

No. 46, 1935.]

ACT

To amend the laws relating to criminal and civil procedure and evidence, to magistrates' courts, to the police and to certain offences.

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

Substitution of section 7 of Act 31 of 1917

1. The unrepealed provisions of section *seven* of the Criminal Procedure and Evidence Act, 1917 (hereinafter referred to as the principal Act) are hereby repealed and the following section substituted for the said section *seven* :

“Prosecution of offenders by Attorneys-General under control of Minister.

7. (1) The Governor-General shall, subject to the provisions of the law relating to the public service, appoint, for each Province of the Union, an officer to be styled an Attorney-General, who shall have authority to prosecute in the name of His Majesty the King, in any court in his province, any person charged with having committed an 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 of the Cape of Good Hope Local Division of the Supreme Court.

(2) The Governor-General shall, for the area of jurisdiction of the said division, appoint, subject to the provisions of the law relating to the public service, an officer, to be styled the Solicitor-General, who shall have authority to prosecute in the name of His Majesty the King in any court in the said area, any person charged with having committed an 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 and 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 and 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 and 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 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.

(6) 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."

Amendment of section 26 of Act 31 of 1917. 2. Section *twenty-six* of the principal Act is hereby amended by the deletion of the words "and required".

Amendment of section 27 of Act 31 of 1917. 3. Sub-section (1) of section *twenty-seven* of the principal Act is hereby amended by the deletion of paragraph (g) and the substitution of the following paragraph:

"(g) 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 habit-forming drugs or the possession or disposal of arms or ammunition;"

Insertion of new section 32*bis* in Act 31 of 1917. 4. The following new section is hereby inserted in the principal Act after section *thirty-two*:

"Arresting person to state cause of arrest. 32*bis*. Whenever a person effects an arrest without warrant, he shall forthwith inform the arrested person of the cause of the arrest."

Amendment of section 33 of Act 31 of 1917. 5. Section *thirty-three* of the principal Act is hereby amended—

(a) by the insertion after the word "him" in sub-section (1) of the words "and unless so released he shall as soon as possible be brought before a judicial officer upon a charge of any offence" and

(b) by the deletion of sub-section (2).

Amendment of section 34 of Act 31 of 1917. 6. Section *thirty-four* of the principal Act is hereