shall apply the law to the facts so found, and enter judgment accordingly, which judgment shall have the same effect as a verdict of the jury.

(2) The jury may acquit the accused of a part of the charge against him and find him guilty of the remainder.

Jury to return a verdict on each count.

145. (1) Unless otherwise ordered by the judge the jury shall return a verdict on each count on which the accused is tried, and the judge may ask them such questions as are necessary to ascertain what their verdict is.

(2) Any questions referred to in sub-section (1) and the answers to them shall be recorded.

Amending verdict.

146. When, by accident or mistake, a wrong verdict is delivered, the jury may, before or immediately after it is recorded, amend the verdict and it shall stand as ultimately amended.

View by jury.

147. (1) The judge may, in any case, if he thinks fit, direct that the jury shall view any place or thing which the judge thinks it desirable that they should see and may give any necessary directions for that purpose.

(2) The validity of the proceedings shall not be affected by disobedience to any such directions, but, if the fact is discovered before the verdict is given, the judge may, if he is of opinion that such disobedience is likely to prejudice the fair trial of the accused, discharge the jury and direct that a fresh jury be sworn during the same session of the court or he may adjourn the trial.

Discharge of jury.

148. (1) If such a majority of the jury as is referred to in section *one hundred and thirteen* cannot arrive at a verdict, or if any emergency arises of such a nature as to render it in the opinion of the judge expedient for the ends of justice to do so, the judge may, in his discretion, discharge the jury without giving a verdict, and, if application be made by or on behalf of the attorney-general, may direct that a fresh jury be sworn during the same session of the court or, upon like application, may adjourn or postpone the trial until such time and place and upon such terms as the judge may think fit, pending the decision of the attorney-general as to the further prosecution of the accused upon the same or any other charge.

(2) An exercise of discretion under sub-section (1) shall not be subject to review by any court.

(3) The provisions of section *one hundred and sixty-two* shall apply to cases postponed under this section.

Incapacity of judge or juror.

149. (1) If the judge becomes incapable of proceeding with the trial or directing the discharge of the jury, the registrar of the court shall discharge the jury.

(2) In any such case the accused, unless already released on bail, shall remain in custody and may be tried again, but he shall have the same rights to be released on bail as upon an original committal for trial for the offence with which he is charged, and the court or the magistrate may in a proper case, as provided by Chapter VII, release him on bail accordingly.

(3) (*a*) If at any time during the trial, a juror dies or becomes in the opinion of the judge incapable of continuing to serve as a juror, or is absent, the judge may, in his discretion, discharge the jury under the provisions hereinbefore contained or may, if he thinks fit, at the request of the accused and with the consent of the prosecutor, discharge the juror who so becomes incapable or is so absent, and direct that the trial shall proceed before the remaining jurors.

(*b*) In any such case the verdict of the remaining jurors, who shall be not less than seven and who shall, if they are seven only, be unanimous, shall have the same effect as if all the jurors had continued present.

CHAPTER X.

PROCEDURE BEFORE COMMENCEMENT OF TRIAL.

In Superior Court.

Persons committed to be brought to trial at the first session provided thirty-one days have elapsed from committal.

150. (1) (*a*) Save as is otherwise expressly provided in this Act as to the adjournment of a court, every person committed for trial or sentence whom the attorney-general has decided to prosecute before a superior court shall be brought to trial at the first session of that court for the trial of criminal cases held after the date of the committal, or else shall be released on bail, if thirty-one days have elapsed between the date of the committal and the date upon which such session is held, unless—

(i) the court is satisfied that, in consequence of the absence of material evidence or of some other sufficient cause, the trial cannot then be proceeded with, without defeating the ends of justice; or

(ii) before the close of such first session an order is obtained from the court under the provisions of section *one hundred and fifty-one* for his removal for trial elsewhere.

(*b*) If such person is not brought to trial at the first session of such court held after the expiry of six months from the date of his committal, and has not previously been removed for trial elsewhere, he shall be discharged from his imprisonment for the offence in respect of which he has been committed.

(2) For the purposes of this section a person shall not be deemed to have been committed for trial in any case in which the attorney-general has, under section *seventy-nine*, ordered a further examination to be taken, until such further examination has been completed.

(3) The accused, with his own consent in writing and with the consent of the attorney-general, may be brought to trial at any time after his committal, notwithstanding that the period of thirty-one days aforesaid has not expired.

Change of place of trial.

151. (1) Whenever an indictment has been lodged against an accused in a superior court, any judge of the court may, upon application by or on behalf of the attorney-general or by or on behalf of the accused, order that the trial shall be held at a place other than the place specified in the indictment and at a time named in the order.

(2) When any order is made under this section, the consequences shall be the same in all respects and with regard to all persons as if the attorney-general had decided to prosecute the accused at the place and time specified in the order, and if the accused has been released on bail, the recognizances of the bail shall be deemed to be extended to that time and place accordingly.

(3) The recognizances of any persons who are bound to attend as witnesses shall in like manner be deemed to be extended to the same time and place.

(4) Notice of such time and place shall be given to the persons bound by the recognizances otherwise their recognizances shall not be liable to forfeiture.

Time at which persons removed for trial elsewhere shall be brought to trial.

152. (1) When a case has been removed for trial elsewhere and the accused is in custody, the court granting the order of removal shall issue a warrant directing his removal forthwith to the gaol of the district to which the case has been removed.

(2) The accused shall be brought to trial at the next criminal session of the court to which the case has been removed, or otherwise shall be discharged from his imprisonment for the offence for which he has been removed for trial: Provided that, if such session is held within twenty-one days after the removal of the accused to and his arrival at the said gaol, he shall not be tried at that session except with his own consent in writing and the consent of the attorney-general.

In Inferior Court.

Commencement of proceedings where accused in custody.

153. When a person who has been arrested upon any charge, is brought before a judicial officer in terms of section *twenty-seven* or sub-section (3) of section *twenty-nine*, such officer shall forthwith commence his trial or a preparatory examination upon such charge, or if the matter is cognizable by another court or judicial officer, remand his case to such court or officer.

CHAPTER XI.

PROCEDURE AT TRIAL.

In Superior and Inferior Courts.

Persons brought before wrong court.

154. (1) If on the trial of a person charged with any offence before any superior or inferior court it appears that he is not properly triable by that court, the court may, at the request of the accused, discharge the jury from giving a verdict, if the trial is to be by a jury, and, whether the trial is or is not to be by a jury, direct that he be tried before some proper court and may remand him for trial accordingly.

(2) If the accused does not make such request the trial shall proceed and the verdict and judgment shall have the same effect in all respects as if the court had originally had jurisdiction to try the accused.

(3) This section shall not affect the right of the accused to plead to the jurisdiction of a court.

Separate trials.

155. When two or more persons are charged jointly, whether with the same offence or with different offences, the court may, at any time during the trial on the application of the prosecutor or of any of the accused, direct that the trial of the accused or any of them shall be held separately from the trial of the other or others of them, and for that purpose may, if the trial is by a jury and the jury has been sworn, discharge the jury from giving a verdict as to any of the accused in respect of whom such application is made, and, if the trial is not by a jury, the court may abstain from giving a judgment as to any of such accused.

Presence of accused.

156. (1) Every criminal trial shall take place, and the witnesses shall, save as is otherwise expressly provided by this Act or any other law, give their evidence *viva voce*, in open court in the presence of the accused, unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable, in which event the court may order him to be removed and may direct the trial to proceed in his absence.

(2) If the accused absents himself during the trial without leave, the court may direct a warrant to be issued for his arrest and if arrested he shall be brought before the court forthwith

(3) The court may, at any time during the trial, order that any person who is to be called as a witness (other than the accused himself) shall leave the court and remain absent until he is called and that he shall remain in court after his evidence has been given.

(4) A superior court may, whenever it thinks fit, and an inferior court may, if it appears to that court to be in the interest of good order or public morals or of the administration of justice, 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 or any class thereof shall not be present thereat; and if an accused is to be tried or is on trial

on a charge referred to in sub-section (5) of section *sixty-four*, the court may, at the request of the person against or in connection with whom the offence charged is alleged to have been committed (or if he is a minor, at the request of that person or of his guardian) whether made in writing before the trial or orally at any time during the trial direct that every person whose presence is not necessary in connection with the trial or any person or class of person mentioned in the request shall not be present thereat.

(5) No person other than a person on trial and his attorney or counsel and other than a parent or the guaridan or a person *in loco parentis* of a person on trial who is a minor shall be present at the trial, in any court, of a person under the age of nineteen years, upon any charge, unless his presence is necessary in connection with the trial or unless the judge or judicial officer presiding at the trial has authorized him to be present thereat.

(6) No person under the age of nineteen years, other than a person on trial, shall be present at a criminal trial in any court except while he is actually giving evidence thereat or unless the judge or judicial officer presiding at the trial has authorized him to be present thereat.

(7) The judge or judicial officer presiding at any trial may direct that while any witness under the age of nineteen years is giving evidence at that trial no person, other than an attorney or counsel of a person on trial and other than a parent or the guardian or a person *in loco parentis* of the witness or of a person on trial who is a minor, whose presence is not necessary in connection with the trial, shall be present thereat.

(8) A trial in an inferior court of an accused who is or of two or more accused jointly who are all under the age of nineteen years shall be held in a building or room (if a suitable one is available) other than that in which criminal proceedings against persons over that age are ordinarily conducted.

Conduct of trial.

157. (1) The prosecutor may, in the case of a trial by jury when the jury have been sworn and before any evidence is adduced, and in the case of a trial without a jury before any evidence is adduced, address the jury or the court, as the case may be, for the purpose of explaining the charge and opening the evidence intended to be adduced for the prosecution but without comment thereon.

(2) The prosecutor shall then examine the witnesses for the prosecution and put in and read any documentary evidence which may be admissible, and, in the case of a trial before a superior court, and in a case remitted to a magistrate's court, as well as in the case of a trial before the court of a regional division which takes place on the direction of the attorney-general in terms of paragraph (*b*) or (*c*) of sub-section (1) of section *seventy-nine*, read any evidence given by the accused as well as the statement made by him in the presence of the magistrate at the preparatory examination.

(3) If, at the close of the case for the prosecution, the court considers that there is no evidence that the accused committed the offence charged in the charge, or any other offence of which he might be convicted thereon, it may then, in the case of a trial by a jury, direct the jury to return a verdict of not guilty and upon such direction, the jury shall be deemed to have returned such verdict and the judge shall thereupon enter such a verdict and in any trial without a jury, the court may itself return such a verdict.

(4) At the close of the evidence for the prosecution the proper officer of the court shall ask the accused, or each of the accused if there are more than one, or his legal representative whether he intends to adduce evidence in his defence and, if he answers in the affirmative, he may by himself or his legal representative address the jury or court, as the case may be, for the purpose of opening the evidence intended to be adduced for the defence but without comment thereon, and thereafter he or his legal representative shall examine his witnesses and put in and read any documentary evidence which may be admissible.

Defence by counsel or attorney.

158. Every person charged with an offence is entitled to make his defence at his trial and to have the witnesses examined or cross-examined by his counsel, if the trial is before a superior

court, or by his counsel or his attorney or law agent, if the trial is before an inferior court: Provided that upon his trial before an inferior court, an accused under the age of sixteen years may be assisted by his natural or legal guardian, and that any accused who in the opinion of the court requires the assistance of another person, may, with the permission of the court be so assisted.

Court may refer juvenile accused to a children's court.

159. (1) If during the trial in any court of a person under the age of nineteen years who is charged with any offence other than murder or rape, it appears to the judge or judicial officer presiding at that trial that the said person is a child in need of care within the meaning of that expression as defined in section *one* of the Children's Act, 1937 (Act No. 31 of 1937), and that it is desirable to deal with that person in terms of sections *twenty-eight* and *twenty-nine* of that Act, he may stop the trial and order that the said person be brought before a children's court mentioned in section *four* of the said Act and be dealt with under the said sections *twenty-eight* and *twenty-nine*.

(2) If such an order is made in the course of a trial after the return of a verdict of guilty, that verdict shall become null and void in so far as it relates to the person to whom the said order relates, and shall be deemed not to have been returned.

Trial of pending case may be postponed.

160. Subject to the provisions of section *one hundred and fifty* any court before which a trial is pending may, if it is necessary or expedient, postpone the trial until such time, and to such place, and upon such terms, as to such court may seem proper, and further postponements may, if necessary or expedient, be made from time to time.

Adjournment of trial.

161. (1) A trial may, if it is necessary or expedient, be adjourned at any time of the trial, and, in the case of a trial by jury, whether a jury has or has not been sworn, and, in a case of a trial with or without a jury, whether evidence has or has not been given.

(2) When the trial of an accused by a jury is adjourned after the jury has been sworn, the court may discharge the jury.

Powers of court on postponement or adjournment.

162. (1) When a trial is postponed or adjourned, as aforesaid, the court may direct that the accused be detained until liberated in accordance with law or release him on bail or extend his bail if he has already been released on bail, and may extend the recognizances of the witnesses.

(2) When the trial of an accused who is not in custody and who has not been released on bail, is so postponed or adjourned, he shall be deemed to have been served with a summons to appear at the time and place to which the trial has been postponed or adjourned.

Accused to plead to the charge.

163. (1) Subject to the provisions of section *three hundred and fifty-one*, the accused shall, upon the day appointed for his trial or sentence upon any charge, appear in court, or if he is in custody, he shall be brought into court and shall be informed in open court of the offence with which he is charged as set forth in the charge, and shall be required to plead instantly thereto except where, in the case of an indictment or summons the accused objects so to plead and the court finds that he has not been duly served with a copy of the indictment or summons.

(2) If the accused is indicted in any superior court after having been released on bail, his plea to the indictment shall, unless the court otherwise directs, have the effect of terminating his bail and he shall thereupon be detained in custody until the conclusion of the trial in the same manner in every respect as if he had not been released on bail.

Doubt as to capacity of accused to understand the proceedings.

164. (1) If, when the accused is called upon to plead to a charge, it appears to be uncertain for any reason whether he is capable of understanding the proceedings at the trial, so as to be able to make a proper defence, the procedure described in section *twenty-eight* of the Mental Disorders Act, 1916 (Act No. 38 of 1916), shall be followed.

(2) If the jury or the court, as the case may be, find that he is so capable, the trial shall proceed as in other cases.

(3) If the jury or court, as the case may be, find that he is not so capable, the accused shall be dealt with in accordance with the provisions of section *twenty-eight* of the Mental Disorders Act, 1916.

(4) A person so found to be incapable of understanding the proceedings at the trial may thereafter be again indicted or charged and tried for the offence at any time when he is so capable.

(5) The provisions of this section shall be read as being additional to and not in substitution for the provisions of section *twenty-eight* of the Mental Disorders Act, 1916.

Objections to charge, how and when made.

165. (1) Every objection to an indictment for any formal defect apparent on the face thereof shall if the trial is by a jury, be taken by exception or by motion to quash such indictment before the jury is sworn and not afterwards, and, if the trial is before a superior court without a jury, before the accused has pleaded but not afterwards.

(2) Any such objection to a summons or charge which is to be tried by an inferior court shall be taken by exception before the accused has pleaded but not afterwards.

(3) Every court before which any such objection is taken for any formal defect may, if it is considered necessary, and if the accused will not thereby be prejudiced in his defence cause the charge to be forthwith amended in such particular as the court may direct, and thereupon the trial shall proceed as if no such defect had appeared.

Exceptions.

166. (1) If the accused excepts only and does not plead, the court shall proceed to hear and determine the matter forthwith, and if the exception is overruled he shall be called upon to plead to the charge.

(2) When the accused pleads and excepts together, it shall be in the discretion of the court whether the plea or exception shall be first disposed of.

Motion to quash charge.

167. (1) The accused may, before pleading, apply to the court to quash the charge on the ground that it is calculated to prejudice or embarrass him in his defence.

(2) Upon such motion the court may quash the charge, or may order it to be amended in such manner as the court thinks just or may refuse to make any order on the motion.

(3) If the accused alleges that he is wrongly named in the charge, the court may, on being satisfied by affidavit or otherwise of the error, order it to be amended.

Notice of motion to quash charge, and of certain pleas to be given.

168. (1) If the accused intends to apply to have a charge quashed under section *one hundred and sixty-seven*, or to except, or to plead any of the pleas mentioned in section *one hundred and sixty-nine*, except the plea of guilty or not guilty, he shall give reasonable notice (regard being had to the circumstances of each particular case) to the attorney-gneeral or his representative if the trial is before a superior court, or to the public prosecutor, if the trial is before an inferior court, or to the private prosecutor, when the prosecution is a private one, stating the grounds upon which he seeks to have the charge quashed or upon which he bases his exception or plea.

(2) A notice required under sub-section (1) may be waived by the attorney-general or the prosecutor, as the case may be: Provided that the court may, on good cause shown, dispense with such notice or adjourn the trial to enable such notice to be given.

Pleas.

169. (1) If the accused does not object that he has not been duly served with a copy of the charge, or apply to have it quashed under section *one hundred and sixty-seven* he shall either plead to it, or except to it on the ground that it does not disclose any offence cognizable by the court.

(2) If the accused pleads to the charge he may plead either—

(*a*) that he is guilty of the offence charged, or, with the concurrence of the prosecutor, of any other offence of which he might be convicted on the charge; or

(*b*) that he is not guilty; or

(*c*) that he has already been convicted of the offence with which he is charged; or

(*d*) that he has already been acquitted of the offence with which he is charged; or

(*e*) that he has received the Royal pardon for the offence charged; or

(*f*) that the court has no jurisdiction to try him for the offence; or

(*g*) that the prosecutor has no title to prosecute.

(3) Two or more pleas may be pleaded together except that the plea of guilty cannot be pleaded with any other plea to the same charge.

(4) The accused may plead and except together.

(5) Together with his plea the accused may offer an explanation of his attitude in relation to the charge, or a statement indicating the basis of his defence, and such explanation or statement shall be recorded and shall form a portion of the record of the case.

(6) Any person who has once been called upon to plead to any charge shall, save as is specially provided in this Act or in any other law, be entitled to demand that he be either acquitted or found guilty.

Truth of defamatory matter to be specially pleaded.

170. (1) A person charged with the unlawful publication of defamatory matter, who sets up as a defence that the defamatory matter is true and that it was for the public benefit that the publication should be made, shall plead that matter specially and may plead it with any other plea except the plea of guilty.

(2) Notice of such plea shall, unless waived, be given as in section *one hundred and sixty-eight* is provided.

Statement of accused sufficient plea of former conviction or acquittal.

171. In any plea of a former conviction or acquittal of the offence charged it shall be sufficient for an accused to state that he has been lawfully convicted or acquitted, as the case may be, of the offence charged.

Trial on plea to the jurisdiction.

172. Upon a plea to the jurisdiction of the court, the court shall proceed to satisfy itself in such manner and upon such evidence as it thinks fit, whether it has jurisdiction or not, and in a case where the accused is entitled to be tried by a jury, may ascertain the fact by the verdict of a jury or otherwise.

Issues raised by plea to be tried.

173. If the accused pleads any plea, other than the plea of guilty or a plea to the jurisdiction of the court, he is, by such plea without any further form, deemed to have demanded that the issues raised by such plea shall be tried by the court, or in a case where the accused is entitled to be tried by a jury, then by a jury.

Person committed or remitted for sentence.

174. (1) When a person has been committed to a superior court by a magistrate for sentence, or his case has been remitted by the attorney-general to a magistrate's court for sentence, he shall be called upon to plead to the charge in the same manner as if he had, in the case of such committal, been committed for trial, and in the case of such remittal, were being tried summarily, and may plead that he is guilty either of the offence charged or, with the concurrence of the prosecutor, of any other offence of which he might be convicted on the charge.

(2) If he pleads that he is not guilty, the court shall, upon being satisfied that he duly admitted before the magistrate that he was guilty of the offence charged, and was so guilty, direct a plea of guilty to be entered or enter such plea notwithstanding his plea of not guilty and a plea so entered shall have the same effect as if it had been actually pleaded.

(3) If the court is not so satisfied, or if notwithstanding that the accused pleads guilty it appears upon an examination of the evidence that he has not in fact committed the offence charged or any other offence of which he might be convicted on the charge, a plea of not guilty shall be entered.

Accused refusing to plead.

175. If the accused when called upon to plead to a charge, will not plead or answer directly thereto, the court may, if it thinks fit, order a plea of not guilty to be entered on behalf of the accused and a plea so entered shall have the same effect as if it had been actually pleaded.

Certain omissions or imperfections not to invalidate charge.

176. (1) No charge in respect of any offence shall be held insufficient—

(*a*) for want of the averment of any matter which need not be proved;

(*b*) because any person mentioned therein is designated by a name of office or other descriptive appellation instead of by his proper name;

(*c*) because of an omission to state the time at which the offence was committed in any case where time is not of the essence of the offence;

(*d*) because the offence is stated to have been committed on a day subsequent to the laying of the complaint or the service of the charge or on an impossible day or on a day that never happened;

(*e*) for want of, or imperfection in, the addition of any accused or any other person;

(*f*) for want of the statement of the value or price of any matter or thing or the amount of damage, injury or spoil in any case where the value or price or the amount of damage, injury or spoil is not of the essence of the offence.

(2) If any particular day or period is alleged in any charge as the day on or period during which any act or offence was committed, proof that such act or offence was committed on any other day or during any other period not more than three months before or after the day or period alleged therein shall be taken to support such allegation if time be not of the essence of the offence: Provided that—

(*a*) proof may be given that the act or offence in question was committed on a day or during a period more than three months before or after the day or period stated in the charge unless it is made to appear to the court before which the trial is pending that the accused is likely to be prejudiced thereby in his defence upon the merits;

(*b*) if the court considers that the accused is likely to be prejudiced thereby in his defence upon the merits, it shall reject such proof and, if the trial is by a jury, discharge the jury from giving a verdict, and the accused, whether or not his trial is by a jury, shall be deemed not to have pleaded to the charge.

Proceedings if defence be an alibi.

177. (1) If in any case the defence of the accused is that commonly called an *alibi*, and the court before which the trial is held considers that the accused might be prejudiced in making such defence if proof were admitted that the act or offence in question was committed on some day or time other than the day or time stated in the charge then, although the day or time proposed to be proved is within a period of three months before or after the day stated in the charge, the court shall reject such proof and thereupon the same consequences shall follow as are in the last proviso of sub-section (2) of section *one hundred and seventy-six* mentioned, anything in that section to the contrary notwithstanding.

(2) If in any case no day is stated in the charge or an impossible day or a day that never happened, the accused may, at any time before pleading, apply to a superior court having jurisdiction, or any judge thereof or to the court in which he is charged, and such court or judge shall, upon being satisfied by affidavit or otherwise that the accused is likely to be prejudiced in his defence upon the merits, unless some day or time were stated, make such order as in the circumstances of the particular case may seem just.

Charge for libel.

178. No charge of publishing a blasphemous, seditious, obscene, or defamatory libel, or of selling or exhibiting any obscene book, pamphlet, newspaper, or other printed or written matter shall be open to objection or deemed insufficient on the ground that it does not set out the words thereof: Provided

that the court may order that particulars shall be furnished by the prosecutor stating what passages in such book, pamphlet, newspaper, printing, or writing are relied on in support of the charge.

Court may order delivery of particulars.

179. (1) The court may either before or at the trial, in any case if it thinks fit, direct particulars to be delivered to the accused of any matter alleged in the charge, and may, if necessary, adjourn the trial for the purpose of the delivery of such particulars.

(2) Such particulars shall be delivered to the accused or to his counsel or attorney or agent without charge, and shall be entered in the record; and the trial shall proceed in all respects as if the charge had been amended in conformity with such particulars.

(3) In determining whether a particular is required or not, and whether a defect in an indictment before a superior court, or charge on remittal to an inferior court, is material to the substantial justice of the case or not, the court may have regard to the preparatory examination.

Correction of errors in charge.

180. (1) Whenever, on the trial of any charge, there appears to be any variance between the statement therein and the evidence offered in proof of such statement, or if it appears that any words or particulars that ought to have been inserted in the charge have been omitted, or that any words or particulars that ought to have been omitted have been inserted, or that there is any other error in the charge, the court may, at any time before judgment, if it considers that the making of the necessary amendment in the charge will not prejudice the accused in his defence, order that the charge be amended, so far as it is necessary, both in that part thereof where the variance, omission, insertion, or error occurs and in every other part thereof which it may become necessary to amend.

(2) The amendment may be made on such terms (if any) as to postponing the trial and, in the case of a trial by jury, directing it to be held before the same or another jury as the court thinks reasonable.

(3) Upon the amendment of the charge in accordance with the order of the court, the trial shall proceed at the appointed time upon the amended charge in the same manner and with the same consequences in all respects as if it had been originally in its amended form.

(4) The fact that a charge has not been amended as provided in this section shall not, unless the court has refused to allow the amendment, affect the validity of the proceedings thereunder.

Verdict as valid as if charge had been originally correct.

181. Every verdict and judgment which is given after the making of any amendment under this Act shall be of the same force and effect in all respects as if the charge had originally been in the form in which it was after such amendment was made.

Trial of insane persons.

182. If at any time after the commencement of any trial it is alleged or appears that the accused is not of sound mind, or if on such a trial the defence is set up that the accused was not criminally responsible, on the ground of insanity, for the act or omission alleged to constitute the offence with which he is charged, he shall be dealt with in manner provided by the law relating to mental disorders.

Address by Counsel, etc.

183. (1) After all the evidence has been adduced, the prosecutor may address the jury or the court, as the case may be, and thereafter the accused, or each of the accused if there are more than one, may by himself or his legal representative address the jury or the court, as the case may be.

(2) If in his address the accused or his legal representative raises any matter of law, the prosecutor may reply, but only on the matter of law so raised.

Summing up by judge in case of trial by jury.

184. In the case of a trial by jury the judge shall, after the evidence is concluded and the legal representatives or the accused, as the case may be have addressed the jury or stated that they do not wish to do so, sum up to the jury.

Decision may be reserved.

185. Any judge or officer presiding over any court at which any person is tried for an offence may reserve the giving of his final decision on questions raised at the trial, and his decision whenever given shall be considered as having been given at the time of the trial.

Provisions applicable to sentences in all courts.

186. (1) All judgments and sentences in criminal proceedings before any court shall be pronounced in open court.

(2) The court may, before passing sentence, receive such evidence as it thinks fit in order to inform itself as to the proper sentence to be passed.

(3) A warrant for the execution of any sentence passed in a criminal case by any court may be issued either by the judge or officer who passed the sentence or by any other judge or judicial officer of that court.

(4) If sentence is not passed upon an accused forthwith upon his conviction in an inferior court or if, by reason of any decision or order of a superior court on appeal, review or otherwise, it is necessary to add to or vary any sentence passed in an inferior court, or to pass sentence afresh in such court, any judicial officer of that court may, in the absence of the judicial officer who convicted the accused or passed the sentence, as the case may be, pass sentence on the accused after consideration of the evidence recorded and in the presence of the accused.

Validity of verdict and sentence.

187. (1) No verdict or judgment or other proceedings whatever of a court in a criminal case shall be invalid merely because it was given or taken on a Sunday.

(2) When by mistake a wrong judgment or sentence is delivered or passed the court may, before or immediately after it is recorded, amend the judgment or sentence, which shall thereupon stand as ultimately amended.

In Cases Remitted to a Magistrate's Court.

Remittal for sentence.

188. (1) If a case is remitted to a magistrate's court for sentence the presiding officer shall, when the accused is brought before his court, inform him that the preparatory examination in the course of which he voluntarily admitted his guilt, having been transmitted to the attorney-general, has been remitted by that officer to the court, and the provisions of section *one hundred and seventy-four* shall *mutatis mutandis* be observed by the court and if the accused is convicted such magistrate shall ask him whether he has anything to say why sentence should not then be passed upon him for the offence of which he has been found or confessed himself guilty.

(2) If, in answer to that question, the accused states that he desires to have any witness formerly examined, recalled or any person not yet examined, called as a witness, or if the accused states any other ground why sentence should not then be passed upon him, the court shall consider what is urged by the accused in support of his application for further evidence or his objection to be then sentenced and shall pass or postpone sentence as it deems to be most in accordance with real and substantial justice.

(3) If the court in any such case deems it proper to pass sentence at once, a note of the application or objection made by the accused and of the reasons for the disallowance thereof shall be made upon the record.

Remittal for trial.

189. (1) If a case is remitted by the attorney-general for trial the accused shall when brought before the court, be required, subject to the provisions of section *one hundred and ninety*, to plead and the case shall, save as hereinafter provided, be proceeded with in the manner prescribed by law in respect of criminal cases which have not been remitted.

(2) When the officer who presides at the trial of any such case is the magistrate before whom the preparatory examination was held, it shall not be necessary for him to recall any witness who gave his evidence in the presence of such magistrate and of the accused at the preparatory examination, but it shall be sufficient to read as evidence the evidence of such witness: Provided that with the consent of the accused or his representative, the magistrate may dispense with the reading of any such evidence.

(3) If it appears to the court that the ends of justice might be served by having a witness who was at the preparatory examination examined in the presence of the presiding officer and of the accused, summoned again for further examination, then such witness shall be summoned and examined accordingly.

(4) Except where specially provided in Chapter XIV or in any other law, no evidence of any witness not previously examined in the presence of both the presiding magistrate and such accused shall be read or used at the subsequent trial, but such witness, if a necessary one, shall be again summoned and be examined in like manner as if he had not been before examined in the case.

(5) In every case where the attorney-general has remitted a case for trial under the powers conferred on him by section *seventy-nine*, the accused shall be entitled, at the time of the trial, to inspect, without fee or reward, all evidence (or a copy thereof) which has been taken and the statement made by him at the preparatory examination.

Right of accused after remittal to demand trial by superior court.

190. (1) In a case remitted by the attorney-general for trial the accused shall, when required to plead, be entitled to demand that his case shall be tried before a superior court having jurisdiction.

(2) If the accused makes such a demand, the court shall record it and inform the attorney-general thereof, who shall thereupon deal with the case under the powers conferred upon him by sub-section (1) of section *seventy-nine*, other than the powers conferred by paragraphs (*d*), (*e*) and (*f*) thereof and if he indicts the accused for trial on a charge of any offence disclosed by the evidence taken at the preparatory examination, the accused shall be tried by a judge without a jury in terms of section *one hundred and nine*.

CHAPTER XII.

Possible Verdicts on Particular Charges.

On charge of committing any offence, accused may be convicted of attempt.

191. (1) If, on the trial of any person charged with any offence, it appears upon the evidence that the accused did not complete the offence charged, but that he is guilty only of an attempt to commit that offence, he may be found guilty of an attempt to commit that offence, or of an attempt to commit any other offence of which he might under any of the provisions of this Act be convicted on the charge.

(2) Any person charged with an offence may be found guilty as an accessory after the fact in respect of that offence if such be the facts proved and shall on conviction, in the absence of any penalty expressly provided by law, be liable to punishment at the discretion of the court convicting him: Provided that in no case shall such punishment exceed that to which the principal offender would under any law be liable.

(3) No person who has been tried on a charge of having committed any offence shall thereafter be prosecuted for an attempt to commit the offence for which he has been so tried.

On charge of fraud court may convict of certain other offences.

192. If an accused is tried on a charge alleging the commission of an offence in which an element consists of false representations as to the nature or quality of a certain article or substance, and if the accused would by the transaction in which those representations were made, have committed some other offence if his representations had been true, he may, if he is acquitted of the firstmentioned offence, be convicted of that other offence or an attempt to commit that other offence as if he had been charged therewith.

On charge of robbery, court may convict of certain other offences.

193. (1) If upon the trial of any person on a charge for robbery it appears upon the evidence that the accused did not commit the offence of robbery but that he did commit an assault with intent to rob, or an assault with intent to do grievous bodily harm, or a common assault or theft forming part of the offence of robbery charged, the accused may be found guilty of an assault with intent to rob, or of an assault with intent to do grievous bodily harm, or of a common assault or of theft, as the case may be.

(2) If on the trial of any person upon any charge in respect of robbery the evidence, though not sufficient to substantiate the charge of robbery, is sufficient to show that the accused was guilty of receiving stolen goods knowing them to have been stolen, he may be found guilty of receiving stolen goods knowing them to have been stolen; and upon any such finding the accused shall be liable to the same punishment as if convicted of the like offence on a charge specially framed for the offence of receiving stolen goods knowing them to have been stolen.

On charge of assault with intent to murder or to do grievous bodily harm, court may convict of other offences.

194. (1) Any person charged with assault with intent to murder may be found guilty of an assault with intent to do grievous bodily harm, or of a common assault, if such be the facts proved.

(2) Any person charged with assault with intent to do grievous bodily harm or with an assault with any other particular intent specified in the charge, may be found guilty of common assault, if such be the facts proved.

On charge of rape, assault with intent to commit rape, indecent assault or sodomy, court may convict for other offences.

195. (1) Any person charged with rape may be found guilty of assault with intent to commit rape; or of indecent assault; or of assault with intent to do grievous bodily harm; or of assault; or of the statutory offence of unlawful carnal knowledge of, or committing any immoral or indecent act with, a girl of or under a specified age; or of the statutory offence of having or attempted to have unlawful carnal connection with a female idiot or imbecile under circumstances which do not amount to rape or an attempt to commit rape, or of committing or attempting to commit any immoral or indecent act with such female, if such be the facts proved.

(2) Any person charged with assault with intent to commit rape or with an attempt to commit rape may be found guilty of indecent assault; or of assault with intent to do grievous bodily harm; or of assault; or of any statutory offence referred to in sub-section (1) save an act of unlawful carnal knowledge, if such be the facts proved.

(3) Any person charged with indecent assault may be found guilty of assault; or of the statutory offence of committing any immoral or indecent act with a girl of or under a specified age; or of the statutory offence of attempting to have unlawful carnal connection with a female idiot or imbecile under circumstances which do not amount to an attempt to commit rape, or of committing or attempting to commit any immoral or indecent act with such female, if such be the facts proved.

(4) Any person charged with any statutory offence referred to in sub-section (1) may be found guilty of indecent assault, or of assault, if such be the facts proved.

(5) Any person charged with sodomy or assault with intent to commit sodomy, may be found guilty of indecent assault or assault, if such be the facts proved.

On charge of murder or culpable homicide or of assault, court may convict for other offences.

196. (1) Any person charged with murder in regard to whom it is proved that he wrongfully caused the death of the deceased, but without intent, may be found guilty of culpable homicide.

(2) Any person charged with murder or culpable homicide in regard to whom it is not proved that he caused the death of the deceased, may if it is proved that he is guilty of having assaulted the deceased, be found guilty, if charged with murder, of assault with intent to murder or of assault with intent to do grievous bodily harm, or of common assault, and, if charged with culpable homicide, of assault with intent to do grievous bodily harm or common assault.

(3) Any person charged with murder or culpable homicide, in regard to whom it is not proved that he wrongfully caused the death of the person whom he is charged with killing, may be found guilty of the robbery of or the assault with intent to rob such person if it is proved that in fact such offence was committed.

(4) If at the trial of any person on a charge alleging that he killed or attempted to kill or assaulted any other person, it has not been proved that he committed the offence charged, but that he pointed at the person against whom the offence

is alleged to have been committed, a firearm or an airgun or air pistol, in contravention of any law, the accused may be convicted of having contravened that law.

On charge of murder or culpable homicide where alleged victim is a recently born child.

197. If upon the trial of any accused upon a charge of murder or culpable homicide, it appears upon the evidence that the accused did not commit the crime of murder or culpable homicide, he may be convicted of exposing an infant or of disposing of the body of a child with intent to conceal the fact of its birth, if the evidence establishes that he committed such offence.

On charge of housebreaking with intent to commit an offence.

198. Any person charged, either at common law or under any statute, with housebreaking with intent to commit an offence specified in the charge may be found guilty of housebreaking with intent to commit some offence other than that specified or some offence unknown if an intent to commit the specified offence is not proved but an intent to commit such other offence or such offence unknown is sufficiently proved.

On charge of statutory offence of entering or being upon premises.

199. In any province in which by law the breaking and entering or the entering of premises with intent to commit an offence or the being without lawful excuse between sunset and sunrise in or upon any dwelling, premises or enclosed area is a statutory offence, a person charged with entering premises with intent to commit an offence specified in the charge may be found guilty of entering premises with intent to commit another offence than that specified or an offence unknown, if an intent to commit the specified offence is not proved but an intent to commit some offence is sufficiently proved, or of being without lawful excuse between sunset and sunrise in or upon any dwelling, premises or enclosed area, if such be the facts proved.

Persons charged with theft may be convicted of receiving stolen goods knowing them to have been stolen.

200. If on the trial of any person on a charge of theft it is proved that the accused received the stolen goods knowing them to have been stolen, he may be found guilty of receiving stolen goods knowing them to have been stolen.

Joint charges of theft and receiving stolen property knowing it to be stolen.

201. (1) When charges of theft of any property and of receiving the same property or any part thereof, knowing it to have been stolen are joined in the same charge, the accused may, according to the evidence, be convicted either of theft of the property or of receiving it or any part of it knowing it to be stolen.

(2) If on a charge alleging that two or more persons jointly committed an offence of which the receiving of any property is an element, it is proved that one or more of them separately received any part or parts of the property under such circumstances as to constitute an offence, such one or more of the persons charged may be convicted of the offence or offences so established by the evidence.

(3) If a charge alleges that such offence was committed by two or more persons, all or any of those persons may, according to the evidence, be convicted of theft of the property, or of receiving it or any part of it knowing it to have been stolen, or one or more of them may according to the evidence be convicted of theft of the property, and the others of them, of receiving it or any part of it, knowing it to have been stolen.

Where property alleged to have been stolen at one time is proved to have been stolen at different times.

202. If on a charge for theft, it appears that the property alleged therein to have been stolen at one time was stolen at different times, the accused may be convicted of every such taking as if every such taking had been separately charged.

Proof of intent to defraud sufficient without alleging whom it was intended to defraud.

203. On the trial of any person for an offence in which any of the following acts are charged against the accused, viz., that he—

(*a*) forged or uttered, offered, disposed of, or put off any forged instrument knowing it to be forged; or

(*b*) obtained anything by means of false pretences; or
(*c*) obtained anything by means of a fraudulent trick or device or any other fraudulent means; or
(*d*) induced, by means of any such trick or device or fraudulent means, the payment or delivery of any money or thing,

or that he attempted to commit or procure the commission of any such act, it shall not be necessary to prove an intent on the part of the accused to defraud any particular person, but it shall be sufficient to prove that the accused did the act charged with intent to defraud.

Conviction for part of offence charged.

204. If in any other case not hereinbefore specified the commission of the offence with which the accused is charged as defined in the law creating the offence or as set forth in the charge, includes the commission of any other offence, the accused may be convicted of any offence so included which is proved, although the whole offence charged is not proved.

When evidence shows other offence of a similar nature.

205. (1) If, on the trial of a person charged with an offence, it is proved that he is guilty of another offence of such a nature that, on a charge alleging that he committed that other offence, he might have been convicted of the offence with which he is actually charged, he may be convicted of the offence with which he is so charged.

(2) A person who has been tried on a charge of having committed such an offence shall not thereafter be prosecuted for the offence so proved by the evidence, unless, in the case of a trial by jury, the jury is discharged from giving a verdict, in which event the accused shall be committed by the court to custody or released on bail pending the decision of the attorney-general as to whether further proceedings shall be taken against him on the same or on another charge.

CHAPTER XIII.

WITNESSES.

Securing attendance of witnesses at Criminal proceedings.

Process for securing attendance of witnesses.

206. (1) Either the prosecutor or the accused may compel the attendance of any person to give evidence or to produce any books, papers or documents in any criminal proceedings by taking out of the office prescribed by rules of court the process of the court for that purpose.

(2) When the accused desires to have any witnesses subpoenaed and satisfies the prescribed officer of the court—

(*a*) that he is unable to pay the necessary costs and fees; and
(*b*) that such witnesses are necessary and material for his defence,

the prescribed officer of the court shall subpoena such witnesses.

(3) In any case where the prescribed officer of the court is not so satisfied, he shall, upon the request of the accused, refer the application to the judge or officer presiding over the court who may grant or refuse such application or may defer giving his decision until he has heard the other evidence in the case or any part thereof.

(4) For the purposes of this Chapter "prescribed officer of the court" means the registrar, assistant registrar, clerk of the court or any officer prescribed by rules of court.

Service of subpoenas.

207. Service of subpoenas in criminal proceedings shall be effected in the manner provided by the rules of court.

Duty of witnesses to keep police informed of their whereabouts.

208. (1) Any person who is advised in writing by any member of a police force established under any law, who is of the rank of sergeant or above such rank, or who is the officer in charge of a police post, that he will be required as a witness in any criminal proceedings, shall, until such criminal proceedings have been finally disposed of, or until he is officially advised that he will no longer be required as a witness, keep the officer in charge of the police post nearest to his ordinary place of residence informed at all times of his full residential address or any other address where, during that period, he may conveniently be found.

(2) Any person who fails to comply with the provisions of sub-section (1) shall be guilty of an offence and liable on conviction to a fine not exceeding twenty-five pounds or to imprisonment for a period not exceeding one month.

Duty of witness to remain in attendance.

209. Every witness duly subpoenaed to attend and give evidence at any criminal proceedings shall attend and remain in attendance throughout the hearing of the proceedings unless excused by the court.

Subpoenaing of witnesses or examination of persons in attendance by the court.

210. The court may at any stage subpoena or cause to be subpoenaed any person as a witness or examine any person in attendance though not subpoenaed as a witness, or may recall and re-examine any person already examined; and the court shall subpoena or cause to be subpoenaed and examine or recall and re-examine any person if his evidence appears to it essential to the just decision of the case.

Arrest and punishment for failure to obey subpoena or to remain in attendance.

211. (1) If any person subpoenaed to attend at any criminal proceedings fails without reasonable excuse to obey the subpoena and it appears from the return or from evidence given under oath that the subpoena was served upon the person to whom it is directed or that he is evading service, or if any person who attended in obedience to a subpoena fails to remain in attendance, the court in which the said criminal proceedings are conducted, may issue a warrant, directing that he be arrested and brought, at a time and place stated in the warrant, or as soon thereafter as possible, before the court or any magistrate.

(2) When the person in question has been arrested under the said warrant, he may be detained thereunder before the court which issued it or in any gaol or lock-up or other place of detention or in the custody of the person who is in charge of him, with a view to securing his presence as a witness at the criminal proceedings: Provided that the court may release him on a recognizance with or without sureties for his appearance to give evidence as required, and for his appearance at the enquiry referred to in sub-section (3).

(3) The court may in a summary manner enquire into the said person's failure to obey the subpoena or to remain in attendance, and unless it is proved that the said person has a reasonable excuse for such failure, the court may sentence him to pay a fine not exceeding twenty-five pounds or to imprisonment for a period not exceeding one month.

(4) Any sentence imposed by any court under sub-section (3) shall be enforced and shall be subject to an appeal as if it were a sentence in a criminal case imposed by that court.

(5) If a person who has entered into any recognizance for his appearance to give evidence at any criminal proceedings or for his appearance at an enquiry referred to in sub-section (3) fails so to appear, he may, apart from the forfeiture of his recognizance, be dealt with as if he had failed to obey a subpoena to attend any criminal proceedings.

Powers of court in case of default of witness in attending or giving evidence.

212. (1) Whenever any person who appears, either in obedience to the subpoena or by virtue of a warrant or is present and is verbally required by the court to give evidence in any criminal proceedings refuses to be sworn or, having been sworn, refuses to answer such questions as are put to him, or refuses or fails to produce any document or thing which he is required to produce, without any just excuse for such refusal or failure, the court may adjourn the proceedings for any period not exceeding eight days and may, in the meantime, by warrant commit the person so refusing or failing, to a gaol, unless he sooner consents to do what is required of him.

(2) If any person referred to in sub-section (1) again refuses at the resumed hearing of the proceedings to do what is so required of him, the court may again adjourn the proceedings and commit him for a like period and so again from time to time until such person consents to do what is required of him.

(3) An appeal shall lie from any order of committal made by a magistrate under sub-section (1) or (2) in a preparatory examination to the superior court to which an appeal lies in the case of a conviction on summary trial by the magistrate's court of the district in which the preparatory examination is held, and the superior court may on such appeal make such order as to it seems just.

(4) Nothing in this section contained shall prevent the court from giving judgment in any case or from committing the accused for trial in the case of a preparatory examination or otherwise disposing of the proceedings in the meantime, according to any other sufficient evidence taken.

(5) No person shall be bound to produce any document or thing not specified or otherwise sufficiently described in the subpoena unless he actually has it in court.

Requiring witness to enter into recognizance.

213. (1) Any court may in any criminal proceedings require any witness, either alone or together with one or more sufficient sureties to the satisfaction of the court, to enter into a recognizance on the condition that the witness shall at any time within twelve months from the date thereof, upon being served with a subpoena at some certain place to be selected by the witness, appear and give evidence at the trial of the accused or of the person in respect of whom the preparatory examination was held.

(2) Every recognizance so entered into shall specify the name and surname of the person entering into it, his occupation or profession, if any, the place of his residence and the name and number, if any, of the street in which that place is, and whether he is an owner or tenant thereof or a lodger therein.

(3) All such recognizances shall be liable to be estreated in the same manner as any forfeited recognizance is by law liable to be estreated by the court before which the principal party thereto was bound to appear.

(4) Any witness who refuses to enter into any such recognizance as aforesaid, may be committed by the court by warrant to the gaol for the place where the trial is to be held, there to be kept until after the trial, or until the witness enters into such a recognizance as aforesaid before a magistrate having jurisdiction in the place where the gaol is situated: Provided that, if the accused is afterwards discharged, any magistrate having jurisdiction shall order such witness to be discharged.

Absconding witnesses.

214. (1) Whenever any person is bound by recognizance to give evidence or is likely to give material evidence in any criminal proceedings any magistrate or any judge of the superior court before which the offence is triable may, if he sees fit, upon information in writing and on oath that such person is about to abscond or has absconded, issue a warrant for the arrest of that person.

(2) If a person referred to in sub-section (1) is arrested, any magistrate or any judge as aforesaid may, if satisfied that the ends of justice would otherwise be defeated, commit him to a gaol until the time at which he is required to give evidence, unless in the meantime he produces sufficient sureties; but any person so arrested shall be entitled on demand to receive a copy of the information upon which the warrant for his arrest was issued.

Restriction on powers of committing witness for detention.

215. The powers of committal of any witness for detention shall not be exercised by a magistrate under sub-section (4) of section *two hundred and thirteen* or sub-section (2) of section *two hundred and fourteen* unless application is made for such committal on the instructions of the attorney-general.

Witnesses from prison.

216. (1) Whenever any prisoner confined in any prison or gaol in the Union is required to give evidence in any criminal proceedings, the court before which such prisoner is required to attend, or any judge of a superior court having jurisdiction in the matter may, before or during the sittings of the court at which the attendance of such prisoner is required, or the magistrate holding the preparatory examination, as the case may be, may make an order upon the superintendent or assistant superintendent, gaoler, or other person having the custody of such prisoner to deliver such prisoner to the person named in such order to receive him; and the person so named shall, at the time prescribed in the order, convey such prisoner to the place at which such prisoner is required to attend, there to receive and obey such further order as to the said court seems fit.

(2) A judge of a superior court may at any time order to be brought before a court over which he is presiding in a criminal case, any person confined in any prison or goal in the Union.

(3) Whenever the attendance of any prisoner confined in a prison or gaol is required as a witness on behalf of a private prosecutor or an accused person, other than an accused person

to whose defence the evidence of such witness is deemed material and who has not sufficient means to make the deposit, there shall be deposited with the superintendent, assistant superintendent, gaoler or other officer having the custody and control of the prisoner so confined such sum as may be necessary to cover the expenses to be occasioned by the conveyance of the prisoner so confined and his necessary escort to and from the court and his maintenance during such period as the prisoner so confined and his escort are likely by reason of the attendance to be detained outside the prison or gaol, and no person shall be required or allowed to obey any such summons unless such a sum has previously been deposited.

(4) The expenses mentioned in sub-section (3) shall be determined in accordance with a scale prescribed by the Minister.

Service of subpoena to secure the attendance of a witness residing in Union outside jurisdiction of court.

217. (1) Whenever a subpoena to give evidence in any criminal proceedings has been issued out of any court and it appears that the person whose attendance is thereby required, resides or is for the time being in a district in the Union outside the area of jurisdiction of that court, the subpoena shall be delivered to the proper officer within that district and shall be served by him as soon as possible on such person: Provided that—

(*a*) the necessary expenses to be incurred by the person subpoenaed, in going to and returning from the court whereout the subpoena was issued and in connection with his detention at the place whereat, and for the purpose for which his attendance is required, shall be tendered to him with the subpoena;

(*b*) if the subpoena is not sued out by the State a sum sufficient to cover the expenses of serving the subpoena shall be lodged with the registrar or clerk of the court by the person suing out the subpoena.

(2) If any person who has been served as aforesaid with a subpoena and to whom has been tendered the expenses aforesaid, fails, without lawful excuse, to attend at the time and place mentioned in the subpoena, a magistrate of the said district may issue a warrant for the apprehension of that person, who shall be liable to be dealt with as if he had failed to attend without lawful excuse when served with a subpoena to attend a like court in the area wherein he resides or is for the time being.

(3) The return of the proper officer showing that service of the subpoena has been duly effected, together with a certificate under the hand of the registrar or clerk of the court that the person whose attendance was required by the subpoena failed to attend when called upon, and has established no lawful excuse for the non-attendance, shall be deemed sufficient proof of the non-attendance for the purpose of dealing with the said person under sub-section (2).

(4) The expression "proper officer" as used in this section shall include a sheriff, deputy-sheriff, messenger, deputy-messenger or other officer who by law or rule of court is charged with the duty of serving subpoenas on witnesses in criminal cases.

Payment of expenses of witnesses.

218. (1) Any person who has attended any criminal proceedings as a witness for the State shall be entitled to such allowance as may be prescribed by regulation under sub-section (3): Provided that the officer presiding at such proceedings may if he thinks fit direct that no such allowance or only a part of such allowance shall be paid to any such witness.

(2) Subject to any regulation made under sub-section (3) the officer presiding at any criminal proceedings may, if he thinks fit, direct that any person who has attended such proceedings as a witness for the accused shall be paid such allowance as may be prescribed by such regulation, or such lesser allowance as such officer may determine.

(3) The Minister may in consultation with the Minister of Finance, by regulation, prescribe a tariff of allowances which may be paid out of public moneys to witnesses in criminal cases and may, by regulation, prescribe different tariffs for witnesses according to their several callings, occupations or station in life, and according also to the distances to be travelled by them to reach the place of trial, preparatory examination or other criminal proceeding, and may, by regulation, further prescribe the circumstances in which any such allowances may be paid to any witness for the accused.

Tender of witness' expenses not necessary.

219. No prepayment or tender of expenses shall be necessary in the case of a person who is required to give evidence at a preparatory examination, and who is within five miles of the premises in which such examination is being held.

Oaths and Affirmations.

Oaths.

220. (1) No person other than a person described in section *two hundred and twenty-one* or *two hundred and twenty-two* shall be examined as a witness otherwise than upon oath.

(2) The oath to be administered to any person as a witness shall be administered in the form which most clearly conveys to him the meaning of the oath, and which he considers to be binding on his conscience.

Affirmations in lieu of oaths.

221. (1) In any case where any person who is, or may be required to take an oath objects to do so, it shall be lawful for such person to make an affirmation in the words following—"I do truly affirm and declare that" (*here insert the matter to be affirmed or declared*). Such affirmation or declaration shall be of the same force and effect as if such person had taken such oath.

(2) Any person authorized, required, or qualified by law to take or administer an oath shall accept, in lieu thereof, an affirmation or declaration as aforesaid.

(3) The same penalties and disabilities which are respectively in force in respect of and are attached to any false or corrupt taking or subscribing of any oath administered in accordance with section *two hundred and twenty* and any neglect and refusal in regard thereto, shall apply and attach in like manner in respect of the false or corrupt making or subscribing respectively, of any such affirmation or declaration as in this section mentioned and any neglect and refusal in regard thereto.

When unsworn or unaffirmed testimony admissible.

222. Any person who, from ignorance arising from youth, defective education, or other cause, is found not to understand the nature, or to recognize the religious obligation, of an oath or affirmation, may be admitted to give evidence in any criminal proceedings without being upon oath or affirmation: Provided that, before any such person proceeds to give evidence, the judge, magistrate or other judicial officer before whom he is called as a witness, shall admonish him to speak the truth, the whole truth, and nothing but the truth, and shall further administer, or cause to be administered, to him any form of admonition which appears, either from his own statement or from any other source of information, to be calculated to impress his mind and bind his conscience, and which is not, as being of an inhuman, immoral or irreligious nature, obviously unfit to be administered: Provided further that any such person who wilfully and falsely states anything which, if sworn, would have amounted to the offence of perjury, or any statutory offence punishable as perjury, shall be deemed to have committed that offence, and shall, upon conviction, be liable to such punishment as is by law provided as a punishment for that offence.

Competency of Witnesses.

No person to be excluded from giving evidence except under this Act.

223. Every person not expressly excluded by this Act from giving evidence shall be competent and compellable to give evidence in any criminal proceedings.

The court to decide questions of competency of witnesses.

224. The court in which any criminal proceedings are conducted shall decide all questions concerning the competency or compellability of any witness to give evidence.

Incompetency from insanity and intoxication.

225. No person appearing or proved to be afflicted with idiocy, lunacy, or insanity, or labouring under any imbecility of mind arising from intoxication or otherwise, whereby he is deprived of the proper use of reason, shall be competent to give evidence while so afflicted or disabled.

Evidence for prosecution by husband or wife of accused.

226. (1) The wife or husband of an accused is competent and compellable to give evidence for the prosecution without the consent of the accused, where the accused is prosecuted for any offence against the person of either of them or any of the children of either of them, or for any offence under Chapter

III of the Children's Act, 1937 (Act No. 31 of 1937), committed in respect of any of the children of either of them or for any of the following offences:

(*a*) bigamy;

(*b*) incest;

(*c*) abduction;

(*d*) contravening any provision of Part IV (sections *twenty-two* to *thirty-six* inclusive) of the Betting Houses, Gaming Houses and Brothels Suppression Act, 1902 (Act No. 36 of 1902), of the Cape of Good Hope, or of the Criminal Law Amendment Act, 1903 (Act No. 31 of 1903) of Natal, or of the Immorality Ordinance, 1903 (Ordinance No. 46 of 1903) of the Transvaal or of the Suppression of Brothels and Immorality Ordinance, 1903 (Ordinance No. 11 of 1903), of the Orange Free State;

(*e*) perjury committed in connection with, or for the purpose of, any judicial proceedings instituted or to be instituted or contemplated by the one of them against the other or in connection with or for the purpose of any criminal proceedings in respect of any offence included in this sub-section; and

(*f*) the statutory offence of making a false statement in any affidavit or solemn or attested declaration if the same be made in connection with or for the purpose of any such proceedings as are mentioned in paragraph (*e*).

(2) The wife or husband of an accused is competent but not compellable to give evidence for the prosecution without the consent of the accused, where such accused is prosecuted for an offence against the separate property of the wife or husband of the accused or for any offence under the Immorality Act, 1927 (Act No. 5 of 1927).

(3) Anything to the contrary notwithstanding in this Act or in any other law every person married in accordance with native law or custom shall, notwithstanding the registration or other recognition under any law of such a union as a valid and binding marriage, for the purposes of the law of evidence in criminal cases, be in the same position as an unmarried person.

Evidence of accused and husband or wife on behalf of accused.

227. (1) Every accused, and the wife or husband (as the case may be) of every accused, shall be a competent witness for the defence at every stage of the proceedings, whether the accused is charged solely or jointly with any other person: Provided that—

(*a*) an accused shall not be called as a witness except upon his own application;

(*b*) the wife or husband of an accused shall not be called as a witness for the defence, except upon the application of the accused.

(2) Every accused called as a witness in pursuance of this section shall, unless otherwise ordered by the court, give his evidence from the witness box or other place from which the other witnesses give their evidence.

(3) Nothing in this section shall affect any right of the accused to make a statement without being sworn: Provided that, if he gives evidence on his own behalf at a preparatory examination, such evidence may be read and put in at his trial by the prosecutor.

Privileges of Witnesses.

Privileges of accused when giving evidence.

228. An accused called as a witness upon his own application shall not be asked, and if asked, shall not be required to answer, any question tending to show that he has committed, or has been convicted of, or has been charged with, any offence other than that wherewith he is then charged, or is of bad character, unless—

(*a*) he has personally or by his counsel, attorney or law agent, asked questions of any witness with a view to establishing, or has himself given evidence of, his own good character, or the nature or conduct of the defence is such as to involve imputation of the character of the prosecutor or the witnesses for the prosecution; or

(*b*) he has given evidence against any other person charged with the same offence; or

(*c*) the proceedings against him are such as are described in section *two hundred and seventy-six* or *two hundred and seventy-seven*, and the notice required by those sections has been given to him; or

(*d*) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged.

Privilege arising out of the marital state.

229. (1) A husband shall not be compelled to disclose any communication made to him by his wife during the marriage, and a wife shall not be compelled to disclose any communication made to her by her husband during the marriage.

(2) A person whose marriage has been dissolved or annulled by a competent court shall not be compelled to give evidence as to any matter or thing which occurred during the subsistence of the marriage or supposed marriage, and as to which he or she could not have been compelled to give evidence if the marriage were subsisting.

No witness compellable to answer questions which the witness' husband or wife might decline.

230. No person shall be compelled to answer any question or to give any evidence, if the question or evidence is such that under the circumstances the husband or wife of such person, if under examination as a witness, might lawfully refuse and could not be compelled to answer or to give it.

Witness not excused from answering question by reason that the answer would establish a civil claim against him.

231. A witness in criminal proceedings may not refuse to answer a question relevant to the issue, the answering of which has no tendency to incriminate himself, or to expose him to penalty or forfeiture of any nature whatsoever, by reason only or on the sole ground that the answering of such question may establish or tend to establish that he owes a debt or is otherwise subject to a civil suit.

Privilege of professional advisers.

232. No advocate, attorney or law agent or other legal practitioner duly qualified to practise in any court whether within the Union or elsewhere shall be competent to give evidence against any person by whom he has been professionally employed or consulted, without the consent of that person, as to any fact, matter, or thing, as to which such legal practitioner, by reason of such employment, or consultation, and without such consent would not be competent to give evidence in any similar proceeding depending in the Supreme Court of Judicature in England: Provided that no such legal practitioner shall, in any proceeding, by reason of any such employment or consultation, be incompetent or not legally compellable to give evidence as to any fact, matter, or thing, relative to or connected with the commission of any offence for which the person by whom such legal practitioner has been so employed or consulted, is in such proceeding prosecuted, whenever such fact, matter, or thing, has come to the knowledge of such legal practitioner before he was professionally employed for or consulted with reference to the defence of such person against such prosecution.

Privilege from disclosure of facts on the ground of public policy.

233. No witness shall, except as in this Act is provided, be compellable or permitted to give evidence in any criminal proceedings as to any fact, matter or thing, or as to any communication made to or by such witness as to which, if the case were depending in the Supreme Court of Judicature in England, such witness would not be compellable or permitted to give evidence, by reason that such fact, matter or thing, or communication, on grounds of public policy and from regard to public interest, ought not to be disclosed and is privileged from disclosure: Provided that it shall be competent for any person, in any criminal proceedings, to adduce evidence of any communication alleging the commission of an offence if the making of that communication *prima facie* constituted an offence, and it shall be competent for the judge or judicial officer presiding at such proceedings to determine whether the making of such communication *prima facie* did or did not constitute an offence, and such determination shall, for the purposes of those proceedings, be final.

Witness excused from answering questions the answers to which would expose him to penalties or degrade his character.

234. No witness in any criminal proceedings shall, except as provided by this Act or any other law, be compelled to answer any question which, if he were under examination in any similar case depending in the Supreme Court of Judicature in England, he would not be compelled to answer, by reason that his answer might have a tendency to expose him to any pains,

penalty, punishment or forfeiture, or to a criminal charge, or to degrade his character: Provided that, anything to the contrary notwithstanding in this section contained, an accused called as a witness on his own application in accordance with section *two hundred and twenty-seven* may be asked any question in cross-examination, notwithstanding that it would tend to incriminate him as to the offence charged against him.

Evidence on Commission.

Taking evidence on commission.

235. (1) Whenever in the course of any criminal proceedings, it appears to a superior court on application made that the examination of a witness is necessary for the ends of justice and that the attendance of such witness cannot be procured without an amount of delay, expense, or inconvenience which under the circumstances of the case would be unreasonable, such court may dispense with such attendance and may issue a commission to any magistrate or, where the witness is resident outside the Union, to any person authorized by such superior court to take evidence on commission in civil cases outside the Union, within the local limits of whose jurisdiction such witness resides: Provided that, in any such application, the specific fact or facts with regard to which the evidence of the witness is required shall be set out and the court may, by its order confine the examination of the witness to those facts: Provided further that, when the application is on behalf of the State, the court may direct as a condition of such order that the expense necessary to the representation of accused by attorney or counsel at the examination shall be paid by the State.

(2) The magistrate or other person to whom the commission is issued shall proceed to the place where the witness is or shall summon the witness before him, and shall take down his evidence in the same manner, as in the case of an ordinary preparatory examination taken before himself, or where the commission is executed outside the Union, in the same manner as a commission to take evidence in civil cases is executed.

Parties may examine witness.

236. (1) Any party to any criminal proceedings in which a commission is issued may transmit any interrogatories in writing which the court directing the commission may think relevant to the issue, and the magistrate or other person to whom the commission is directed shall examine the witness upon such interrogatories.

(2) Any such party may appear before such magistrate or other person by counsel, attorney, or agent or, if not in custody, in person, and may examine, cross-examine and re-examine (as the case may be), the said witness.

Return of commission.

237. (1) After a commission under section *two hundred and thirty-five* has been duly executed, it shall be returned, together with the evidence of the witness examined thereunder, to the court which issued it; and the commission, the return thereto, and the evidence shall be open at all reasonable times to the inspection of the parties, and may, subject to all just exceptions, be read in evidence in the case by either party and shall form part of the record.

(2) Any evidence so taken may also be received in evidence at any subsequent stage of the case before another court.

Adjournment of enquiry or trial.

238. In any case in which a commission is issued under section *two hundred and thirty-five* the criminal proceedings may be adjourned for a specified time, reasonably sufficient for the execution and return of the commission.

CHAPTER XIV.

Evidence.

Admissibility of Evidence.

Proof of certain facts by affidavit.

239. (1) Whenever in any criminal proceedings the question arises whether any particular act, transaction or occurrence did or did not take place in any particular department or sub-department or branch thereof or office of the Union or of a province or in a particular court of law or in a particular bank, or whether any particular Union or provincial functionary did or did not perform any particular act or take part in any

particular transaction, a document purporting to be an affidavit made by a person who in that affidavit alleges—

(*a*) that he is in the service of the Union or of the said province or of the said bank as the case may be;

(*b*) that if the said act, transaction or occurrence had taken place in the said department or sub-department or branch thereof or office, court or bank, or if the said functionary had performed the said act or taken part in the said transaction it would in the ordinary course of events have come to his, the deponent's, knowledge, and a record thereof, available to him, would have been kept;

(*c*) that no such act, transaction or occurrence has come to his knowledge or that he has satisfied himself that no such record was kept or that no such act, transaction or occurrence took place,

shall on its mere production in those proceedings by any person, but subject to the provisions of sub-section (6), be *prima facie* proof that no such act, transaction or occurrence took place.

(2) Whenever in any criminal proceedings the question arises whether any person bearing a particular name did or did not furnish any particular officer in the service of the Union or of a province with any particular information or document, a document purporting to be an affidavit made by a person who, in that affidavit, alleges that he is the said officer and that no person bearing the said name furnished him with any such information or document, shall on its mere production in those proceedings by any person, but subject to the provisions of sub-section (6), be *prima facie* proof that the said person did not furnish the said officer with any such information or document.

(3) In any criminal proceedings in which the registration of any matter or the recording of any fact or transaction under any law is relevant to the issue, such registration or recording and any matter connected therewith may, subject to the provisions of sub-section (6), be proved *prima facie* by the production of a document purporting to be an affidavit made by the person upon whom the said law confers the power or imposes the duty to effect any such registration or to record any such fact or transaction.

(4) Whenever any fact ascertained by any examination or process requiring any skill in bacteriology, biology, chemistry, physics, astronomy or geography is or may become relevant to the issue in any criminal proceedings, a document purporting to be an affidavit made by a person who in that affidavit alleges that he is in the service of the Union or of a province or in the service of, or attached to, the South African Institute for Medical Research or any University in the Union or any other institution designated by the Governor-General for the purposes of this section by proclamation in the *Gazette*, and that he has ascertained any such fact by means of any such examination or process, shall on its mere production in those proceedings by any person, but subject to the provisions of sub-section (6), be admissible to prove that fact: Provided that such affidavit shall not be so admissible in an inferior court, if objected to by an accused or his representative, where the affidavit is produced by the prosecutor, or if objected to by the prosecutor or by an accused or his representative, where the affidavit is produced by another accused or his representative, unless the objector or his representative has received, not later than three days after the day upon which the accused was summoned or otherwise notified of his trial, a notice in writing that such affidavit will be tendered in evidence at the trial, and has not within three days of the day of the receipt of such notice, given notice in writing to the person who gave such first-mentioned notice, that he will object to the production of such affidavit.

(5) In any criminal proceedings in which it is relevant to prove that the details set out in any consignment note executed for the purpose of the transport of any goods by the Railway Administration are correct, such details may subject to the provisions *mutatis mutandis* of the proviso to sub-section (4) and to the provisions of sub-section (6), be proved *prima facie* by the production of a document purporting to be an affidavit made by

the person who executed such consignment note, in which it is stated that the details set out in such consignment note are correct in relation to the goods described in such consigment note and delivered for transport in connection therewith.

(6) The court in which any such affidavit is adduced in evidence may in its discretion cause the person who made it, to be summoned to give oral evidence in the proceedings in question or may cause written interrogatories to be submitted to him for reply and such interrogatories and any reply thereto, purporting to be a reply from such person, shall likewise be admissible in evidence in such proceedings.

(7) Nothing in this section contained shall affect any other law under which any certificate or other document is admissible in evidence, and the provisions of this section shall be deemed to be additional to, and not in substitution for, any such law.

Inadmissibility of irrelevant evidence.

240. No evidence as to any fact, matter, or thing shall be admissible which is irrelevant or immaterial and cannot conduce to prove or disprove any point or fact at issue in the case which is being tried.

Hearsay evidence.

241. No evidence which is of the nature of hearsay evidence shall be admissible in any case in which such evidence would be inadmissible in any similar case depending in the Supreme Court of Judicature in England.

Admissibility of dying declarations.

242. The declaration made by any deceased person upon the apprehension of death shall be admissible or inadmissible in evidence in every case, in which such declaration would be admissible or inadmissible in any similar case depending in the Supreme Court of Judicature in England.

Admissibility in criminal cases of evidence at preparatory examination of witness since deceased or kept away by the accused.

243. (1) The evidence of any witness taken upon oath before any magistrate at a preparatory examination in the manner required by section *sixty-four* in the presence of any person who has been brought before such magistrate on a charge of having committed an offence, or the evidence of a witness taken in the circumstances referred to in section *sixty-five*, shall be admissible in evidence on the trial of the person for any offence charged by the attorney-general in pursuance of the preparatory examination at which the evidence was taken, or on that person's trial before an inferior court or on the remittal of that person's case by the attorney-general after considering the said preparatory examination provided it is proved on oath to the satisfaction of the court that the witness is dead, or is incapable of giving evidence, or that he is too ill to attend, or that he is kept away from the trial by means and contrivance of the accused and that the evidence offered is the evidence which was sworn before the magistrate without any alteration and provided it appears from the record or is proved to the satisfaction of the court that the accused, by himself, his counsel, attorney, or law agent, had a full opportunity of cross-examining the witness.

(2) The evidence of a witness given at a former criminal trial shall, under like circumstances, be admissible on any subsequent trial of the same person upon the same charge.

(3) Where the witness cannot be found after diligent search or cannot be compelled to attend, the court may, in its discretion, allow his evidence to be read as evidence at the trial subject to the conditions hereinbefore mentioned.

Admissibility of confessions by accused.

244. (1) Any confession of the commission of any offence shall, if such confession is proved by competent evidence to have been made by any person charged with such offence, whether before or after his arrest and whether on a judicial examination or after committal, and whether reduced into writing or not, be admissible in evidence against such person provided such confession is proved to have been freely and voluntarily made by such person in his sound and sober senses and without having been unduly influenced thereto: Provided that if such confession is shown to have been made to a peace officer, other than a magistrate or justice, it shall not be admissible in evidence under this section unless it was confirmed and reduced to writing in the presence of a magistrate or justice: Provided further that if such confession has been made at a preparatory examination before any

magistrate, such person has previously, according to law, been cautioned by the magistrate that he is not obliged, in answer to the charge against him, to make any statement which may incriminate himself, and that what he then says may be used in evidence against him.

(2) In any proceedings any confession which is, by virtue of any provision of sub-section (1), inadmissible in evidence against the person who made it, shall become admissible against him if he or his representative adduces in those proceedings any evidence, either directly or in cross-examining a witness, of any statement, verbal or in writing, made by the person who made the confession either as part thereof or in connection therewith, if such evidence is, in the opinion of the officer presiding at such proceedings, favourable to the person who made the confession.

Admissibility of facts discovered by means of inadmissible confession.

245. (1) Evidence may be admitted of any fact otherwise admissible in evidence, notwithstanding that such fact has been discovered and come to the knowledge of the witness who gives evidence respecting it only in consequence of information given by the person under trial in any confession or evidence which by law is not admissible in evidence against him on such trial, and notwithstanding that the fact has been discovered and come to the knowledge of the witness against the wish or will of the accused.

(2) It shall be lawful to admit evidence that anything was pointed out by the person under trial or that any fact or thing was discovered in consequence of information given by such person notwithstanding that such pointing out or information forms part of a confession or statement which by law is not admissible in evidence against him on such trial.

Confession not admissible against other persons.

246. No confession made by any person shall be admissible as evidence against any other person.

Evidence of character.

247. Save as is provided in section *two hundred and twenty-eight*, no evidence as to the character of the accused or as to the character of any woman on whose person any rape or assault with intent to commit a rape or indecent assault is alleged to have been committed, shall, in any case, be admissible or inadmissible if such evidence would be inadmissible or admissible in any similar case depending in the Supreme Court of Judicature in England.

Evidence of genuineness of disputed writings.

248. Comparison of a disputed writing with any writing proved to the satisfaction of the court to be genuine may be made by witnesses, and such writings and the evidence of any witness with respect thereto may be submitted to the court or jury, as the case may be, as evidence of the genuineness or otherwise of the writing in dispute.

Proof of trial and conviction or acquittal of any person.

249. The trial and conviction or acquittal of any person may be proved by the production of a certificate signed or purporting to be signed by the registrar or clerk of the court or other officer having the custody of the records of the court where such conviction or acquittal took place, or by the deputy of such registrar, clerk or other officer, that the document produced is a copy of the charge and of the trial, conviction, and judgment or acquittal, as the case may be, omitting the formal parts thereof.

Proof of admission of guilt by accused at preparatory examination.

250. The statement made by an accused under section *sixty-six* or *seventy-five* in answer to any question put to him under the first-mentioned section shall, when he is brought before a superior court after committal by a magistrate for sentence, or when he is brought before a magistrate's court on remittal to it by the attorney-general for sentence, be admissible in evidence on its production without further proof.

Proof of law or anything published in *Gazette*.

251. (1) Judicial notice shall be taken of any law or government notice, or of any other matter which has been published in the *Gazette* or in the official *Gazette* of any province.

(2) A copy of the *Gazette*, or of the official *Gazette* of any province, or a copy of such law, notice or other matter purporting to be printed under the superintendence or authority of the Government printer, shall, on its mere production, be evidence of the contents of such law, notice or other matter, as the case may be.

Proof of appointment to a public office.

252. Any evidence which would be admissible in any criminal case depending in the Supreme Court of Judicature in England as evidence of the appointment of any person to any public office or of the authority of any person to act as a public officer shall be admissible in evidence in all criminal proceedings in the Union.

Proof of signature of public officer not necessary.

253. In any criminal proceedings any document—
(*a*) purporting to bear the signature of any person holding a public office; and
(*b*) bearing a seal or stamp which purports to be a seal or stamp of the department, office or institution to which such person is attached,

shall on its mere production, without proof of such signature, seal or stamp, be presumed to be signed by such person, unless it is proved not to have been signed by him.

Evidence of Accomplices.

Accomplices giving evidence for prosecution freed from prosecution.

254. (1) Where any person who to the knowledge of the public prosecutor has been an accomplice, either as principal or accessory, in the commission of any offence alleged in any charge, or the subject of a preparatory examination, is produced as a witness by and on behalf of the public prosecutor, and submits to be sworn as a witness, and fully answers to the satisfaction of the court or magistrate all such lawful questions as are put to him while under examination, such person shall thereby be absolutely freed and discharged from all liability to prosecution for such offence, either at the public instance, or at the instance of any private prosecutor, or, if he is produced as a witness by and on behalf of any private prosecutor who is aware of such person's complicity, from all prosecution for such offence at the instance of such private prosecutor.

(2) The said court or magistrate shall cause such discharge to be entered on the record of the proceedings: Provided that such discharge shall be of no force and effect and the entry thereof on the record of the proceedings shall be deleted if, when called as a witness at a re-opening of the preparatory examination or at the trial of any person upon a charge of having committed such offence, the person in respect of whom the discharge was made refuses to be sworn as a witness or fails to answer fully to the satisfaction of the magistrate holding the preparatory examination or of the court trying such charge, all such questions as are put to him while under examination as a witness.

(3) No accomplice produced as a witness by and on behalf of any private prosecutor shall, in any case, be compelled to answer any question whereby he may incriminate himself in respect of any offence alleged in the charge under trial, or the subject of a preparatory examination, unless there is produced to him, and put on record, a writing under the hand of the officer who by law is entitled to prosecute at the public instance in such court or at the preparatory examination, discharging such accomplice from all liability to prosecution at the instance of the public prosecutor for such offence.

Evidence of accomplice cannot be used against him.

255. No evidence given by an accomplice on behalf of the prosecution in any criminal proceedings in respect of any offence shall, if the said accomplice is thereafter prosecuted for such offence, be admissible in evidence against him at his trial: Provided that if such accomplice is subsequently prosecuted for perjury arising from the giving of such evidence, nothing contained in this section shall prevent the admission against him in evidence at his trial for the said perjury of the evidence so given.

Sufficiency of Evidence.

Sufficiency of one witness in all cases, except perjury and treason.

256. Any court or jury may convict any accused of any offence alleged against him in the charge, on the single evidence of any competent and credible witness: Provided that no court or jury shall—
(*a*) convict any accused of perjury on the evidence of any one witness, unless in addition to and independent of the evidence of such witness, some other competent and credible evidence as to the falsity of the statement which forms the subject of the charge is given to such court or jury; or
(*b*) convict any accused of treason except upon the evidence of two witnesses where one overt act is charged, or

where two or more overt acts are so charged, upon the evidence of one witness to each such overt act.

Conviction on single evidence of accomplice if the offence is proved *aliunde*.

257. Any court or jury may convict any accused of any offence alleged against him in the charge on the single evidence of any accomplice, provided the offence has, by competent evidence, other than the single and unconfirmed evidence of the accomplice, been proved to the satisfaction of such court or jury, as the case may be, to have been actually committed.

Conviction of accused on plea of guilty or evidence of confession.

258. (1) If an accused charged with any offence before any court pleads guilty to that offence or to an offence of which he might be found guilty on the charge, and the prosecutor accepts that plea, the court may—

(*a*) if it is a superior court, and the accused pleads guilty to any offence other than murder, sentence him for that offence without hearing any evidence; or

(*b*) if it is an inferior court, sentence him for the offence to which he pleads guilty upon proof, other than the unconfirmed evidence of the accused, that the offence was actually committed: Provided that if the offence to which he pleads guilty is such that the court is of opinion that it does not merit punishment of imprisonment without the option of a fine or of whipping or of a fine exceeding fifteen pounds, it may, if the prosecutor does not tender evidence of the commission of the offence, convict the accused of such offence upon his plea of guilty, without other proof of the commission of the offence, and thereupon impose any competent sentence other than imprisonment or any other form of detention without the option of a fine or whipping or a fine exceeding fifteen pounds, or it may deal with him otherwise in accordance with law.

(2) Any court or jury may convict an accused of any offence alleged against him in the charge by reason of any confession of that offence proved to have been made by him, although the confession is not confirmed by any other evidence, provided the offence has, by competent evidence, other than such confession, been proved to have been actually committed.

Admission in writing of guilt before trial of minor offence.

259. (1) Whenever a public prosecutor causes an accused person to be summoned (otherwise than in terms of sub-section (8) of section *three hundred and fifty-one*), to appear in an inferior court upon a charge of having committed any offence and he has reasonable grounds for believing that the court which will try the said charge will, on convicting the accused, not impose a sentence of imprisonment or whipping or a fine exceeding fifteen pounds, he may attach to such summons to be served therewith upon the accused, a form of declaration for signature by the accused, wherein the latter admits having committed the offence, expresses his intention of pleading guilty to the charge and agrees to be convicted of the offence charged upon his plea of guilty without the calling of any evidence in support of the charge.

(2) Such form shall contain a notice for the information of the accused that when appearing in court to answer the charge upon which he is summoned, he may, in spite of having signed the said declaration, plead not guilty to the charge and that he will thereupon be tried, upon a future date to be determined by the court, as if he had not signed such declaration, and that such declaration will, at such trial, not be admissible in evidence against him.

(3) The said form shall also contain a notice for the information of the accused, directing his attention to the provisions of section *three hundred and fifty-one* and setting forth the purport of those provisions.

(4) The person serving such summons shall, if service is upon the accused personally, explain the aforesaid form of declaration to the accused and ascertain from him whether he will or will not sign such declaration, and if the accused signs such declaration the said person shall countersign it and transmit it forthwith to the public prosecutor who caused the summons to be issued.

(5) If the accused, on appearing in court in answer to the summons, pleads guilty to the charge, the court may deal with him in terms of the proviso to paragraph (*b*) of sub-section (1)

of section *two hundred and fifty-eight*, or it may direct that evidence be led to prove the commission of the offence charged.

(6) If the accused, on appearing in court as aforesaid, pleads not guilty or if after having pleaded guilty, the court directs that evidence be led to prove the commission of the offence, the court shall at the request of the public prosecutor or of the accused postpone the trial of the case to such date as it may fix to enable the public prosecutor, and the accused, if he so desires, to subpoena witnesses.

(7) If the accused pleads not guilty, as aforesaid, the admission of guilt signed by him shall not be admissible in evidence against him at his trial.

Sufficiency of proof of appointment to a public office.

260. Any evidence which would, if credible, be deemed in any criminal case depending in the Supreme Court of Judicature in England to be sufficient proof of the appointment of any person to any public office, or of the authority of any person to act as a public officer shall, if credible, be deemed in all criminal proceedings in the Union to be sufficient proof of such appointment or authority.

Documentary Evidence.

Certified copies or extracts of public documents admissible in evidence.

261. Whenever any book or other document is of such a public nature as to be admissible in evidence on its mere production from the proper custody, any copy thereof or extract therefrom shall be admissible in evidence in any criminal proceedings provided it is proved to be an examined copy or extract, or provided it purports to be signed and certified as a true copy or extract by the officer to whose custody the original is entrusted; and such officer shall furnish such certified copy or extract to any person applying at a reasonable time therefor, upon payment of a reasonable sum therefor not exceeding one shilling for every hundred words.

Production of official documents.

262. Any original document in the custody or under the control of any State official by virtue of his office, shall only be produced in any criminal proceedings before any court upon the order of the attorney-general.

Copies of official documents sufficient.

263. (1) Except when the original is ordered to be produced, as in section *two hundred and sixty-two* provided, it shall be sufficient to produce a copy of or extract from a document described in that section certified as a true copy or extract by the head of the department in whose custody or under whose control such document is, which copy or extract so certified shall be admissible in evidence in any criminal proceedings, and shall be of like value and effect as the original document.

(2) (*a*) It shall not be necessary for any head of a State department or office to appear in person to produce any original document in his custody or under his control as such officer, but it shall be sufficient if such document is produced by a person authorized by him so to do.

(*b*) Certified copies or extracts may be handed into the court by the person who desires to avail himself thereof.

(3) Any officer authorized or required by this Act to furnish any certified copy or extract who wilfully certifies any document as being a true copy or extract knowing that the same is not a true copy or extract, as the case may be, shall be guilty of an offence and liable upon conviction to imprisonment for a period not exceeding two years.

Special Provisions as to Bankers' Books.

Entries in bankers' books admissible in evidence in certain cases.

264. The entries in ledgers, day-books, cash-books and other account books of any bank, including a savings bank, shall be admissible as *prima facie* evidence of the matters, transactions and accounts therein recorded, on proof being given by the affidavit in writing of one of the directors, managers or officers of such bank, or by other evidence, that such ledgers, day-books, cash-books or other account books are or have been the ordinary books of such bank, and that the said entries have been made in the usual and ordinary course of business, and that such books are in or come immediately from the custody or control of such bank.

Examined copies admissible after due notice.

265 (1) Copies of all entries in any ledgers, day-books, cash-books or other account books used by any such bank may be proved in any criminal proceedings as evidence of such entries without production of the originals, by means of the affidavit of a person who has examined the same, stating the fact of the said examination and that the copies sought to be put in evidence are correct: Provided that no ledger, day-book, cash-book or other account book of any such bank, and no copies of entries therein contained, shall be adduced or received in evidence under this Act, unless at least ten days' notice in writing, or such other notice as may be ordered by the court, containing a copy of the entries proposed to be adduced in evidence, has been given by the party proposing to adduce the same in evidence to the other party and that such other party is at liberty to inspect the original entries and the accounts of which such entries form a part.

(2) On the application of any party who has received such notice, the court may order that such party be at liberty to inspect and take copies of any entry in the ledgers, day-books, cash-books or other account books of any such bank relating to the matters in question in the criminal proceedings, and such order may be made by such court in its discretion, either with or without summoning before it such bank or the other party, and shall be intimated to such bank at least three days before such copies are required.

(3) On the application of any party who has received such notice, the court may order that the entries and copies mentioned in the notice shall not be admissible as evidence of the matters, transactions and accounts recorded in such ledgers, day-books, cash-books and other account books.

Bank not compelled to produce books unless ordered by court.

266. No bank shall be compelled to produce the ledgers, day-books, cash-books, or other account books of the bank in any criminal proceedings unless the court specially orders that such ledgers, day-books, cash-books or other account books shall be produced.

Last three preceding sections not to apply to proceedings in which bank is a party.

267. Nothing in sections *two hundred and sixty-four* to *two hundred and sixty-six* (inclusive) contained shall apply to any criminal proceedings to which any such bank whose ledgers, day-books, cash-books or other account books are required to be produced in evidence, is a party.

Special Rules of Evidence in Particular Cases.

Evidence on a charge of treason.

268. On the trial of a person charged with treason, evidence shall not be admitted of any overt act not alleged in the charge, unless relevant to prove some other overt act alleged therein.

Evidence on charge of perjury or subornation.

269. On the trial of a person charged with an offence of which the giving of false evidence by any person at the trial of a person charged with an offence is an element, a certificate setting out the substance and effect only, without the formal parts of the charge, and the proceedings at the trial, and purporting to be signed by the officer having the custody of the records of the court where the charge was tried or by his deputy, is sufficient evidence of the trial without proof of the signature or official character of the person who appears to have signed the certificate.

Evidence on a charge of bigamy.

270. (1) On the trial of a person charged with bigamy, it shall be proved that a lawful and binding marriage between the accused and another person existed at the time when the offence is alleged to have been committed: Provided that it shall be presumed till the contrary is proved that the marriage between the accused and that other person was at the date of the marriage lawful and binding—

(*a*) in a case where the marriage is alleged to have been solemnized in any part of Africa included in the Union, as soon as there is produced to the court an extract from a marriage register which is either a duplicate original, or a copy, and which purports to be certified as such by the officer or minister of religion having for the time being the custody of the register, or by a registrar of marriages;

(*b*) in a case where the marriage is alleged to have been solemnized outside any part of Africa included in the Union, as soon as there is produced to the court a document which purports to be an extract from a marriage register kept according to law in the country where the marriage is alleged to have been solemnized, and which purports to be certified as such by an officer or person having the custody of that register, provided the signature of such officer or person to the certificate is authenticated in accordance with any law of the Union governing the authentication of documents executed outside the Union.

(2) On the trial of a person charged with bigamy, as soon as a marriage ceremony in a part of Africa included within the Union between the accused and another person has been proved, the marriage shall be deemed to have been lawful and binding as between them at the date thereof until it is shown that they were within the prohibited degrees of consanguinity or affinity, or that owing to a then subsisting marriage one of them was incapable of contracting a lawful and binding marriage with the other.

(3) On the trial of a person on a charge of bigamy, as soon as the alleged bigamous marriage, wherever solemnized, has been proved, the fact that shortly before the alleged bigamous marriage the accused had been cohabiting with the person to whom he is alleged to be lawfully married and had been treating and recognizing such person as a spouse shall, if in addition there be evidence of the performance of a marriage ceremony between the accused and such person, be *prima facie* evidence that there was a lawful and binding marriage subsisting between the accused and such person at the time of the solemnization of the alleged bigamous marriage.

Evidence of relationship on charge of incest.

271. (1) On the trial of a person charged with incest—

(*a*) it shall be sufficient to prove that the woman or girl on whom or by whom the offence is alleged to have been committed, is reputed to be the lineal ascendant, descendant, or sister, step-mother, or step-daughter, of the other party to the incest;

(*b*) the accused shall, until the contrary is proved, be presumed to have had knowledge, at the time of the alleged offence, of the relationship existing between him and the other party to the incest.

(2) Whenever the fact that any lawful and binding marriage was contracted is relevant to the issue at the trial of a person charged with incest, such fact may be proved *prima facie* in the manner provided in section *two hundred and seventy* for the proof of the existence of a lawful and binding marriage of a person charged with bigamy.

Evidence on charge of infanticide or concealment of birth.

272. (1) On the trial of a person charged with murder or culpable homicide of a newly born child, such child shall be deemed to have been born alive if it is proved to have breathed, whether or not it has had an independent circulation, and it shall not be necessary to prove that such child was, at the time of its death, entirely separated from the body of its mother.

(2) On the trial of a person charged with the concealment of the birth of a child, it shall not be necessary to prove whether the child died before, at, or after its birth.

Evidence as to counterfeit coin.

273. When upon the trial of any person it becomes necessary to prove that any coin produced in evidence against him is false or counterfeit, it shall be sufficient to prove that fact by the evidence of any credible witness.

Evidence of counterfeit coin.

274. Upon the trial of any person charged with any offence respecting currency or coin, no difference in the date or year or in any legend marked upon the lawful coin described in the charge and the date or year or legend marked upon the false coin counterfeited to resemble or pass for such lawful coin, or upon any die, plate, press, tool, or instrument, used, constructed, devised, adapted, or designed, for the purpose of counterfeiting or imitating any such lawful coin, shall be considered lawful cause or reason for acquitting any such person of such offence; and it shall in any case be sufficient to prove such general

resemblance to the lawful coin as will show an intention that the counterfeit should pass for it.

Evidence of gambling-house.

275. (1) When any cards, dice, balls, counters, tables, or other instruments of gaming used in playing any unlawful game are found in or on any premises suspected to be used as a gambling house and entered under a warrant or order issued under any law, or on the person of any one found therein or thereon, it shall be *prima facie* evidence in a prosecution under any law or under the common law for keeping a gambling house, that such premises are used as a gambling house and that the persons found in or on those premises were playing therein or thereon, although no play was actually going on in the presence of the person entering the premises under the warrant or order, or in the presence of those persons by whom he is accompanied.

(2) In any prosecution under any law or under the common law for keeping a gambling house it shall be *prima facie* evidence that premises are used as a gambling house—

(*a*) if a policeman authorized to enter upon those premises is wilfully prevented from or obstructed or delayed in entering the same or any part thereof; or

(*b*) if those premises or any part thereof be fitted or provided with any means or contrivance for unlawful gaming or with any means or contrivance for concealing, removing, or destroying any instruments of gaming.

(3) On the trial of a person charged with an offence referred to in this section, it shall not be necessary to prove that any person found on any premises playing at any game was playing for any money, wager, or stake.

Evidence on charge of receiving stolen goods.

276. (1) Upon the trial of a person charged with having received stolen goods knowing them to be stolen, or for having in his possession stolen property or property obtained by means of an offence knowing the same to have been stolen or so obtained, evidence may be given at any stage of the proceedings that there was found in the possession of such person other property stolen or obtained by an offence as aforesaid within the period of twelve months preceding the date upon which such person was first charged with the offence on which he is being tried: Provided that no such evidence shall be so given against such person unless at least three days' notice in writing has been given to him that it is intended to adduce such evidence against him and that the notice specified the nature or description of such other property and the person, if known, from whom the same was stolen or obtained by means of an offence.

(2) Such evidence may be taken into consideration for the purpose of proving that such person knew the property which forms the subject of the charge against him to have been stolen or obtained by an offence as aforesaid.

(3) If at any trial referred to in sub-section (1) it is proved that the accused received from a person under the age of nineteen years stolen goods or property or anything obtained by means of an offence, he shall be presumed to have known at the time when he received those goods or that property or thing, that they or it were stolen or had been obtained by means of an offence, unless it is proved that at that time he was under the age of twenty-one years or had good reason, other than the mere statement of the person from whom he received the goods, property or thing, to believe, and that he did believe that the said person had the right to dispose of those goods or of that property or thing.

Evidence of previous conviction on charge of receiving stolen property.

277. If upon the trial of a person charged with having received stolen goods knowing them to be stolen, or for having in his possession stolen property or property obtained by means of an offence, it is proved that the stolen property or property obtained by means of an offence has been found in his possession, and if such person has, within five years immediately preceding the date upon which such person was first charged with the offence on which he is being tried, been convicted of an offence involving fraud or dishonesty, evidence of such previous conviction may be given at any stage of the trial and may be taken into consideration for the purpose of proving that the accused knew that the property which was found in his possession was stolen

or obtained by means of an offence: Provided that not less than three days' notice in writing has been given to the accused that evidence is intended to be given of such previous conviction.

Evidence on charge of defamation.

278. If on the trial of a person charged with the unlawful publication of defamatory matter which is contained in a periodical, it is proved that the number or part of the periodical containing the alleged defamatory matter was published by the accused, other writings or prints purporting to be other numbers or parts of the same periodical, previously or subsequently published and containing a printed statement that they were published by or for the accused, shall be admissible in evidence on either side without further proof of their publication.

Evidence on charge of theft against clerk or servant.

279. (1) Upon the trial of any person charged with theft while employed in any capacity in the public service or by the Government, of money or any other property which belonged to the State, or which came into such person's possession by virtue of his employment, or of any person charged with theft, while a clerk, servant or agent, of money or any other property which belonged to his employer or principal or which came into his possession on account of his employer or principal, an entry in any book of account kept by the accused or kept under or subject to his charge or supervision, purporting to be an entry of the receipt of any money or other property, shall be evidence that the money or other property so purporting to have been received was so received by him.

(2) It shall not, on the trial of a person charged with an offence referred to in sub-section (1), be necessary to prove the theft by the accused of any specific sum of money or specific goods or articles if, on the examination of the books of account or entries kept or made by him or kept or made in, under, or subject to his charge or supervision, or by any other evidence, there is proof of a general deficiency, and if the court or jury is satisfied that the accused stole the money so deficient or any part of it or the deficient goods or articles or any part thereof.

Evidence on charges relating to seals and stamps.

280. On the trial of a person charged with any offence relating to any seal or stamp used for the purposes of the public revenue or of the post office in any part of Her Majesty's Dominions or in any foreign country, a despatch from one of Her Majesty's Ministers of State, or from the Governor or officer adminstering the government of the dominion or country affected, transmitting to the Governor-General of the Union any stamp, mark, or impression, and stating it to be a genuine stamp, mark, or impression of a die plate or other instrument provided, made, or used by or under the direction of the proper authority of the dominion or country in question, for the purpose of denoting any stamp duty or postal charge, shall be admissible as evidence of the facts stated in the despatch, and the stamp, mark, or impression so transmitted may be used by the court, jury, and by witnesses for the purposes of comparison.

Miscellaneous Matters.

Impounding documents.

281. Whenever any instrument which has been forged or fraudulently altered, is admitted in evidence, the court, judge or person who admits the instrument may, at the request of the public prosecutor or of any person against whom it is admitted in evidence, direct that it shall be impounded and kept in the custody of an officer of the court or other proper person, for such period and subject to such conditions as the court, judge or person admitting the instrument thinks fit.

Cutting counterfeit coin.

282. If any false or counterfeit coin is produced at any trial for an offence relating to currency or coin, the court shall order such coin to be cut in pieces in open court or in the presence of a magistrate, and thereafter delivered to or for the lawful owner thereof if he claims it.

Unstamped instruments admissible in criminal proceedings.

283. An instrument liable to stamp duty shall be admissible in evidence in any criminal proceedings, whether stamped as required by law or not.

Admissions.

284. (1) The accused or his representative in his presence, may in any criminal proceedings admit any fact relevant to the

issue and any such admission shall be sufficient evidence of that fact.

(2) An admission made by an accused or his representative in his presence at a preparatory examination which the magistrate presiding thereat has noted on the record, may be proved at the subsequent trial of the accused by the production, by any person, of the documents purporting to constitute that record.

Presumption that accused possessed particular qualification or acted in particular capacity.

285. If an act or omission constitutes an offence only if committed by a person possessing a particular qualification or quality, or vested with a particular authority or acting in a particular capacity, a person charged with such offence upon a charge alleging that he possessed such qualifications or quality or was vested with such authority or was acting in such capacity shall, at his trial, be deemed to have possessed such qualification or quality or to have been vested with such authority or to have been acting in such capacity at the time of commission of the alleged offence, unless at any time during the trial he or his representative expressly denies that allegation in the court trying the case, or the allegation is disproved: Provided that if after the prosecutor has closed his case the allegation is denied as aforesaid or evidence is led to disprove it, the prosecutor may adduce any evidence and submit any argument in support of the allegation as if he had not closed his case.

Impeachment and support of witness' credibility.

286. Any party may in any criminal proceedings impeach or support the credibility of any witness called against or on behalf of such party in any manner and by any evidence in and by which if the proceedings were depending before the Supreme Court of Judicature in England the credibility of such witness might be impeached or supported by such party and in no other manner and by no other evidence whatever: Provided that any such party who has called a witness who has given evidence in any such proceedings (whether that witness is or is not, in the opinion of the judge or judicial officer presiding at such proceedings, adverse to the party calling him) may, after the said party or the said judge or judicial officer has asked the witness whether he has or has not previously made a statement with which his evidence in the said proceedings is inconsistent, and after sufficient particulars of the alleged previous statement to designate the occasion when it was made, have been mentioned to the witness, prove that he previously made a statement with which his said evidence is inconsistent.

Onus of proof in charges under taxation laws.

287. When a person is charged with any offence whereof failure to pay any tax or impost to the Union or to a province, or failure to furnish any information to an officer of the Union or of a province, is an element, he shall be deemed to have failed to pay that tax or impost or to furnish that information, unless the contrary is proved.

Onus of proof in charges under laws prescribing licences, etc.

288. (1) Where a person carries on an occupation or business or performs an act or has in his possession or custody or owns any article or is present at any place and he would commit or have committed an offence by carrying on that occupation or business, or performing that act, or having that article in his possession or custody or owning it, or being present at that place or entering it, if he were not the holder of a licence, permit, permission or other authorization or qualification (hereinafter in this section referred to as the necessary authorization), to carry on that occupation or business or to perform that act or to have that article in his possession or custody or to own it or to be present at that place or to enter it, he shall, if charged with having committed such offence, be deemed not to have been the holder of the necessary authorization unless the contrary is proved.

(2) Any European policeman, or, where any fee payable for the necessary authorization would, if paid, accrue to the Consolidated Revenue Fund, or the Railway and Harbour Fund or any provincial revenue fund, then also any other person authorized thereto in writing by the head of the department or sub-department to which or to an officer in which any such fee should be paid, or by any officer in charge of any office in that department or sub-department, may demand from a person referred to in sub-section (1) the production of the necessary

authorization for the occupation, business, act, possession, custody, ownership, presence or entry in question: Provided that (save in the case of a European policeman in uniform), the person demanding the necessary authorization, if a European policeman, shall produce written proof that he is such, or if he is a person so authorized, shall produce his authorization in writing, when such proof or authorization is requested by the person upon whom the demand is made.

(3) If the said person is the holder of the necessary authorization and he fails without reasonable excuse to produce it forthwith to the person making the demand, or to submit it, within a reasonable time thereafter to a person and at a place specified by the person making the demand, he shall be guilty of an offence and liable on conviction to a fine not exceeding thirty pounds.

Finger prints, palm prints and foot prints of arrested person may be taken and bodily marks, characteristics or appearance may be noted.

289. (1) Any peace officer may take or cause to be taken the finger prints, palm prints and foot prints of any person arrested upon any charge and the medical officer of any prison or gaol or any district surgeon or (except in the case of a woman), any peace officer may take or cause to be taken such steps, including (except in the case of a peace officer), any blood test, as he may deem necessary in order to ascertain whether the body of any such person bears any mark, characteristic or distinguishing feature or shows any condition or appearance: Provided that the finger prints, palm prints or foot prints of any person found not guilty of such charge shall be destroyed

(2) The magistrate holding any preparatory examination or the court trying any charge may order that the finger prints, palm prints and foot prints of the accused be taken, and may take all such steps (including arrangements for a blood test), as may by such magistrate or court be deemed necessary to ascertain whether the body of the accused bears any mark, characteristic or distinguishing feature, or shows any condition or appearance or to ascertain the state of health of the accused.

Ascertainment of abnormal or unusual mental characteristics of an accused person.

290. (1) Any police officer, who is of the rank of sergeant or above such rank, or who is the commander of a police post, may cause any person arrested upon any charge to be examined by a psychiatrist, if there is reason to believe, either from the personal characteristics of the person accused or from the nature of the alleged offence, that psychopathic or psychoneurotic disability or any form of mental disorder in such person has influenced his conduct in respect of the charge under investigation.

(2) Any psychiatrist who is consulted as aforesaid may take such steps as he may deem necessary to ascertain whether the person accused is suffering from any psychopathic or phsychoneurotic disability or whether his mental characteristics show a deviation from the normal and shall record his finding and the reasons therefor in writing.

(3) A copy of the psychiatrist's report shall be served upon the accused or his legal representative at least two days before the commencement of any preparatory examination or trial upon the charge and the provisions of sections *three hundred and seventy-seven* and *three hundred and seventy-eight* shall *mutatis mutandis* apply in that regard.

(4) (*a*) Except for the purposes of section *twenty-eight* of the Mental Disorders Act, 1916 (Act No. 38 of 1916), evidence of the result of any examination by a psychiatrist in terms of this section shall not be led—

(i) save at the request of the accused or his legal representative, at any preparatory examination held in respect of the accused; or

(ii) save as provided in paragraph (*b*), by the prosecutor at any trial of the accused before verdict.

(*b*) Such evidence as aforesaid may be led—

(i) on behalf of the accused before verdict;

(ii) on behalf of the prosecution or the accused after verdict but before sentence is passed;

(iii) on behalf of the prosecution before verdict in rebuttal of any conflicting evidence that may be led on behalf of the accused.

Evidence of finger prints, palm prints, foot prints and bodily marks of accused.

291. (1) Whenever it is relevant, or whenever it may in the opinion of the court, become relevant to ascertain whether a finger print, palm print or foot print of the accused corresponds to any other finger print, palm print or foot print, or whether the body of the accused bears or bore any mark, characteristic or distinguishing feature or shows or showed any condition or appearance, evidence of the accused's finger prints, palm prints or foot prints or of the fact that the body of the accused bears or bore any mark, characteristic or distinguishing feature or shows or showed any condition or appearance (including the result of any blood test that may be relevant as aforesaid), shall be admissible in evidence.

(2) Such evidence shall not be rendered inadmissible by the fact that the finger print, palm print or foot print was taken or the mark, characteristic, feature, condition or appearance was ascertained, otherwise than in terms of section *two hundred and eighty-nine* or against the wish or will of the accused.

Cases not provided for by this Act.

292. The law as to admissibility of evidence and as to the competency, examination, and cross-examination of witnesses in force in criminal proceedings in the Supreme Court of Judicature in England, shall in any case not provided for by this Act be followed by the courts of the Union in any criminal proceedings of a like nature.

Saving as to special provisions in any other law.

293. Nothing in this Chapter contained shall be construed as modifying the provisions of any other law whereby in any criminal proceedings referred to in such law a person is deemed a competent witness or certain specified facts and circumstances are deemed to be evidence, or a particular fact or circumstance may be proved in a manner specified therein.

CHAPTER XV.

Discharge of Accused Persons.

Dismissal of charge in default of prosecution.

294. (1) If a prosecutor has in the case of a trial in a superior court given notice of trial and does not appear to prosecute the indictment against the accused before the close of the session of that court before which he gave notice of trial, or, in the case of a trial by an inferior court, does not appear on the court day appointed for the trial, the court may, on the application of the accused, dismiss the indictment, summons or charge, and, if the accused or any other person on his behalf has been bound by recognizance for the appearance of the accused at his trial, the court may, in addition, on the further application of the accused, discharge the recognizance.

(2) Where the indictment is at the instance of a private prosecutor the accused may move the court that the private prosecutor and his sureties be called on their recognizance and, in default of his appearance, that the recognizance be estreated, and for an order directing that the private prosecutor pay the costs incurred by the accused in preparing his defence.

(3) Nothing in this section contained shall deprive the attorney-general or the public prosecutor with his authority or on his behalf, of the right of withdrawing any charge at any time before the accused has pleaded, and framing a fresh charge for hearing before the same or any other competent court.

Liberation of accused persons.

295. (1) Every superior court shall, at the close of each of its criminal sessions, discharge from custody all such accused persons as are then in custody and by law are then entitled to be discharged.

(2) Any person who is acquitted on any charge in an inferior court or against whom a charge is dismissed therein for want of prosecution shall forthwith be discharged out of custody.

Gaol list of unsentenced prisoners and witnesses detained

296. Every superintendent, assistant superintendent or gaoler within the area for which any session or circuit of any superior court is held for the trial of criminal cases, shall, under penalty of five pounds, deliver to that court at the commencement of each such session or circuit a list of the unsentenced prisoners and the witnesses detained under section *two hundred and thirteen* or *two hundred and fourteen* (if any) then within his gaol and that list shall specify in the case of each prisoner and detained witness the date of his admission, the date of his

commitment, the authority for his detention and in the case of each prisoner, the cause of his imprisonment and in the case of a detained witness the preparatory examination at which he was committed.

Discharge from imprisonment or expiration of recognizance no bar to trial.

297. Neither discharge from imprisonment nor the expiration of the recognizance shall be a bar to any person being brought to trial in any competent court for any offence for which he was formerly committed to prison or released on bail.

Accused not brought to trial not obliged to find further bail.

298. No person who has been released on bail and who has not been duly brought to trial or who has been discharged from custody pursuant to section *two hundred and ninety-five* shall be obliged to find further bail or shall be committed to custody either for examination or trial for the same offence in respect of which he was formerly released on bail: Provided that the attorney-general may, notwithstanding the discharge of the accused from custody pursuant to section *two hundred and ninety-five* or the expiration of his bail, at any time before the offence has become prescribed, indict the accused for trial for that offence in any competent court, and if the accused, having been duly served with such indictment and notice of trial, fails to appear at the time mentioned in such notice, the court in which he is indicted may, on the application of the attorney-general, issue a warrant for the accused's arrest and detention in prison until he can be brought to trial or until he finds bail for his appearance to stand his trial on the said indictment.

CHAPTER XVI.

PREVIOUS CONVICTIONS.

Previous conviction not to be alleged in any charge.

299. It shall not in any charge against any person for any offence be alleged that such person has been previously convicted of any offence, whether in the Union, or elsewhere.

Proof of previous convictions.

300. Except where otherwise expressly provided by this Act, no evidence shall be admissible during the trial of any accused for any offence to prove that he has been previously convicted of any offence, whether in the Union or elsewhere, and no accused shall, if called as a witness, be asked whether he has been so convicted.

Tendering admission of previous conviction after accused has pleaded guilty or been found guilty.

301. Where a person indicted before a superior court for any offence, has been previously convicted of any offence, whether in the Union or elsewhere, the prosecutor may, if the accused has under section *sixty-nine* admitted that he has been so previously convicted and his admission has been subscribed by the magistrate in accordance with that section, and if he has pleaded guilty to or has been found guilty of the offence, before sentence is pronounced, tender the admission in proof of the previous conviction, and such admission shall be received by the court upon its mere production as proof of the previous conviction unless it is shown that the admission was not in fact duly made or that the signatures or marks thereto are not in fact the signatures or marks of the accused and the magistrate respectively: Provided that if the accused made the admission under section *sixty-nine* but refused to subscribe the same by signature or mark, a solemn declaration, signed by the magistrate and attached to the document signed by him under section *sixty-nine*, stating that the accused did so make the admission but refused to subscribe the same shall, upon its mere production, be sufficient evidence that the accused admitted the previous conviction.

Notice that proof of previous conviction will be offered.

302. Where a person indicted before a superior court for any offence has been previously convicted of any offence whether in the Union or elsewhere, the prosecutor in that superior court may in any case in which the procedure prescribed by section *sixty-nine* has not been followed, give not less than seventy-two hours notice to that person that, if he pleads guilty to or is found guilty of the offence for which he is indicted, proof will be given of such previous conviction.

Mode of proof of previous conviction.

303. (1) Whenever notice has been duly served on a person that evidence of a previous conviction will be given against him as provided by section *three hundred and two*, the prosecutor

may, if such person pleads guilty, or after he has been found guilty, and before sentence is pronounced, offer to prove such previous conviction, and thereupon the court shall ask such person whether he admits that he is the person alleged to have been so previously convicted and whether he has been so convicted as alleged.

(2) If such person does not admit that he has been so convicted and has not admitted it at the preparatory examination in manner prescribed in section *sixty-nine*, the court shall—

(*a*) if he would have been tried by a jury if he had not pleaded guilty, empanel a jury; or

(*b*) if he has been convicted by a jury, direct such jury,

to try the truth of the matter.

(3) In the case of a trial before a superior court without a jury, the court shall itself determine the truth as to the alleged previous convictions which the accused has not admitted in the manner aforesaid.

(4) If the trial is before an inferior court the prosecutor may, after the accused has pleaded guilty or has been found guilty, tender evidence of such previous convictions as he may allege in respect of the accused, and thereupon the court shall ask the accused whether he is the person so alleged to have been previously convicted and shall determine the truth as to the alleged previous convictions which the accused has not admitted.

(5) If any previous conviction is lawfully proved against the accused or if he has admitted such previous conviction, the court shall take it into consideration in awarding sentence for the offence to which he has pleaded, or of which he has been found, guilty.

Finger print records to be *prima facie* evidence of previous conviction.

304. Anything to the contrary notwithstanding in this Act contained, any finger print record, photograph, or document purporting to be certified by any officer having charge of criminal records of the Union or of any other country, colony or territory, whether or not such record, photograph or document was obtained under any law and the person concerned was unable to prevent their being obtained, shall, whenever under any provision of this Act a previous conviction may be proved, be admissible in evidence in any criminal proceedings and shall be *prima facie* proof of the facts in such record, photograph or document set forth: Provided that such record, photograph or document shall be produced to the court by a policeman or prisons officer having the custody thereof.

CHAPTER XVII.

Indictments, Summonses and Charges.

Indictments in Superior Courts.

Charge in superior courts to be laid in an indictment.

305. (1) Where a person charged with an offence has been committed for trial or sentence and it is intended to prosecute him before a superior court, the charge shall be in writing in a document called an indictment.

(2) Where the prosecution is at the public instance, the indictment shall be in the name of, and shall be signed by, the attorney-general, and when the prosecution is a private one, the indictment shall be in the name of the private prosecutor at whose instance it is preferred, who must be described therein with certainty and precision, and must be signed by such private prosecutor or by counsel on his behalf.

(3) Two or more persons shall not prosecute in the same indictment, except where two or more persons have been injured by the same offence.

(4) The service upon an accused of any indictment together with any notice of trial thereof, shall be made by the person and in the manner provided by rules of court.

(5) When a person under the age of nineteen years is served with an indictment and notice of trial, as aforesaid, the provisions of sub-sections (1), (2) and (4) of section *fifty-seven* shall *mutatis mutandis* apply.

When the case is pending.

306. As soon as the indictment in any criminal case brought in any superior court has been duly lodged with the registrar of that court, such case shall be deemed to be pending in that court.

In what courts indictment may be tried.

307. Subject to the provisions of section *one hundred and fifty-one*, any person charged with an offence may be indicted—

(*a*) before any superior court which has, under the law governing the jurisdiction in criminal cases of superior courts, jurisdiction to try that offence; or

(*b*) in the circumstances referred to in Chapter VIII, before the special criminal court constituted under that Chapter.

Summonses and Charges in Inferior Courts.

Lodging of charges in an inferior court.

308. Where a public prosecutor has, by virtue of his office, determined to prosecute any person in an inferior court for any offence within the jurisdiction of that court, he shall forthwith lodge with the clerk of the court a statement in writing of the charge against that person, describing him by his christian names, surname, place of abode and occupation or status and setting forth shortly and distinctly the nature of the offence and the time when and place at which it was committed.

Summons in inferior court.

309. (1) The clerk of the inferior court shall, upon the lodging of any charge, at the request of the prosecutor, issue and deliver to the messenger of the court a summons to the person charged to appear to answer the charge, together with so many copies of the said summons as there are persons to be summoned.

(2) Except where otherwise specially provided by any law, the service upon an accused of any summons or other process in a criminal case in an inferior court shall be made by the prescribed officer, either by delivering it to the accused personally or, if he cannot conveniently be found, by leaving it for him at his place of business or usual or last known place of abode with some inmate thereof. The service of the summons may be proved by the evidence on oath of the person effecting the service or by his affidavit or by due return of service under his hand.

(3) If, upon the day appointed for the appearance of any person to answer any charge, he fails to appear and the court is satisfied upon the return of the person required to serve the summons that he was duly summoned, the court may on the request of the prosecutor, issue a warrant for the arrest of the said person and may also impose on him a fine not exceeding five pounds, or, in default of payment, imprisonment for a period not exceeding one month. The court may, upon cause shown, remit any fine or imprisonment imposed under this sub-section.

(4) When a person under the age of nineteen years is summoned as aforesaid, the provisions of sub-sections (1), (2) and (4) of section *fifty-seven* shall *mutatis mutandis* apply.

Warning to appear in inferior court.

310. (1) Notwithstanding anything in section *three hundred and nine* contained, the presence of any person to be charged with any offence before an inferior court may be obtained by means of a warning to such person.

(2) In a summary trial in any inferior court without summons, the charge shall be entered upon a form called the "Charge Sheet", containing the name of the accused, the name of the offence with which he is charged and the necessary particulars thereof concisely stated and at the trial the charge so drawn shall be read out to the person charged, who shall be called upon to plead thereto, and his plea shall be recorded thereon.

(3) The accused or his legal adviser may at all reasonable times inspect the charge as stated on the charge sheet.

(4) Where a person under the age of nineteen years has been arrested by a peace officer for the purpose of being brought before a court or has been warned to appear before a court on a charge of having committed an offence, the officer who arrested or warned the said person shall warn the parent or guardian of the said person or cause him to be warned, if he can be found within the area of jurisdiction of the said court, to attend the court on the day on which and at the time at which the said person is to be brought or was warned to appear before the said court, and to remain in attendance during the proceedings against the said person in that court, and there-

upon the provisions of sub-sections (2) and (4) of section *fifty-seven* shall *mutatis mutandis* apply.

Charges in remitted cases.

311. (1) Whenever any case has been remitted by the attorney-general to be dealt with by a magistrate's court, the court shall cause the accused to be brought before it as soon as possible.

(2) (*a*) If the accused has been released on bail, the court shall cause a notice to be served on him stating that the case has been remitted to it to be dealt with and requiring him to appear on the day appointed for the trial.

(*b*) A notice under paragraph (*a*) shall be served in the same manner as a summons, and if the accused does not appear in pursuance of the notice, his bail may be estreated and he may be arrested and brought before the court in the same manner as a person who has not appeared upon a summons.

General for all Courts.

Joinder of counts.

312. (1) Any number of counts for any offences whatever may be joined in the same charge: Provided that to a count in an indictment for murder no count for any offence other than murder shall be joined.

(2) When there are more counts than one in a charge, they shall be numbered consecutively and each count may be treated as a separate charge.

(3) (*a*) If the court thinks it conducive to the ends of justice to do so, it may direct that the accused shall be tried upon any one or more of such counts separately.

(*b*) An order under paragraph (*a*) may be made either before or in the course of the trial, and, if it is made in the course of the trial before a jury, the jury shall be discharged from giving a verdict on the counts on which the trial is not to proceed.

(*c*) The counts in the indictment which are not then tried shall be proceeded upon in all respects as if they had appeared in a separate indictment.

(4) If it is alleged that on divers occasions during any period any person has committed against or in respect of any one person an offence of which unlawful carnal connection or any indecent act of whatever nature is an element, the charge may charge in one count that the accused committed the offence on divers occasions during that period.

Withdrawing charges.

313. (1) When a charge containing more counts than one, is brought against the same person and a conviction is obtained on one or more of them, the prosecutor may withdraw the remaining count or counts.

(2) A withdrawal under sub-section (1) shall have the effect of an acquittal on such charge or charges unless the conviction is set aside, in which event the court, subject to the order of the court setting aside the conviction, may, upon the application of the attorney-general, proceed with the trial of the count or counts so withdrawn.

Where it is doubtful what offence has been committed.

314. If by reason of any uncertainty as to the facts which can be proved, or for any other reason it is doubtful which of several offences is constituted by the facts which can be proved, the accused may be charged with having committed all or any of those offences and any number of such charges may be tried at once, or the accused may be charged in the alternative with having committed any number of those offences.

Essentials of charge.

315. (1) Subject to the succeeding provisions of this Act and to any provisions of any other law relating to any particular offence, each count of a charge shall set forth the offence with which the accused is charged in such manner and with such particulars as to the time and place at which the offence is alleged to have been committed and the person, if any, against whom and the property, if any, in respect of which the offence is alleged to have been committed, as may be reasonably sufficient to inform the accused of the nature of the charge.

(2) The following provisions shall apply in relation to all criminal proceedings in any superior or inferior court:

(*a*) the description of any statutory offence in the words of the law creating the offence, or in similar words, shall be sufficient; and

(*b*) any exception, exemption, proviso, excuse or qualification whether it does or does not accompany in the same section the description of the offence in the law creating the offence, may be proved by the accused but need not be specified or negatived in the charge and, if so specified or negatived, need not be proved by the prosecution.

(3) Where any of the particulars referred to in this Act are unknown to the prosecutor it shall be sufficient to state that fact in the charge.

It shall be sufficient to allege the dates between which thefts took place.

316. It may in any charge for theft be alleged that the property alleged to have been stolen was stolen at divers times between any two certain days named in the charge, and, upon such charge, proof may be adduced of the theft of such property upon any day or days between the two certain days aforesaid.

General deficiency may be charged.

317. In a charge for theft of money or for the theft of any property by a person entrusted with the custody or care thereof, the accused may be charged and proceeded against for the amount of a general deficiency, notwithstanding that such general deficiency is made up of a number of specific sums of money or of a number of specific articles or of a sum of money representing the value of any number of specific articles, the theft of which extended over a space of time.

Not necessary to specify particular coin or banknote stolen.

318. It shall be sufficient in any charge in which it is necessary to make averment as to any money or any bank-note, to describe such money or bank-note simply as money, without specifying any particular coin or bank-note, and such description of the property shall be sustained by proof of any amount of coin or of any bank-note, although the particular species of coin of which such amount was composed or the particular nature of the bank-note is not proved, and, in cases of money or bank-notes obtained by false pretences or by any other unlawful act, by proof that the offender obtained any coin or any bank-note or any portion of the value thereof, although such coin or bank-note may have been delivered to him in order that some part of the value thereof should be returned to the person delivering the same or to any other person, and such part has been returned accordingly.

Charges for giving false evidence.

319. (1) It shall not be necessary in a charge for an offence which relates to the taking or administering of an oath or to the giving of false testimony, or the making of a false statement on solemn declaration or otherwise, or to the procuring of the giving of false testimony or the making of a false statement, to set forth the words of the oath or testimony or statement, but it shall be sufficient to set forth the purport thereof or so much of the purport thereof as is material; and it shall not be necessary to allege in any such charge or to establish at the trial, that the false testimony or statement was material to any issue in the proceedings in connection wherewith it was given or made, or that it was to the prejudice of any person.

(2) In a charge for an offence which relates to the giving of false testimony or the procuring or the attempted procuring of the giving of false testimony, it shall not be necessary to allege the jurisdiction or to state the nature of the authority of the court or tribunal before which or the officer before whom the false testimony was given or intended or proposed to be given.

(3) If a person has made any statement on oath whether orally or in writing, and he thereafter on another oath makes another statement as aforesaid, which is in conflict with such first-mentioned statement, he shall be guilty of an offence and may, on a charge alleging that he made the two conflicting statements, and upon proof of those two statements and without proof as to which of the said statements was false, be convicted of such offence and punished with the penalties prescribed by law for the crime of perjury, unless it is proved that when he made each statement he believed it to be true.

Rules applicable to particular charges.

320. (1) It shall not be necessary in a charge, for an offence relating to a testamentary writing to allege that the writing is the property of any person.

(2) It shall not be necessary in a charge for an offence relating to anything fixed in a square, street, or open place or in a place dedicated to public use or ornament or to anything in or taken from a public place or office, to allege that the thing in respect of which the offence was committed is the property of any person.

(3) In a charge for an offence relating to a document which is the evidence of title to land or an interest in land, the document may be described as being the evidence of the title of the person or one of the persons having an interest in the land to which the document relates, while the land or any part thereof shall be described in a manner sufficient to identify it.

(4) In a charge for the theft of anything whatsoever leased to the accused, the thing may be described as the property of the person who actually leased it.

(5) In a charge against a person employed in the public service for an offence committed in connection with anything which came into his possession by virtue of his employment, the thing in question may be described as the property of the Union Government.

(6) In a charge for an offence committed in connection with anything in the occupation or under the management of any public officer the thing may be described as belonging to such officer without naming him.

(7) In a charge for an offence committed in connection with any property, movable or immovable, whereof any body corporate has by law the management, control, or custody, the property may be described as belonging to such body corporate.

(8) If it is uncertain to which of two or more persons any property in connection with which an offence has been connected, belonged at the time when the offence was committed, the property may in the charge for that offence, be described as being the property of one or other of those persons, naming each of them, but without specifying which of them; and it shall be sufficient at the trial to prove that at the time when the offence was committed the property belonged to one or other of those persons without proving which of them.

(9) If property alleged to have been stolen was not in the physical possession of the owner thereof at the time when the theft was committed, but was in the physical possession of another person who had the custody thereof on behalf of the owner, it shall be sufficient to allege in a charge for the theft of that property that it was in the lawful custody or under the lawful control of that other person.

(10) In a charge in which any trade mark or forged trade mark is proposed to be mentioned, it shall be sufficient, without further description and without any copy or facsimile, to state that such trade mark or forged trade mark is a trade mark or forged trade mark.

(11) In a charge for housebreaking, or for entering any house or premises, with intent to commit an offence, whether the charge be made under the common law or any law, the charge may either state the offence which it is alleged the accused intended to commit or may aver an intent to commit an offence to the prosecutor unknown.

(12) In a charge for theft from any grave, whether in a cemetery or burial place or not, it shall not be necessary to allege that any dead body or portion thereof or anything whatever in the grave is the property of any person.

Companies and partnerships may be named in charges by their name, style or title.

321. (1) In any case in which it is necessary in any charge to name any company, firm or partnership, it shall be sufficient to state the name of the company or the style or title of the firm or partnership, without naming any of the officers or shareholders of the company, or any of the partners in the firm or partnership, and one individual trading under the style or title of a firm may be described by such style or title.

(2) It shall be sufficient where two or more persons not partners are joint owners of property to name one of such persons adding the words "and another" or "and others", as the case may be, and to state that the property belongs to the person so named and another or others as the case may be.

Means or instrument by which act is done need not be stated.

322. It shall not in any charge be necessary to set forth the manner in which, or the means or instrument by which any act is done, unless the manner, means or instrument is an essential element of the offence.

In charge for murder or culpable homicide charge as to fact sufficient.

323. It shall be sufficient in an indictment for murder to allege that the accused did wrongfully, unlawfully, and maliciously, kill and murder the deceased, and it shall be sufficient in a charge for culpable homicide to allege that the accused did wrongfully and unlawfully kill the deceased.

In charge for forgery and other cases copy of instrument not necessary.

324. (1) In any charge for forging, uttering, stealing, destroying, concealing, or otherwise unlawfully dealing with, any instrument, it shall be sufficient to describe such instrument by any name or designation by which it is usually known or by the purport thereof, without setting out any copy or facsimile thereof, or otherwise describing it or stating its value.

(2) Whenever it is necessary in any other case to make any allegation in any charge in relation to any instrument, whether the same consists wholly or in part of writing, print or figures, it shall be sufficient to describe such instrument by any name or designation by which it is usually known or by the purport thereof, without setting out any copy or facsimile of the whole or any part thereof, unless the wording of the instrument is an element of the offence.

Certain particulars not required in case of an offence relating to insolvency.

325. In a charge for an offence relating to an insolvent, it shall not be necessary to set forth any debt, act of insolvency, adjudication, or other proceeding in any court, or any order, warrant or document, made or issued out of or by the authority of any court.

Allegation of intent to defraud sufficient without alleging whom it is intended to defraud.

326. (1) It shall be sufficient in any charge for—

(*a*) forging, uttering, offering, disposing of, or putting off, any instrument whatsoever; or

(*b*) theft by means of false pretences; or

(*c*) obtaining anything by means of a fraudulent trick or device or any other fraudulent means; or

(*d*) inducing, by means of any such trick or device or fraudulent means, the payment or delivery of any money or thing; or

(*e*) procuring or attempting to commit or to procure the commission of any such offence,

to allege that the accused did the act with intent to defraud, without alleging that it was the intention of the accused to defraud any particular person.

(2) In the case of any such offence it shall not be necessary to mention the owner of the property in question or to set forth the details of the trick or device.

Persons implicated in same offence may be charged together.

327. (1) Any number of persons charged with committing or with procuring the commission of the same offence, although at different times, or with having, after the commission of the offence, harboured or assisted the offender, and any number of persons charged with receiving, although at different times, any property which has been obtained by means of an offence or any part of any property so obtained, may be charged with substantive offences in the same charge and may be tried together, notwithstanding that the principal offender or the person who so obtained the property is not included in the same charge or is not amenable to justice.

(2) A person who counsels or procures another to commit an offence, or who aids another person in committing an offence, or who after the commission of an offence harbours or assists the offender, may be charged in the same charge with the principal offender and may be tried with him or separately or may be charged and tried separately whether the principal offender has or has not been convicted, or is or is not amenable to justice.

Joint trial of offenders on different charges.

328. Whenever any person in taking part or being concerned in any transaction commits an offence and any other person in taking part or being concerned in the same transaction commits a different offence, both such persons may be charged with such offence in the same charge and may be tried thereon jointly.

CHAPTER XVIII.

Punishments.

Nature of punishments.

329. (1) Sentence of death by hanging shall be passed by a superior court upon a person convicted before or by it of murder, and sentence of death by hanging may be passed by a superior court upon a person convicted before or by it of treason or rape: Provided that where a woman is convicted of the murder of her newly born child, or where a person under sixteen years of age is convicted of murder or where the jury, in convicting the accused of murder, expresses, in terms of sub-section (2) of section *one hundred and forty-one*, the opinion that there are extenuating circumstances, or in the case of a trial without a jury, where the court is of opinion that there are extenuating circumstances, the court may impose any sentence other than the death sentence.

(2) (*a*) Subject to the provisions of sections *three hundred and thirty-five*, *three hundred and forty-two*, sub-section (2) of section *three hundred and forty-four*, and section *three hundred and forty-six* of this Act, and section *forty-five* of the Prisons and Reformatories Act, 1911 (Act No. 13 of 1911), any person, other than a person over the age of fifty years, convicted of any offence mentioned in Part II of the Third Schedule, shall be sentenced to a whipping of not exceeding ten strokes with or without imprisonment with compulsory labour.

(*b*) the Minister may by notice in the *Gazette* add any offence to Part II of the Third Schedule, if a resolution authorizing him so to add such offence is passed by both Houses of Parliament.

(*c*) Notwithstanding anything to the contrary contained in section *ninety-two* of the Magistrates' Courts Act, 1944, (Act No. 32 of 1944) or in any other law, a magistrate's court shall have jurisdiction to impose the penalties prescribed by paragraph (*a*) of this sub-section whether in respect of a first conviction or any subsequent conviction of an offence mentioned in Part II of the Third Schedule.

(3) The following sentences may subject to the provisions of this Act or of any other law or of the common law be passed upon a person convicted of any offence:

(*a*) imprisonment with or without compulsory labour and with or without solitary confinement and spare diet;

(*b*) declaration as an habitual criminal;

(*c*) fine;

(*d*) detention at a farm colony;

(*e*) detention at an inebriate reformatory;

(*f*) whipping;

(*g*) putting the accused under recognizance with conditions.

(4) Subject to the provisions of paragraph (*c*) of sub-section (2) of this section and of section *three hundred and thirty-six* nothing in this Act contained shall be construed—

(*a*) as authorizing any court to impose for any offence any sentence other than, or in excess of, the sentence which by law it is competent for that court to impose for that offence; or

(*b*) as derogating from the authority specially conferred on any court by any law to impose any other punishment.

Sentence of Death.

Sentence of death.

330. The form of the sentence to be pronounced upon a person who is convicted of an offence punishable with death and sentenced to death shall be that he be returned to custody and that he be hanged by the neck until he is dead.

Sentence of death upon a woman who is pregnant.

331. (1) When sentence of death is passed upon a woman, she may apply at any time after the passing of such sentence for an order to stay execution on the ground that she is with child of a quick child.

(2) If such an application is made, the court shall direct that one or more duly registered medical practitioners shall examine

the woman in a private place, either together or successively, to ascertain whether she is with child of a quick child or not.

(3) If upon the report of any of them on oath it appears that the woman is with child of a quick child, the court shall order that the execution of the sentence be stayed until she is delivered of a child or until it is no longer possible in the course of nature that she should be so delivered.

Manner of carrying out death sentences.

332. (1) As soon as practicable after a sentence of death is passed the judge who passed the sentence or any other judge of the court shall issue his warrant to the sheriff or his deputy for the execution of the sentence, but such warrant shall not be executed until the Minister has, in writing signed by himself, given notice to the sheriff or the deputy that the Governor-General has decided not to grant a pardon to, or reprieve, the person so sentenced or otherwise exercise the Royal prerogative of mercy in respect of him.

(2) As soon after the receipt of such notice by the sheriff or his deputy as fitting arrangements for the carrying out of the sentence can be made in or in the precincts of a prison or gaol appointed in accordance with law for the carrying out of sentences of death, the sheriff or a deputy sheriff shall execute the judge's warrant issued to him as aforesaid in such a prison or gaol or such precincts: Provided that the sheriff or his deputy shall not execute the judge's warrant aforesaid if at any time the Minister by written notice under his own hand to the sheriff or the deputy sheriff intimates that the Governor-General has decided to grant a pardon or reprieve to the person so sentenced or otherwise to exercise the Royal prerogative of mercy with regard to him and any such notice shall be construed for all purposes as a cancellation of the judge's warrant aforesaid.

(3) The Minister may direct, either generally or in any particular case, that any sentence of death shall be executed at a designated place appointed in accordance with law for the carrying out of sentences of death, which is situate within the area of jurisdiction of a court other than the court which passed such sentence, and thereupon the sheriff or his deputy appointed for the area wherein such place is situate shall act in accordance with the provisions of sub-sections (1) and (2).

Imprisonment and Fine.

Cumulative or concurrent sentences.

333. (1) When a person is convicted at one trial of two or more different offences or when a person under sentence or undergoing punishment for one offence is convicted of another offence, the court may sentence him to such several punishments for such offences or for such last offence, as the case may be, as the court is competent to impose.

(2) Such punishments, when consisting of imprisonment, shall commence the one after the expiration, setting aside or remission of the other, in such order as the court may direct, unless the court directs that such punishments shall run concurrently.

Discretion of the Court as to the punishment.

334. (1) A person liable to a sentence of imprisonment for life or for any period, may be sentenced to imprisonment for any shorter period, and a person liable to a sentence of imprisonment, may be sentenced to imprisonment with or without compulsory labour, and a person liable to a sentence of a fine of any amount may be sentenced to a fine of any lesser amount.

(2) The provisions of sub-section (1) shall not apply to any offence for which a minimum penalty or imprisonment with compulsory labour, as distinguished from imprisonment with or without compulsory labour, is prescribed in the law creating the offence or prescribing a penalty therefor.

(3) Notwithstanding anything contained in any law, any court which sentences a person to imprisonment without the option of a fine shall be competent to order that, during a period not exceeding six months, which in case the term of imprisonment is longer than six months, shall be the first six months of such term, the imprisonment shall be on spare diet and in solitary confinement and with or without compulsory labour.

(4) Whenever a person is sentenced to imprisonment on spare diet and in solitary confinement, whether with or without compulsory labour, the ratio and the distribution of the days upon which imprisonment on spare diet and in solitary confinement shall take place in relation to the days upon which imprisonment without spare diet and solitary confinement shall take place, shall be determined in accordance with regulations framed under the law relating to prisons and gaols.

(5) Whenever a sentence of imprisonment without compulsory labour and with spare diet and solitary confinement is imposed upon any person and the part of the sentence providing for spare diet and solitary confinement is, during any period, not enforced, such person shall in respect of such period be deemed to have been sentenced to imprisonment with compulsory labour.

Declaration of certain persons as habitual criminals.

335. (1) Subject to the provisions of sub-section (2), any person who—

(*a*) is proved to have been convicted before or after the commencement of this Act, either in the Union or elsewhere, of an offence mentioned in Part I of the Third Schedule; and

(*b*) is proved thereafter to have been convicted, before or after the commencement of this Act, either in the Union or elsewhere, of the same offence or another offence mentioned in Part I of the said Schedule,

may, if he be again convicted after the said commencement of any one of the offences mentioned in the said Schedule, before a superior court within the Union, be declared an habitual criminal by the judge presiding over that court.

(2) Any person who—

(*a*) is proved to have been convicted before or after the commencement of this Act, either in the Union or elsewhere, of an offence mentioned in Part II of the Third Schedule; and

(*b*) is proved thereafter to have been convicted, before or after the commencement of this Act, either in the Union or elsewhere, of the same offence or another offence mentioned in Part II of the said Schedule,

shall, if he be again convicted after such commencement of any one of the offences mentioned in Part II of the said Schedule, be declared an habitual criminal: Provided—

(i) the previous convictions proved in terms of paragraphs (*a*) and (*b*) have been sustained within the period of ten years immediately preceding the date on which the offence was committed in respect of which such person is again convicted; and

(ii) in respect of the said two previous convictions such person was sentenced in each case to imprisonment without the option of a fine, and the total period of imprisonment to which he was so sentenced in respect of such two previous convictions or in respect of such two previous convictions together with any other previous convictions which he is proved to have sustained within the said period amounts to at least twelve months.

(3) Notwithstanding anything to the contrary contained in section *ninety-two* of the Magistrates' Courts Act, 1944, or in any other law, a magistrate's court shall have jurisdiction to declare a person an habitual criminal in terms of sub-section (2): Provided that such a declaration shall be subject to review in terms of section *ninety-six* of the said Act.

(4) A person declared an habitual criminal in terms of this section shall be dealt with as provided by any law then in force relating to prisons and gaols and the treatment of habitual criminals.

Imprisonment in default of payment of fines.

336. (1) Whenever a court convicts a person of any offence punishable by a fine (whether with or without any other direct or alternative punishment) it may, in imposing a fine upon such person, impose, as a punishment alternative to such fine, a sentence of imprisonment with or without compulsory labour, of any period within the limits of its punitive jurisdiction: Provided that, subject to the provisions of sub-section (3), the period of such alternative sentence of imprisonment shall not, either alone or together with any period of imprisonment imposed as a direct punishment, exceed the longest

period of imprisonment prescribed by any law as a punishment (whether direct or alternative) for such offence.

(2) Whenever a court has imposed upon any person a fine without an alternative sentence of imprisonment and the fine is not paid in full or is not recovered in full in terms of section *three hundred and thirty-seven*, the court which passed sentence on such person (or if that court was a Circuit Local Division of the Supreme Court, then the Provincial or Local Division of the Supreme Court within whose area of jurisdiction such sentence was imposed) may issue a warrant directing that he be arrested and brought before the court, which may thereupon sentence him to such term of imprisonment as could have been imposed upon him as an alternative punishment in terms of sub-section (1).

(3) Whenever by any law passed before the date of commencement of section *sixty-three* of the General Law Amendment Act, 1935 (Act No. 46 of 1935), a court is empowered to impose upon a person convicted by such court of an offence, a sentence of imprisonment (whether direct or as an alternative to a fine) of a duration proportionate to the sum of a fine, that court may, notwithstanding such law, impose upon any person convicted of such offence in lieu of a sentence of imprisonment which is proportionate as aforesaid, any sentence of imprisonment within the limits of the court's punitive jurisdiction.

Recovery of fine.

337. (1) Whenever a person is sentenced to pay a fine, the court passing the sentence may, in its discretion, issue a warrant addressed to the sheriff or messenger of the court authorizing him to levy the amount by attachment and sale of any movable property belonging to such person although the sentence directs that, in default of payment of the fine, such person shall be imprisoned. The amount which may be levied shall be sufficient to cover, in addition to the fine, the costs and expenses of the warrant and of the attachment and sale thereunder.

(2) If the proceeds of sale of the movable property are insufficient to satisfy the amount of the fine and the costs and expenses aforesaid, a superior Court may issue a warrant, or in the case of a sentence by any inferior court, may authorize such inferior court to issue a warrant, for the levy against the immovable property of such person of the amount unpaid.

(3) When a person is sentenced to pay a fine only or, in default of payment of the fine, to imprisonment, and the court issues a warrant under this section, it may suspend the execution of the sentence of imprisonment and may release the person upon his executing a bond with or without sureties as the court thinks fit, on condition that he appears before such court or some other court on the day appointed for the return of such warrant, such day not being more than fifteen days from the time of executing the bond; and in the event of the amount of the fine not being recovered, the sentence of imprisonment may be carried into execution forthwith or may be suspended as before for a further period or periods of not more than fifteen days, as the court may deem fit.

(4) In any case in which an order for the payment of money is made on non-recovery whereof imprisonment may be ordered, and the money is not paid forthwith, the court may require the person ordered to make such payment to enter into a bond as prescribed in sub-section (3), and in default of his doing so, may at once pass sentence of imprisonment as if the money had not been recovered.

(5) (*a*) When a person is sentenced to pay a fine only or in default of payment of the fine to a period of imprisonment and before the expiry of that period any part of the fine is paid or levied, the period of imprisonment shall be reduced by a number of days bearing as nearly as possible the same proportion to the number of days to which such person is sentenced as the sum so paid and levied bears to the amount of the fine.

(*b*) An amount which would reduce the imprisonment by a fractional part of a day shall not be received.

(6) No payment of any sum under this section need be accepted otherwise than during the ordinary office hours.

Recovery of fine and costs on conviction for defamation.

338. When any person is convicted of the unlawful publication of any defamatory matter which was published by means of printing, the prosecutor may levy the fine, if any, and costs out of any property of the accused in like manner as in civil actions.

Execution of sentence of fine or imprisonment not suspended by transmission of record of case for review.

339. The execution of any sentence of a fine or of imprisonment with or without compulsory labour, shall not be suspended by the obligation imposed by any law to transmit the record of the case for review unless the person sentenced gives sufficient bail at a time or place or on conditions specified by such law to pay the fine imposed upon him or to surrender himself in order to undergo the imprisonment, as the case may be, if the proceedings in the case be approved.

Detention at Farm Colonies and Reformatories.

Detention in farm colony.

340. In any case where the court may sentence any person to imprisonment, otherwise than in default of payment of a fine, it may sentence him in lieu of such imprisonment, to be detained at any farm colony, work colony, refuge, rescue home or other similar institution in which there is available accommodation, for any period not exceeding the period for which it might have sentenced him to imprisonment and to perform thereat such labour or work as may be prescribed by regulation made under the law governing such institutions.

Detention in an inebriate reformatory.

341. (1) If upon conviction of any person of an offence punishable with either a fine or imprisonment, the court is satisfied from the evidence that the offence was committed under the influence of liquor or that drunkenness was a contributory cause of the offence and if the person admits that he is or if he is found by the court to be, an habitual drunkard, the court may, in addition to or in substitution for any other sentence, order that he be detained for a period not exceeding three years at an inebriate reformatory and to perform thereat such labour or work as may be prescribed by regulation made under the law governing such a reformatory, or that he be detained in a work colony, retreat or certified retreat in the same manner as a person committed thereto under section *fifteen* of the Work Colonies Act, 1949 (Act No. 25 of 1949).

(2) If it is proved to the satisfaction of the court that any person charged before it with drunkenness has, during the twelve months immediately preceding, been twice convicted of drunkenness, or if he admits that he is, or if he is found by the court to be, an habitual drunkard, the court may, in lieu of the sentence prescribed for drunkenness, order that he be detained for a period not exceeding three years at an inebriate reformatory and to perform thereat such labour or work as may be prescribed by regulation made under the law governing such a reformatory or to be detained in a work colony, retreat or certified retreat in the same manner as a person committed thereto under section *fifteen* of the Work Colonies Act, 1949.

Manner of dealing with convicted juveniles.

342. (1) Any court in which a person under the age of nineteen years is convicted of any offence may, instead of imposing any punishment upon him for that offence (but subject to the provisions of sub-section (1) of section *three hundred and twenty-nine*—

(*a*) order that he be placed under the supervision of a probation officer or of any other suitable person designated in the order; or

(*b*) order that he be placed in the custody of any suitable person designated in the order; or

(*c*) deal with him both in terms of paragraphs (*a*) and (*b*); or

(*d*) order that he be placed under the control of an approved agency as defined in section *one* of the Children's Act, 1937 (Act No. 31 of 1937); or

(*e*) order that he be sent to a certified hostel as so defined; or

(*f*) order that he be sent to a reformatory as so defined.

(2) Any court which sentences a person under the age of nineteen years to a fine or a whipping may, in addition to imposing that punishment, deal with him in terms of paragraph (*a*), (*b*), (*c*), (*d*), (*e*) or (*f*) of sub-section (1).

(3) A court which, in terms of sub-section (1) or (2), makes any such order as is referred to in paragraph (*a*), (*b*) or (*d*) of sub-section (1) may, in any area and in respect of any trade in respect of which the provisions of the Apprenticeship Act, 1944 (Act No. 37 of 1944) apply, further order that the person convicted, if he has attained the age of sixteen years, be apprenticed in accordance with the provisions of sub-section (1) or (2) of section *thirty* of the Children's Act, 1937, to a suitable employer (whether the person under whose supervision or in whose custody the firstmentioned person has been placed or any other person).

(4) Any court in which a person over the age of nineteen but under the age of twenty-one years is convicted of any offence other than treason, murder or rape may, instead of imposing any punishment upon him—

(*a*) order that he be placed under the supervision of a probation officer or of any other suitable person designated in the order; or

(*b*) order that he be sent to a certified hostel defined as aforesaid; or

(*c*) order that he be sent to a reformatory defined as aforesaid.

Period of supervision, custody, control or detention of juvenile.

343. (1) (*a*) Any person who is dealt with in terms of sub-section (1), (2) or (4) of section *three hundred and forty-two* shall remain under the supervision or control or in the custody under or in which he is placed, or in the hostel or reformatory, to which he is sent or under or in any other supervision, control, custody, hostel or reformatory to which he may lawfully be transferred—

(i) if at the time of the making of the order he is under the age of sixteen years, until he attains the age of eighteen years; or

(ii) if at the said time he is over the age of sixteen years but under the age of nineteen years, until he attains the age of twenty-one years; or

(iii) if at the said time he is over the age of nineteen years, until he attains the age of twenty-three years;

or, in any such case, until he is discharged or released on licence from that hostel or reformatory in accordance with the provisions of the Children's Act, 1937, before having attained the said age.

(*b*) The period during which a person shall, in terms of this sub-section, remain under or in any supervision, control or custody or in a hostel or reformatory, is hereinafter in this section referred to as the period of detention.

(2) (*a*) After the expiration of the period of detention of a person in a certified hostel or reformatory, he shall remain under the supervision of the managers of the hostel or board of management of the reformatory or under any other supervision to which he may lawfully be transferred—

(i) if at the time of the making of the order that he be sent to the hostel or reformatory he was under the age of sixteen years, until he attains the age of twenty-one years; or

(ii) if at the said time he was over the age of sixteen years but under the age of nineteen years, until he attains the age of twenty-three years; or

(iii) if at the said time he was over the age of nineteen years, until he attains the age of twenty-five years;

or, in any such case, until he is lawfully discharged before having attained the said age.

(*b*) The period during which a person shall remain under supervision in terms of this sub-section is hereinafter in this section referred to as the period of further supervision.

(3) The Minister responsible for the administration of the Children's Act, 1937, may, if he deems it necessary, order that any person detained in a certified hostel or in a reformatory whose period of detention has expired or is about to expire, return to or remain in that hostel or reformatory for such further period as he may fix and may from time to time by further order extend that period: Provided that no such order

or further order shall extend the period of detention of the person concerned beyond the date of expiration of his period of further supervision.

Whipping.

Whipping by superior court.

344. (1) When any person may be sentenced by a superior court to a whipping, that punishment may be inflicted in addition to, or in substitution for, any punishment to which he may otherwise be sentenced, and the number of strokes to be inflicted, not exceeding ten, shall, subject to the provisions of any other law, be in the discretion of the court which shall specify in the sentence the number of strokes which are to be imposed.

(2) In any case in which a sentence by a superior court of whipping is wholly or partly prevented on grounds of health from being executed, the person so sentenced shall be kept in custody until that sentence is revised by the court which passed it or if that court is not sitting, by the provincial division concerned, and the court may in its discretion either remit the sentence of whipping or sentence such person, in lieu of whipping or in lieu of so much of the sentence of whipping as was not executed, to imprisonment for a period not exceeding twelve months, which period of imprisonment may be in addition to any other punishment to which the person may have been sentenced for the same offence.

Whipping on male children.

345. If a male person of not exceeding the age of twenty-one years is convicted of any offence, the court before which he is convicted may, in lieu of any other punishment and, as well in the case of a first conviction as of any subsequent conviction, sentence such person to receive in private a moderate correction of whipping not exceeding ten cuts, which correction shall be administered by such person and in such place and with such instrument as the court may appoint. The parent or guardian of such firstmentioned person shall have the right to be present.

Sentence of whipping not to be imposed in certain cases.

346. (1) No female shall be sentenced by any court to punishment of whipping.

(2) Whipping shall not be imposed by any court, if it is proved that the existence of some psychoneurotic or psychopathic condition contributed towards the commission of the offence.

Where whipping to be carried out.

347. Subject to the provisions of section *three hundred and forty-five,* every punishment of whipping by whatever court imposed shall be carried out privately in a prison or gaol, and in accordance with the regulations made under the law governing prisons or gaols.

Recognizances.

Recognizances to keep the peace and be of good behaviour.

348. (1) A person convicted of an offence other than an offence punishable with death or an offence in respect of which the imposition of a prescribed punishment on the person convicted thereof, is compulsory, may, instead of or in addition to any punishment to which he is liable, be ordered by a superior court to enter into his own recognizances, with or without sureties, in such amount as the court thinks fit, that he shall keep the peace and be of good behaviour for a period fixed by the court and may be ordered by the court to be imprisoned until such recognizances, with sureties, if so directed, are entered into: Provided that the imprisonment for not entering into the recognizance shall, in no case, exceed one year.

(2) If any person is convicted of an offence involving assault or injury to any person, other than an offence in respect of which the imposition of a prescribed penalty on the person convicted thereof, is compulsory, an inferior court may, in lieu of or in addition to any other punishment, order that the convicted person shall give security to keep the peace and to refrain from committing any injury against the complainant for a period not exceeding three months, and if such person refuses or fails to give such security the court may order him to be committed to gaol for a period not exceeding one month unless such security is sooner given.

(3) If the conditions upon which any recognizance or security under this section was given are not observed by the person who gave it, the court may declare the recognizance or security to be forfeited and any such declaration of forfeiture shall have the effect of a judgment in a civil action in that court.

Recognizances to come up for judgment.

349. (1) When a person is convicted of an offence other than an offence punishable with death or an offence in respect of which the imposition of a prescribed penalty on the person convicted thereof, is compulsory, a superior court may, instead of passing sentence, discharge the accused upon his entering into his own recognizances with or without sureties, in such sum as the court may think fit, on condition that he shall appear and receive judgment at some future session of the court or when called upon.

(2) If the trial was held before a local division of the supreme court in any province, the recognizance may, in the discretion of the court, be subject to the condition that the person convicted shall appear and receive judgment at some fixed future time or when called upon before the provincial division of that province, or in the case of a trial before a circuit court in the eastern districts of the Cape of Good Hope, before the Eastern Districts Local Division.

(3) If sentence is not passed forthwith any judge of the court may, at any subsequent sitting thereof at which the person convicted is present, pass sentence upon him.

Miscellaneous Provisions.

Offence committed by person while under influence of intoxicating liquor or narcotic drugs.

350. Whenever it is proved that a person convicted of any offence was under the influence of intoxicating liquor or narcotic drugs when he committed that offence the court may, in determining the appropriate sentence to be imposed upon him in respect of that offence, regard as an aggravating circumstance the fact that he was thus under the influence of intoxicating liquor or narcotic drugs.

Payment of fine without appearance in court.

351. (1) When a person is summoned or warned to appear in an inferior court or is arrested or is informed by a peace officer that it is intended to institute criminal proceedings against him for any offence, and an officer holding a rank or post designated by the Minister from time to time for the purposes of this section by notice in the *Gazette*, has reasonable grounds for believing that the court which will try the said person for such offence will, on convicting such person of such offence, not impose a sentence of imprisonment or whipping or a fine exceeding fifteen pounds, such person may sign and deliver to such officer a document admitting that he is guilty of the said offence, and

(*a*) deposit with such officer such sum of money as the latter may fix; or

(*b*) furnish to such officer such security as the latter deems sufficient, for the payment of any fine which the court trying the case in question may lawfully impose therefor,

to an amount not exceeding fifteen pounds or the maximum of the fine with which such offence is punishable, whichever amount is the lesser, and such person shall, subject to the provisions of sub-section (8), thereupon not be required to appear in court to answer a charge of having committed the said offence.

(2) Such person may at any time before sentence is passed upon him in terms of sub-section (5) submit to any person in charge of the aforesaid document an affidavit setting forth any facts which he desires to bring to the notice of the court in mitigation of the punishment to be imposed for the said offence, and such affidavit shall be submitted together with the said document to the court which is to pass the sentence.

(3) An officer designated, as aforesaid, if he is not the public prosecutor attached to the court in which the offence in question is triable, shall, as soon as practicable after receiving a document referred to in sub-section (1), transmit it to such public prosecutor.

(4) Whenever such public prosecutor has received any such document he shall transmit it to the clerk of the said court: Provided that before doing so he may report the matter to the attorney-general and ask him for his directions thereon.

(5) After receiving such document the clerk of such court shall enter it in the criminal record book of that court and the person in question shall, subject to the provisions of sub-section (8), thereupon be deemed to have been convicted by such court of the said offence, and such court shall pass sentence upon such person in accordance with law: Provided that such court may decline to pass sentence upon him and may direct that he be

prosecuted in the ordinary course, and in that case, if the said person has been summoned or warned in terms of sub-section (1), he shall be summoned afresh to answer such charge as the public prosecutor may prefer against him.

(6) If the court imposes a fine on such person such fine shall be paid out of any sum deposited in terms of paragraph (*a*) of sub-section (1), or if security has been given in terms of paragraph (*b*) of sub-section (1) and the fine is not paid in accordance with the terms of the security, the latter, if corporeal property, may be sold by public auction and the fine paid out of the proceeds of the sale: Provided that if the whereabouts of such person are known, written notice of the intended sale and of the time and place thereof shall be given to him not less than three days before the sale takes place.

(7) If any balance remains of any such deposit or of the proceeds of any such sale, after payment of such fine, such balance shall be paid over to the person who made such deposit or gave such security, and if such deposit or such security is insufficient to pay the fine imposed, the balance remaining due shall be recovered from the person upon whom the fine was imposed in manner provided in section *three hundred and thirty-seven.*

(8) At any time before sentence has been passed upon the person in question under sub-section (5) the attorney-general may direct that no action be taken in the matter under sub-sections (5), (6) and (7), but that such person be brought to trial in the ordinary manner: Provided that in that case, if such person has been summoned or warned in terms of sub-section (1), he shall be summoned afresh to answer such charge as the attorney-general may direct.

(9) If at the conclusion of the trial referred to in sub-section (8) the person tried is sentenced to pay a fine, the provisions of sub-sections (6) and (7) shall apply.

(10) If at the conclusion of any proceedings against any person under this section, no fine is imposed upon him, the money or security deposited or given by or on behalf of such person shall be returned to the person who made the deposit or gave the security.

Powers of courts to impose suspended sentences or a caution or reprimand.

352. (1) Whenever a person is convicted before any court of any offence other than an offence specified in the Fourth Schedule or an offence in respect of which the imposition of a prescribed punishment on the person convicted thereof is compulsory, it may in its discretion—

(*a*) postpone for a period not exceeding three years the passing of sentence and release the person convicted on one or more conditions (whether as to compensation, the rendering to the person aggrieved of some specific benefit or service in lieu of compensation for damage or pecuniary loss, submission to instruction or treatment, compulsory attendance at some specified centre for a specified purpose, good conduct or otherwise) which the court may order to be inserted in recognizances to appear at the expiration of that period; or

(*b*) pass sentence, but order the operation of the whole or any part of the sentence to be suspended for a period not exceeding three years on such conditions as aforesaid as the court may specify in the order; or

(*c*) impose a fine but suspend the enforcement thereof until the expiration of such period not exceeding three years as the court may fix for payment, in instalments or otherwise of the amount of the fine, the amounts of any instalments and the dates of payment thereof being fixed by order of the court; or

(*d*) discharge the person convicted with a caution or reprimand.

(2) (*a*) Whenever a person is convicted of an offence specified in the Fourth Schedule or an offence in respect of which the imposition of a prescribed punishment on the person convicted thereof is compulsory, the court may in its discretion, subject to the provisions of sub-section (2) of section *three hundred and thirty-five*—

(i) pass sentence, but order the operation of a part of the sentence to be suspended on conditions as provided in paragraph (*b*) of sub-section (1); or

(ii) if the person convicted is sentenced to both whipping and imprisonment, order the whole of either the one or the other such sentence to be suspended as aforesaid.

(*b*) The court shall not suspend any sentence of whipping as provided in paragraph (*a*), except in special circumstances, and shall in the event of such suspension enter on the record its reasons therefor.

(3) (*a*) Any court which has sentenced a convicted person to a term of imprisonment as an alternative to a fine, may where the fine has not been paid, at any stage before the termination of the imprisonment suspend the operation of such sentence and order the release of the person convicted on conditions relating to the payment of the fine or such portion thereof as may still be due in terms of sub-section (5) of section *three hundred and thirty-seven* (whether as to the taking up of a specified employment and payment of the fine in instalments by the accused, or his employer, or otherwise) which may be satisfactory to the court.

(*b*) Any court which has suspended a sentence in terms of paragraph (*a*) may for good cause at any time during the period of suspension cancel the order of suspension and recommit the person convicted to serve the balance of the sentence subject to the provisions of sub-section (5) aforesaid, or further suspend the operation of the sentence on one or more conditions as the court may deem fit.

(4) If at the end of the period for which the passing of sentence has been postponed under paragraph (*a*) of sub-section (1) the court is satisfied that the person convicted has observed all the conditions of the recognizances, the court may discharge him without passing any sentence, and such discharge shall have the effect of an acquittal, except for the purpose of Chapter XVI.

(5) If the operation of a sentence or any portion of a sentence has been suspended in terms of paragraph (*b*) of sub-section (1) or in terms of sub-section (2) and the person convicted has observed all the conditions specified in the order throughout the period of suspension, such sentence or portion thereof shall not be enforced.

(6) (*a*) If the conditions of any order made or recognizance entered into under this section be not fulfilled, the person convicted may, upon the order of a magistrate be arrested without warrant, and such magistrate may then commit the person convicted to undergo the sentence which has been or may then be lawfully imposed, or may, in his discretion, grant the person convicted an extension of time (where this is possible) for the purpose of carrying out such conditions.

(*b*) The court which has suspended the operation of a sentence under paragraph (*b*) or (*c*) of sub-section (1) or under sub-section (2) or (3), may, if satisfied that the person convicted has through circumstances beyond his control been unable to perform any condition of such suspension, or for any other good and sufficient reason, grant an order further suspending the operation of the sentence subject to such conditions as might have been imposed at the time of the passing or suspension of the sentence.

(7) If a convicted person has been discharged with a caution or reprimand under paragraph (*d*) of sub-section (1), the discharge shall have the effect of an acquittal, except for the purpose of Chapter XVI.

Court may order seizure of moneys on person of offender or contribution from wages in payment of fine.

353. Whenever a person is convicted of any offence and is sentenced to pay a fine in respect thereof, with or without an alternative period of imprisonment, the court may (without prejudice to any other powers that it possesses in regard to the payment of fines under this Act) in its discretion order enforcement of the fine, whether in whole or in part, by seizure of moneys upon the person of the person convicted or, with the consent of the person convicted, if any amount is due or to

become due thereafter as wages from the employer of the person convicted, order that employer to deduct a specified amount from the wages so due, or from time to time as they become due, sufficient to pay the amount of the fine in one sum or in instalments.

Hard labour shall be construed as compulsory labour.

354. Any reference in any law to hard labour in relation to imprisonment, shall be construed as a reference to compulsory labour.

Inferior courts cannot impose imprisonment for less than four days.

355. No person shall be sentenced by an inferior court to imprisonment for a period of less than four days, unless the sentence is that the person convicted be detained until the rising of the court.

Regulations.

356. The Minister may make regulations as to—

(*a*) the powers and duties of employers in relation to any order made under section *three hundred and fifty-two* for deduction from the wages of a convicted person;

(*b*) the powers and duties of probation officers appointed under the Children's Act, 1937 (Act No. 31 of 1937), in relation to the care or supervision of persons whose sentences of imprisonment are suspended under this Act, the circumstances under which courts of law may entrust such care or supervision to probation officers, the conditions which shall be observed by such persons while on probation, and the varying of such conditions,

and generally for the better carrying out of the objects and purposes of this Chapter.

CHAPTER XIX.

Costs, Compensation and Restitution.

Court may order accused to pay compensation.

357. (1) When any person is convicted by a superior court, the court of a regional division or an inferior court with jurisdiction in civil cases, of an offence which has caused damage to or loss of property belonging to some other person, the court trying the case may, after recording the conviction and upon the application of the injured party or of the person conducting the prosecution acting on the instructions of such party, forthwith award him compensation for such damage or loss: Provided that—

(*a*) the court of a regional division shall not make any such award unless the compensation claimed does not exceed five hundred pounds;

(*b*) an inferior court with civil jurisdiction shall not make any such award unless the compensation claimed does not exceed two hundred pounds.

(2) For the purposes of determining the amount of compensation or the liability of the accused therefor, the court may refer to the proceedings and evidence at the trial or hear further evidence either upon affidavit or verbally.

(3) The court may order a person convicted upon a private prosecution to pay the costs and expenses of such prosecution, in addition to the sum (if any) awarded under sub-section (1) of this section: Provided that if such private prosecution was instituted after a certificate by the attorney-general that he declined to prosecute, the court may order the costs thereof to be paid by the State.

(4) When a court has convicted a person under sub-section (1) of section *twenty-three* of the Children's Act, 1937 (Act No. 31 of 1937), of having conduced to the commission of an offence mentioned in sub-section (1) of this section, it may order the said person to pay to the party injured by the said offence, the compensation and costs mentioned in the preceding sub-sections of this section even though the said party has not applied therefor.

(5) (*a*) When an inferior court with civil jurisdiction has made any award of compensation, costs or expenses under this section, the award shall have the effect of a civil judgment of that court.

(*b*) When the court of a regional division has made any award of compensation, costs or expenses under this section, the award shall have the same effect as a civil

judgment of the magistrate's court of the district in which the trial took place.

(c) When a superior court has made any award of compensation, costs or expenses under this section, the registrar of the court shall forward a certified copy of the award to the clerk of the magistrate's court of the district wherein the convicted person underwent the preparatory examination held in connection with the offence in question, and thereupon such award shall have the same effect as a civil judgment of that magistrate's court.

(6) Any costs awarded as aforesaid shall be taxed according to the scale, in civil cases, of the court which made the award, or if the award was made by a court of a regional division, according to the scale, in civil cases, of magistrates' courts.

(7) Where any moneys of the accused have been taken from him upon his arrest, the court may order payment in satisfaction or on account of the award, as the case may be, to be made forthwith from those moneys.

(8) No person against whom an award has been made under this section shall be liable at the suit of the person in whose favour the award has been so made to any other civil proceedings in respect of the injury for which compensation has been awarded.

Compensation to innocent purchaser of stolen property.

358. When any person is convicted of theft or of any offence whereby he has unlawfully obtained any property, and it appears to the court on the evidence that he sold such property or part thereof to any person who had no knowledge that it was stolen or unlawfully obtained, and that money has been taken from the convicted person on his arrest, the court may, on the application of such purchaser and on restitution of such property to its owner, order that, out of the money so taken from the convicted person and belonging to him, a sum, not exceeding the amount of the proceeds of the sale, be delivered to such purchaser.

Restitution of stolen property.

359. (1) If any person is convicted of theft or receiving stolen property, knowing it to have been stolen, or otherwise unlawfully obtaining any property, such property may be restored to the owner or his representative on application by him to the court.

(2) The court before which a person is convicted of any such offence may from time to time award writs of restitution in respect of the said property or order the restitution thereof in a summary manner.

(3) If it appears, before any award is made, that any valuable security has been *bona fide* paid or discharged by any person liable for the payment thereof or, being a negotiable instrument, has been *bona fide* taken or received by transfer or delivery by any person for a just and valuable consideration without notice or without any reasonable cause to suspect that it had been stolen or otherwise unlawfully obtained, or if it appears that the property stolen or received as aforesaid or otherwise unlawfully obtained has been transferred to an innocent purchaser for value who has acquired a lawful title thereto, the court shall not award or order the restitution of such security or property.

Return of exhibits, etc.

360. (1) The court may, after the conclusion of any trial and subject to any special provision contained in any law, make a special order as to the return to the person entitled thereto of the property in respect of which the offence was committed or of any property seized or taken under this Act or produced at the trial, and if no such order is made the property shall, on application, be returned to the person from whose possession it was obtained, unless it was proved during the trial that he was not entitled to such property, after payment of the expenses incurred since the conclusion of the trial in connection with the custody of the property; but if within a period of three months after the conclusion of the trial no application is made under this section for the return of the property or if the person applying is not entitled thereto or does not pay the expenses aforesaid, the property shall vest in the State.

(2) The court convicting any person of an offence which was committed by means of any weapon, instrument or other article produced to the court may, if it thinks fit, declare such weapon, instrument or other article to be forfeited to the State.

(3) The court convicting any person of any offence specified in Part I of the Second Schedule, or of theft either at common law or as defined by any statute, or of breaking or entering any premises with intent to commit an offence, either at common law or in contravention of any statute, may, if satisfied that any vehicle or receptacle was used for the purpose of or in connection with the commission of the offence or (when the conviction is in respect of the theft of any goods) for the purpose of conveying or removing any of the stolen goods, declare such vehicle or receptacle, or the convicted person's rights thereto, to be forfeited to the State: Provided that such declaration shall not affect any rights which any person other than the convicted person may have to the vehicle or receptacle in question if it is proved that he did not know that it was being used or would be used for the purpose of or in connection with the commission of such offence or for the purpose of conveying or removing such stolen goods, or that he could not prevent such use.

(4) The court which is holding or which held the trial may at any time after the making of such declaration enquire into and determine any person's rights to the vehicle or receptacle in question; and if such determination is adverse to any person, he may appeal therefrom as if it were a conviction by the court making the determination, and such appeal may be heard either separately or jointly with an appeal against the conviction as a result whereof the forfeiture was declared, or against a sentence imposed as a result of such conviction.

(5) If any such declaration is set aside or varied after the sale, on behalf of the State, of the vehicle or receptacle or rights declared to be forfeited, the person whose rights were upheld by the setting aside or variation of the declaration may, at his option, enforce those rights against any person in possession or custody of the vehicle or receptacle in question, or claim from the State an amount equal to the value of those rights but not exceeding the proceeds of the sale of those rights.

Miscellaneous provisions as to awards or orders under this Chapter.

361. (1) Any award or order of restitution made under this Chapter may be made subject to the applicant giving security *de restituendo* in case the award or order be reversed on appeal or review.

(2) The court may in any case refer a person applying for compensation under this Chapter to his remedy under the civil law.

(3) Where any such award or order is made against two or more persons it shall be joint and several.

CHAPTER XX.

Appeals in Cases of Criminal Proceedings Before Superior Courts.

Court of appeal from superior court judgments.

362. (1) In respect of appeals and questions of law reserved in connection with criminal cases dealt with by a provincial or local division of the Supreme Court, or a special criminal court, the court of appeal shall be the Appellate Division of the Supreme Court.

(2) An appeal shall lie to the court of appeal only as provided in sections *three hundred and sixty-three* to *three hundred and sixty-six* inclusive, and not as of right.

Application for leave to appeal.

363. (1) An accused convicted of any offence before a superior court, whether sitting with or without a jury, may, within a period of fourteen days of the passing of any sentence as a result of such conviction, or within such extended period as may on good cause be allowed, apply—

(*a*) if the conviction was by a special criminal court, to that court, or any judge who was a member of that court, or if no such judge is avialable, to any judge of the provincial or local division within whose jursidiction the special criminal court sat; and

(*b*) if the conviction was by any other court, to the judge who presided at the trial, or if he is not available, or if in the case of a conviction before a circuit court, the said court is not sitting, to any other judge of the provincial or local division of which the aforesaid judge was a member when he so presided,

for leave to appeal to the court of appeal against his conviction or against any sentence or order following thereon, and an accused convicted of any offence before any such court on a plea of guilty, may, within the same period, apply for leave so to appeal against any sentence or any order following thereon.

(2) Every application for leave to appeal shall set forth clearly and specifically the grounds upon which the accused desires to appeal: Provided that if the accused applies verbally for such leave immediately after the passing of the sentence, he shall state such grounds and they shall be taken down in writing and form part of the record.

(3) If an application under sub-section (1) for leave to appeal is granted, the registrar of the court granting such application shall cause notice to be given accordingly to the registrar of the court of appeal without delay, and shall cause to be transmitted to the said registrar a certified copy of the record including copies of the evidence, whether oral or documentary, taken or admitted at the trial, and a statement of the grounds of appeal: Provided that, instead of the whole record, with the consent of the accused and the attorney-general, copies (one of which shall be certified) may be transmitted of such parts of the record as may be agreed upon by the attorney-general and the accused to be sufficient, in which event the court of appeal may nevertheless call for the production of the whole record.

(4) If an application under sub-section (1) for leave to appeal is refused, the accused may, within a period of twenty-one days of such refusal, or within such extended period as may on good cause be allowed, by petition addressed to the Chief Justice submit his application to the court of appeal, at the same time giving written notice that this has been done to the registrar of the provincial or local division (other than a circuit court) within whose jurisdiction the trial has taken place, and of which the judge who presided at the trial was a member when he so presided. Such registrar shall forward to the court of appeal a copy of the application for leave to appeal and of the reasons for refusing such application.

(5) The petition may be considered in Chambers by the Chief Justice or by any other judge of the court of appeal to whom it may be referred by the Chief Justice.

(6) The judge considering the petition may—

(i) call for any further information from the judge who presided at the trial; or

(ii) order that the application be argued before him at a time and place appointed; or

(iii) whether he has acted under paragraph (i) or (ii) or not, grant or refuse the application; or

(iv) refer the matter to the court of appeal for consideration, whether upon argument or otherwise, and the court of appeal may then grant or refuse the application.

(7) The decision of a judge of the court of appeal, or of the court of appeal, as the case may be, to grant or refuse the application, shall be final.

(8) Notice shall be given to the attorney-general concerned and the accused of the date fixed for the hearing of any application under this section, and of any place appointed under sub-section (6) for any hearing.

Special entry of irregularity or illegality.

364. (1) If an accused thinks that any of the proceedings in connection with or during his trial, whether by jury or not before a superior court are irregular or not according to law, he may, either during his trial or within a period of fourteen days after his conviction, or within such extended period as may on good cause be allowed, apply for a special entry to be made on the record stating in what respect the proceedings are alleged to be irregular or not according to law and such a special entry shall, upon such application, be made unless the court to which or the judge to whom application is made is of opinion that the application is not made *bona fide*, or that it is frivolous or absurd, or that the granting of the application would be an abuse of the process of the Court.

(2) Save as hereinafter provided the application shall be made to the judge who presided at the trial, or if he is not available, or if in the case of a conviction before a circuit court, the said court is not sitting, to any other judge of the provincial or local division of which that judge was a member when he so presided.

(3) If the accused was convicted by a special criminal court, the application shall be made to that court, or if that court is not sitting, to any judge who was a member of that court, or if no such judge is available, to any judge of the provincial or local division within whose area of jurisdiction the special criminal court sat.

(4) The terms of a special entry shall be settled by the court which or the judge who grants the application.

(5) If an application under sub-section (1) is refused, the accused may, within a period of twenty-one days of such refusal, or within such extended period as may on good cause be allowed, by petition addressed to the Chief Justice, apply to the court of appeal for a special entry to be made on the record stating in what respect the proceedings are alleged to be irregular or not according to law and thereupon the provisions of sub-sections (5), (6), (7) and (8) of section *three hundred and sixty-three* shall, *mutatis mutandis*, apply.

Appeal on special entry under section 364.

365. (1) If a special entry is made on the record, the person convicted may appeal to the court of appeal against his conviction on the ground of the irregularity or illegality stated in the special entry if, within a period of twenty-one days after entry is so made, or within such extended period as may on good cause be allowed, notice of appeal has been given to the registrar of the court of appeal and to the registrar of the provincial or local division, other than a circuit court, within whose area of jurisdiction the trial took place, and of which the judge who presided at the trial was a member when he so presided.

(2) The registrar of such provincial or local division shall forthwith after receiving such notice, give notice thereof to the attorney-general, and shall transmit to the registrar of the court of appeal a certified copy of the record including copies of the evidence, whether oral or documentary, taken or admitted at the trial and of the special entry made in manner aforesaid: Provided that, with the consent of the accused and the attorney-general, the registrar concerned may, instead of transmitting the whole record, transmit copies, one of which shall be certified, of such parts of the record as may be agreed upon by the attorney-general and the accused to be sufficient, in which event the court of appeal may nevertheless call for the production of the whole record.

Reservation of question of law.

366. (1) If any question of law arises on the trial in a superior court of any person for any offence, that court may, of its own motion or at the request either of the prosecutor or the accused, reserve that question for the consideration of the court of appeal, and thereupon the firstmentioned court shall state the question reserved, and shall direct that it be specially entered in the record and that a copy thereof be transmitted to the registrar of the court of appeal.

(2) The grounds upon which any exception or objection to an indictment is taken shall, for the purposes of this section, be deemed to be questions of law.

(3) The provisions of sub-sections (2), (3) (4) and (5) of section *three hundred and sixty-four* and of sub-section (2) of section *three hundred and sixty-five* shall apply *mutatis mutandis* to all proceedings under this section.

Trial judge's report to be furnished on appeal.

367. The judge or judges (as the case may be) of any court before whom a person is convicted shall, in the case of an appeal under section *three hundred and sixty-three*, or of an application for a special entry under section *three hundred and sixty-four*, or for the reservation of a question of law under section *three hundred and sixty-six*, or, in the case of an application made to the court of appeal for leave to appeal or for a special entry under this Act, furnish to the registrar a report giving his (or their) opinion upon the case or upon any point arising in the case, and such report, which shall form part of the record, shall, without delay, be forwarded by the registrar to the registrar of the court of appeal.

When execution of sentence may be suspended.

368. The execution of the sentence of a superior court shall not be suspended by reason of any appeal against a conviction or by reason of a question having been reserved for consideration of the court of appeal, unless—

(*a*) the sentence is that the accused suffer death or be whipped, in either of which cases the sentence shall not be executed until the appeal or question reserved has been heard and decided; or

(*b*) the superior court from which the appeal is made or by which the question is reserved thinks fit to order that the accused be released on bail or, if he is sentenced to any punishment other than simple imprisonment, that he be treated as an unconvicted prisoner until the appeal or the question reserved has been heard and decided:

Provided that, when the accused is ultimately sentenced to imprisonment, the time during which he was so released on bail shall be excluded in computing the term for which he is so sentenced: Provided further that when the accused has been detained as an unconvicted prisoner as hereinbefore provided, the time during which he has been so detained shall be included or excluded in computing the terms for which he is ultimately sentenced, as the court of appeal may determine.

Powers of court of appeal.

369. (1) In case of any appeal against a conviction or any question being reserved as aforesaid, the court of appeal may—

(*a*) allow the appeal if it thinks that the judgment of the trial court should be set aside on the ground of a wrong decision of any question of law or that on any ground there was a failure of justice; or

(*b*) give such judgment as ought to have been given at the trial, or impose such punishment as ought to have been imposed at the trial; or

(*c*) make such other order as justice may require:

Provided that, notwithstanding that the court of appeal is of opinion that any point raised might be decided in favour of the accused, no conviction or sentence shall be set aside 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 from such irregularity or defect.

(2) Upon an appeal under section *three hundred and sixty-three* against any sentence, the court of appeal may confirm the sentence, or may delete or amend the sentence and impose such punishment as ought to have been imposed at the trial.

(3) Where a question of law has been reserved on the application of a prosecutor in the case of an acquittal, and the court of appeal has given a decision in favour of the prosecutor, the court of appeal may order that such of the steps referred to in section *three hundred and seventy* be taken as the court may direct.

(4) The order or direction of the court of appeal shall be transmitted by the registrar of the court of appeal to the registrar of the court before which the case was tried, and such order or direction shall be carried into effect and shall authorize every person affected by it to do whatever is necessary to carry it into effect.

(5) In exercising its powers under any of the preceding subsections the court of appeal shall not impose any punishmen more severe than the sentence imposed by the court below.

Institution of proceedings *de novo* when conviction set aside on appeal.

370. Whenever a conviction and sentence are set aside by the court of appeal on the ground that—

(*a*) the court which convicted the accused was not competent to do so; or

(*b*) the indictment on which the accused was convicted was invalid or defective in any respect; or

(*c*) there has been any other technical 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 charge, suitably amended where necessary, or upon any other charge as if the accused had not previously been arraigned, tried and convicted: Provided that—

(*a*) no judge or judicial officer before whom the original trial took place shall take part in such proceedings;

(*b*) where the original trial was by jury, no juror who served on such jury shall be qualified to serve on the jury that has been or may be empanelled in such proceedings.

CHAPTER XXI.

PARDON AND COMMUTATION.

Saving of royal prerogative of mercy.

371. Nothing in this Act shall affect Her Majesty's Royal prerogative of mercy.

Governor-General may commute sentence.

372. (1) In any case in which the Governor-General is authorized to extend the Royal mercy conditionally to a person under sentence of death, he may, without the consent of that person, commute the punishment to any other punishment provided by law.

(2) Any such commutation is to be signified in writing to the Minister who is required thereupon to allow the said person the benefit of the conditional pardon and to make an order that he be punished in the manner directed by the Governor-General and such allowance and order shall have the effect of a valid sentence passed by the court before which the said person was convicted.

Effect of free pardon.

373. A free or unconditional pardon by the Governor-General on behalf of Her Majesty shall have the effect of discharging the convicted person from the consequences of the conviction.

Conditional remission of sentence by Governor-General.

374. In any case in which the Governor-General is authorized, on behalf of Her Majesty, to extend the Royal mercy to a person under sentence of imprisonment with or without compulsory labour, he may extend mercy upon condition of the said person entering into a recognizance on conditions as in the case of persons discharged by the court upon suspension of the execution of a sentence and thereupon the said person shall be liable to the same obligations and shall be dealt with in all respects in the same manner as a person discharged by the court on recognizance upon such suspension.

Release on probation and breach of fulfilment of conditions of release.

375. (1) Any person declared an habitual criminal or under sentence of imprisonment and released upon probation may be ordered as a condition of his release to reside and labour during the whole or any part of such period of probation at any farm colony, work colony, refuge or rescue home established or approved by the Governor-General.

(2) If any such person fail to observe any condition of such release on probation, he may be arrested and recommitted to any prison or gaol by warrant under the hand of the Minister and shall be detained in a prison or gaol as if he had not been so released, and the period of detention shall in such event, unless the Governor-General specially determine otherwise, be equal to the portion of the sentence which was unexpired at the date of the release on probation.

(3) If any person so released on probation complete the period thereof without breaking any condition of the release, he shall no longer be deemed to be an habitual criminal or, as the case may be, liable to any punishment in respect of the conviction upon which he was sentenced.

(4) In the case of any such release on probation there may be included a condition that the person released shall not reside in or visit the Union or any defined portion thereof for a specified time: Provided that, if the person released is a South African citizen or a citizen of a Commonwealth Country or of the Republic of Ireland, there shall not be included a condition that he be banished or absent himself from the Union.

CHAPTER XXII.

GENERAL AND SUPPLEMENTARY.

Force of process.

376. Every warrant or summons or other process relating to any criminal matter shall be of force throughout and may be executed anywhere within the Union.

How documents are to be served.

377. (1) Unless some other period is expressly provided, any notice or document required to be served upon an accused shall be served by delivering it to the accused ten days at least before the day specified therein for his trial, if his trial is to be before a superior court or two days at least (Sundays and public holidays excluded) before that day if his trial is to be before an inferior court, or, where the accused cannot be found, by leaving a copy of the notice or document with a member of his household at his dwelling or, if no person belonging to his household can be found, then by affixing such copy to the principal outer door of the said dwelling or of any place where he actually resides or was last known to reside.

(2) Where the accused has been released on bail, any such notice or document may either be served upon him personally or left at the place specified in the recognizance as that at which any notice of trial and service of the indictment or summons may be made.

(3) The officer serving any such notice or document as aforesaid shall forthwith deliver or transmit to the official from whom he has received the notice or document for service a return of the mode in which service was made and such return shall be *prima facie* evidence that the service of the notice or document was made in manner and form as in the return stated.

(4) Members of any police force shall, subject to the rules of court, be as qualified to serve any notice or document under this Act as if they had been appointed deputy-sheriffs or deputy-messengers or other like officers of the court.

Mode of proving service of process.

378. Whenever it is necessary to prove service of any summons, subpoena, notice, or other process or the execution of any judgment or warrant under this Act, the service or execution may be proved by affidavit made before a justice or commissioner for oaths having jurisdiction to take affidavits in the district wherein the affidavit is made, or in any other manner in which the service or execution might have been proved if it had been effected in the Province, district or other area from which the summons, subpoena, notice, or other process or judgment or warrant emanated.

Transmission of summonses, writs, etc., by telegraph.

379. Any summons, writ, warrant, rule, order, notice or other process, document, or communication which by any law, rule of court, or agreement of parties is required or directed to be served or executed upon any person, or left at the house or place of abode or business of any person, in order that such person may be affected thereby, may be transmitted by telegraph, and a telegraphic copy served or executed upon such person, or left at his house or place of abode or business, shall be of the same force and effect as if the original had been shown to, or a copy thereof served or executed upon such person, or left as aforesaid, as the case may be.

Person who made statement in a criminal case entitled to copy thereof.

380. Whenever a person has made to a peace officer a statement in writing or a statement which was reduced to writing, relating to any transaction, and criminal proceedings are thereafter instituted in connection with that transaction, any person in possession of such statement shall furnish the person who made the statement, at his request, with a copy of such statement.

Prosecution of corporations and members of associations.

381. (1) For the purpose of imposing upon a corporate body criminal liability for any offence, whether under any law or at common law—

(*a*) any act performed, with or without a particular intent, by or on instructions or with permission, express or implied, given by a director or servant of that corporate body; and

(*b*) the omission, with or without a particular intent, of any act which ought to have been but was not performed by or on instructions given by a director or servant of that corporate body,

in the exercise of his powers or in the performance of his duties as such director or servant, or in furthering or endeavouring to further the interests of that corporate body, shall be deemed to have been performed (and with the same intent, if any) by that corporate body or, as the case may be, to have

been an omission (and with the same intent, if any) on the part of that corporate body.

(2) In any prosecution against a corporate body, a director or servant of that corporate body shall be cited, as representative of that corporate body, as the offender, and thereupon the person so cited may, as such representative, be dealt with as if he were the person accused of having committed the offence in question: Provided that—

(*a*) if the said person pleads guilty, the plea shall not be valid unless the corporate body authorized him to plead guilty;

(*b*) if at any stage of the proceedings the said person ceases to be a director or servant of that corporate body or absconds or is unable to attend, the court or magistrate concerned may, at the request of the prosecutor, from time to time substitute for the said person, any other person who is a director or servant of the said corporate body at the time of the said substitution, and thereupon the proceedings shall continue as if no substitution had taken place;

(*c*) if the said person, as representing the corporate body, is committed for trial, he shall not be committed to prison but shall be released on his own recognizance to stand his trial;

(*d*) if the said person, as representing the corporate body, is convicted, the court convicting him shall not impose upon him in his representative capacity any punishment, whether direct or as an alternative, other than a fine, even if the relevant law makes no provision for the imposition of a fine in respect of the offence in question, and such fine shall be payable by the corporate body and may be recovered by attachment and sale of any property of the corporate body in terms of section *three hundred and thirty-seven*;

(*e*) the citation of a director or servant of a corporate body as aforesaid, to represent that corporate body in any prosecution instituted against it, shall not exempt that director or servant from prosecution for that offence in terms of sub-section (5).

(3) In any criminal proceedings against a corporate body, any record which was made or kept by a director, servant or agent of the corporate body within the scope of his activities as such director, servant or agent, or any document which was at any time in the custody or under the control of any such director, servant or agent within the scope of his activities as such director, servant or agent, shall be admissible in evidence against the accused.

(4) For the purposes of sub-section (3) any record made or kept by a director, servant or agent of a corporate body or any document which was at any time in his custody or control shall be presumed to have been made or kept by him or to have been in his custody or control within the scope of his activities as such director, servant or agent, unless the contrary is proved.

(5) When an offence has been committed, whether by the performance of any act or by the failure to perform any act, for which any corporate body is or was liable to prosecution, any person who was, at the time of the commission of the offence, a director or servant of the corporate body, shall be deemed to be guilty of the said offence, unless it is proved that he did not take part in the commission of the offence, and that he could not have prevented it, and shall be liable to prosecution therefor, either jointly with the corporate body or apart therefrom, and shall on conviction be personally liable to punishment therefor.

(6) In any proceedings against a director or servant of a corporate body, in respect of an offence—

(*a*) any evidence which would be or was admissible against that corporate body in a prosecution for that offence, shall be admissible against the accused;

(*b*) whether or not such corporate body is or was liable to prosecution for the said offence, any document, memorandum, book or record which was drawn up, entered up or kept in the ordinary course of that corporate body's business, or which was at any time in the custody or under the control of any director, servant, or agent of such corporate body, in his capacity as director, servant or agent, shall be *prima facie* evidence of its contents and admissible in

evidence against the accused, unless and until he is able to prove that at all material times he had no knowledge of the said document, memorandum, book or record, in so far as its contents are relevant to the offence charged, and was in no way party to the drawing up of such document or memorandum or making of any relevant entries in such book or record.

(7) When a member of an association of persons, other than a corporate body, has, in carrying on the business or affairs of that association or in furthering or in endeavouring to further its interests, committed an offence, whether by the performance of any act or by the failure to perform any act, any person who was, at the time of the commission of the offence, a member of that association, shall be deemed to be guilty of the said offence, unless it is proved that he did not take part in the commission of the offence, and that he could not have prevented it: Provided that if the business or affairs of the association are governed or controlled by a committee or other similar governing body, the provisions of this sub-section shall not apply to any person who was not at the time of the commission of the offence a member of that committee or other body.

(8) In any proceedings against a member of an association of persons in respect of an offence mentioned in sub-section (7) any record which was made or kept by any member or servant or agent of the association within the scope of his activities as such member, servant or agent or any document which was at any time in the custody or under the control of any such member, servant or agent within the scope of his activities as such member, servant or agent, shall be admissible in evidence against the accused.

(9) For the purposes of sub-section (8) any record made or kept by a member or servant or agent of an association or any document which was at any time in his custody or control shall be presumed to have been made or kept by him or to have been in his custody or control within the scope of his activities as such member or servant or agent, unless the contrary is proved.

(10) In this section the word "director" in relation to a corporate body means any person who controls or governs that corporate body or who is a member of a body or group of persons which controls or governs that corporate body or where there is no such body or group, who is a member of that corporate body.

(11) The provisions of this section shall be additional to and not in substitution for any other law which provides for a prosecution against corporate bodies or their directors or servants or against associations of persons or their members.

Provisions as to offences under two or more laws.

382. Where an act or omission constitutes an offence under two or more statutory provisions or is an offence against a statutory provision and the common law, a person guilty of such act or omission shall, unless the contrary intention appears, be liable to be prosecuted and punished under either statutory provision, or, as the case may be, under the statutory provision or the common law, but shall not be liable to more than one punishment for the act or omission constituting the offence.

Estimating age of person.

383. If in any criminal proceedings the age of any person is a relevant fact of which no or insufficient evidence is available in those proceedings, the judge or officer presiding at those proceedings may estimate the age of such person by his appearance or from any information which may be available and the age so estimated shall be deemed to be such person's correct age, unless—

(*a*) it is subsequently proved that the said estimate was incorrect; and

(*b*) the person accused in those proceedings could not have been lawfully convicted of the offence with which he was charged if the said person's correct age had been proved.

Binding over of persons to keep the peace.

384. (1) Whenever a complaint on oath is made to a magistrate that any person is conducting himself violently towards, or is threatening injury to the person or property of another or that he has used language or behaved in a manner towards another likely to provoke a breach of the peace or assault, then, whether such conduct occurred or such language was used or such threat was made in a public or private place, the magistrate

may order such person to appear before him and if necessary may cause him to be arrested and brought before him, and thereupon the magistrate shall enquire into and determine upon such complaint and may place the parties or any witnesses thereat on oath and in his discretion may order the person against whom the complaint is made to give recognizances with or without sureties in an amount not exceeding twenty-five pounds for a period not exceeding six months to keep the peace towards the complainant and refrain from doing or threatening injury to his person or property.

(2) The magistrate may, upon any such enquiry, order the person against whom the complaint is made or the complainant to pay the costs of and incidental to the enquiry.

(3) If any person after having been ordered to give recognizances under this section refuses or fails to do so the magistrate may order him to be committed to gaol for a period not exceeding one month unless such security is sooner found.

(4) If the conditions upon which the recognizances were given are not observed by the person who gave the same, the magistrate may declare the recognizances to be forfeited and any such declaration of forfeiture shall have the effect of a judgment in a civil action in the magistrate's court of the district.

Minister may invoke Appellate Division's decision on point of law.

385. Whenever the Minister has any doubt as to the correctness of any decision given by any superior court in any criminal case on a question of law, he may submit that decision to the Appellate Division of the Supreme Court and cause the matter to be argued before it, in order that it may determine the said question for the future guidance of all courts.

No information of trial of certain offences to be published.

386. (1) If an accused is tried upon a charge referred to in sub-section (5) of section *sixty-four* no person shall at any time (subject to the provisions of sub-section (4)) publish by radio or in any document any information relating to the said trial or any information disclosed thereat, unless the judge or officer presiding at such trial has, after having consulted the person against or in connection with whom the offence charged is alleged to have been committed (or if he is a minor, his guardian) given his consent, conveyed in a document signed by himself or by the registrar or clerk of the court, to such publication.

(2) No person shall at any time publish in any manner described in sub-section (1) the name, address, school, place of occupation or any other information likely to reveal the identity of any person under the age of nineteen years who is being or has been tried in any court on a charge of having committed any offence: Provided that, subject to the provisions of sub-section (1), if the Minister or if the judge or judicial officer who presides or presided at the trial is of the opinion that such publication would be just and equitable and in the interest of any particular person, he may by order dispense with the prohibition contained in this sub-section to such an extent as may be specified in the order.

(3) Any person who contravenes sub-section (1) or (2) shall be guilty of an offence and liable on conviction to a fine not exceeding fifty pounds or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

(4) The prohibition contained in sub-section (1) shall not apply to the publication in the form of a *bona fide* law report of any information relating to or disclosed at any trial as aforesaid, which is necessary to report any question of law which was raised during such trial or during any proceedings resulting therefrom, and any decision or ruling given by any court on such question, if such report does not mention the name of the person tried or of the person against or in connection with whom or the place where the offence in question was alleged to have been committed or any witness at the trial.

Compounding of certain minor offences.

387. (1) If a person has received from a policeman or any other officer in the service of the State who has been authorized by the Minister either generally by notice in the *Gazette* or specially, to issue a notification under this section, or from an officer in the employ of any council, board or committee estab-

lished in terms of any law for the management of the affairs of any division, city, town, borough, village or other similar community, a notification in writing, alleging that the said person has committed, at a place and upon a date and at a time or during a period specified in the said notification, any offence likewise therein specified, of any class mentioned in Part III of the Second Schedule, and setting forth the amount of the fine which a court trying such person for such offence would probably impose upon him, the said person may within seventy-two hours after the receipt of the said notification deliver or transmit the said notification, together with a sum of money equal to the said amount, to the magistrate of the district wherein the offence is alleged to have been committed, and thereupon the said person shall not be prosecuted for having committed such offence: Provided that an officer in the employ of a council, board or committee shall not issue any such notification in respect of an offence committed outside the area of jurisdiction of his employer.

(2) (*a*) In the case of an offence, other than an offence under the common law or under the Motor Carrier Transportation Act, 1930 (Act No. 39 of 1930), relating to any vehicle whatsoever or to traffic of whatsoever nature, (other than aerial or waterborne traffic), committed within the area of jurisdiction of a local authority, any person receiving a notification in terms of sub-section (1) from an officer in the employ of such local authority may deliver or transmit the said notification, together with a sum of money equal to the amount specified in such notification to such local authority.

(*b*) Any sum of money paid to a local authority as provided in paragraph (*a*) shall for the purposes of section *twenty-two* of the Financial Adjustments Act, 1932 (Act No. 25 of 1932), be deemed to be a fine imposed as a traffic fine.

(*c*) Not later than seven days after receipt of any sum of money as provided in paragraph (*a*), the local authority concerned shall forward an amount equal to such sum of money to the magistrate of the district wherein the offence is alleged to have been committed, together with a copy of the notification relating to the payment concerned.

(*d*) If the amount notified and paid as aforesaid is found by the magistrate not to exceed the relative determination made in terms of sub-section (5), the said amount shall be refunded to the local authority concerned.

(*e*) If the said amount is found to exceed the said determination, the excess shall be repaid by the magistrate to the person concerned, and only the amount that should properly have been paid shall be refunded to the said local authority.

(*f*) For the purposes of this sub-section "local authority" means a city council, a town council, a village council, a village management board or a local board.

(3) Any money paid to a magistrate in terms of sub-section (1) shall be dealt with as if it had been paid as a fine for the offence in question.

(4) The Minister may from time to time by notice in the *Gazette* add any offence to the offences mentioned in Part III of the Second Schedule, or remove therefrom any offence mentioned therein.

(5) The amount to be specified in any notification issued under this section as the amount of the fine which a court would probably impose in respect of any offence, shall be determined from time to time for any particular area, by the magistrate of the district in which such area is situate.

(6) The Minister may by regulation declare that any officer mentioned in sub-section (1), of a class defined in such regulation, shall, in any area likewise defined, be deemed to be a peace officer in relation to any offence specified in such regulation or in connection with any duty of such officer likewise specified.

Prosecution for offences other than murder barred by lapse of time.

388. The right of prosecution for murder shall not be barred by lapse of time; but the right of prosecution for any other offence, whether at the public instance or at the instance of a private prosecutor, shall, unless some other period is expressly

provided by law, be barred by the lapse of twenty years from the time when the offence was committed.

Neither conviction nor acquittal a bar to civil action for damages.

389. Neither a conviction nor an acquittal following on any prosecution for any offence shall be a bar to a civil action for damages at the instance of any person who has suffered any injury in consequence of the commission of that offence.

Power to make rules.

390. (1) The Minister may make rules prescribing forms of complaint, summons, charges, depositions, indictments, judgments, records, convictions, warrants and recognizances and other forms to be used in any court.

(2) Rules, not inconsistent with this Act, regulating—

(*a*) the sittings of any superior court for criminal purposes;
(*b*) the proceedings upon the trial of persons charged with offences;
(*c*) bail and costs;
(*d*) the duties of the officers of any superior court; and
(*e*) generally any other matter which it is deemed expedient to regulate for carrying this Act into effect,

may be made in terms of section *one hundred and eight* of the South Africa Act, 1909.

Repeal of laws.

391. (1) Subject to the provisions of sub-section (2), the laws specified in the Fifth Schedule are hereby repealed to the extent set out in the fourth column of that Schedule.

(2) Any proclamation, regulation, notice, approval, authority, return, certificate or document issued, made, promulgated, given or granted and any other action taken under any provision of a law repealed by sub-section (1), shall be deemed to have been issued, made, promulgated, given, granted or taken under the corresponding provision of this Act.

Short title.

392. This Act shall be called the Criminal Procedure Act, 1955.

First Schedule.

OFFENCES IN RESPECT OF WHICH ARRESTS MAY UNDER CHAPTER IV BE MADE WITHOUT WARRANT.

Treason.
Sedition.
Murder.
Culpable Homicide.
Rape, or any statutory offence of a sexual nature against a girl of or under a prescribed age.
Sodomy and Bestiality.
Indecent Assault.
Robbery.
Assault in which a dangerous wound is inflicted.
Arson.
Breaking or entering any premises with intent to commit an offence, either under the common law or under any statutory provision.
Theft, either under the common law or under any statutory provision.
Receiving stolen goods knowing the same to have been stolen.
Fraud.
Forgery or uttering a forged document knowing it to be forged.
Offences against the laws for the prevention of illicit dealing in or possession of precious metals or precious stones or of the supply of intoxicating liquor to natives or coloured persons.
Offences relating to the coinage.
Offences the punishment whereof may be a period of imprisonment exceeding six months, without the option of a fine.
Any conspiracy, incitement or attempt to commit any of the abovementioned offences.

Second Schedule.

PART I.

OFFENCES IN CONNECTION WHEREWITH VEHICLES AND RECEPTACLES MAY BE SEIZED AND CONFISCATED UNDER SECTIONS *FORTY-NINE* AND *THREE HUNDRED AND SIXTY.*

Any offence under any law relating to the illicit possession, conveyance or supply of habit forming drugs or intoxicating liquor.

Any offence under any law relating to the illicit possession of, or dealing in precious metals or precious stones.

PART II.

Offences in Connection Wherewith Bail may not be Granted under Sub-section (2) of Section *ONE HUNDRED AND FIVE.*

Treason.
Sedition.
Murder.
Rape.
Robbery.
Assault in which a dangerous injury is inflicted.
Arson.
Breaking or entering any premises with intent to commit an offence, either under the common law or under any statutory provision.
Theft, either under the common law or under any statutory provision, receiving stolen goods knowing the same to have been stolen, fraud, forgery or uttering a forged document knowing it to be forged, if the amount or value involved in the offence exceeds one hundred pounds.
Any offence under any law relating to illicit possession of or dealing in precious metals or precious stones.
Any offence relating to the coinage.
Any conspiracy, incitement or attempt to commit any of the above-mentioned offences.

PART III.

Offences which may be Compounded under Section *THREE HUNDRED AND EIGHTY-SEVEN.*

Any contravention of a bye-law or regulation made by or for a council, board or committee referred to in section *three hundred and eighty-seven;*

Any offence committed by—

(*a*) driving a vehicle at a speed exceeding a prescribed limit;
(*b*) driving a vehicle which does not bear prescribed lights, or any prescribed means of identification;
(*c*) leaving or stopping a vehicle at a place where it may not be left or stopped, or leaving a vehicle in a condition in which it may not be left;
(*d*) driving a vehicle at a place where and at a time when it may not be driven;
(*e*) driving a vehicle which is defective or any part whereof is not properly adjusted, or causing any undue noise by means of a motor vehicle;
(*f*) owning or driving a vehicle for which no valid licence is held;
(*g*) driving a motor vehicle without holding a licence to drive it.

Third Schedule.

PART I.

Offences, a Third or Subsequent Conviction Whereof Renders the Offender Liable to be Declared an Habitual Criminal under Chapter XVIII.

Rape or any statutory offence of a sexual nature against a girl of or under a prescribed age.
Robbery.
Culpable homicide (where an assault with intent to commit rape or robbery or to do grievous bodily harm is involved).
Assault with intent to commit murder, rape or robbery or to do grievous bodily harm, or indecent assault.
Arson.
Fraud.
Forgery or uttering a forged document knowing it to be forged.
Offences relating to the coinage.
Breaking or entering any premises with intent to commit an offence, either under the common law or under any statutory provision.
Theft, either under the common law or under any statutory provision.
Receiving stolen goods knowing the same to have been stolen.
Extortion or threats by letter or otherwise with intent to extort.
Offences described in any law for the suppression of brothels and the punishment of immorality.
Offences against the laws for the prevention of illicit dealing in or possession of precious metals or precious stones or of the supply of intoxicating liquor to natives or coloured persons.
Any conspiracy, incitement or attempt to commit any of the above-mentioned offences.

PART II.

Offences, on Conviction Whereof the Offender shall be Sentenced to Whipping with or without Imprisonment with Compulsory Labour, and on Conviction Whereof for a Third Time or Subsequently the Offender shall be Declared an Habitual Criminal under Chapter XVIII.

Rape, where the death sentence is not imposed.
Robbery.
Culpable homicide, where assault with intent to commit rape or robbery is involved.
Assault with intent to commit rape or robbery.
Breaking or entering any premises with intent to commit an offence, either under the common law or under any statutory provision.

Theft of a motor vehicle (except where the accused obtained possession of the motor vehicle with the consent of the owner thereof.)

Theft or an attempted theft of goods from a motor vehicle or part thereof where the said motor vehicle or the said part thereof was properly locked.

Receiving stolen property well knowing the same to have been stolen (except in the case of a conviction in terms of section *two hundred and five* on evidence establishing that the accused is in fact guilty of the theft of property not being a motor vehicle or property stolen from a motor vehicle or part thereof which was properly locked).

Fourth Schedule.

OFFENCES ON CONVICTION WHEREOF THE OFFENDER CANNOT BE DEALT WITH UNDER SECTION *THREE HUNDRED AND FIFTY-TWO*.

Murder.

Rape.

Robbery.

Any offence in respect of which any law imposes a minimum punishment.

Any conspiracy, incitement or attempt to commit any of the above-mentioned offences.

Fifth Schedule.

LAWS REPEALED.

No. and year of Law.	Title.	Extent of repeal.
Act No. 31 of 1917.	Criminal Procedure and Evidence Act, 1917.	The whole.
Act No. 39 of 1926.	Criminal and Magistrates' Courts Procedure (Amendment) Act, 1926.	So much as is unrepealed.
Act No. 7 of 1927.	Criminal Procedure and Evidence Act, 1917, Amendment Act, 1927.	The whole.
Act No. 46 of 1935.	General Law Amendment Act, 1935.	Sections *one* to *seventy-six*, inclusive.
Act No. 31 of 1937.	Children's Act, 1937	Sections *ninety* to *one hundred and six*, inclusive.
Act No. 23 of 1939.	Companies Amendment Act, 1939.	Section *one hundred and seventeen.*
Act No. 12 of 1947.	Jury Lists Amendment Act, 1947	The whole.
Act No. 37 of 1948.	Criminal Procedure Amendment Act, 1948.	Sections *four* to *thirteen* inclusive.
Act No. 8 of 1951.	Jury Lists Amendment Act, 1951	The whole.
Act No. 13 of 1951.	Children's (Amendment) Act, 1951.	Section *seven.*
Act No. 19 of 1951.	Jury Trials Amendment Act, 1951	The whole.
Act No. 32 of 1952.	General Law Amendment Act, 1952.	Section *eight.*
Act No. 33 of 1952.	Criminal Sentences Amendment Act, 1952.	The whole.
Act No. 40 of 1952.	Magistrates' Courts Amendment Act, 1952.	Sections *twenty-nine* to *thirty-two* inclusive.
Act No. 20 of 1953.	Criminal Sentences Amendment Act, 1953.	The whole.
Act No. 13 of 1954.	Native High Court Abolition Act, 1954.	Sections *eleven* to *sixteen* inclusive.
Act No. 21 of 1954.	Criminal Procedure and Jurors Amendment Act, 1954.	Sections *one* to *sixteen* inclusive.
Act No. 29 of 1955.	Criminal Procedure and Evidence Amendment Act, 1955.	The whole.

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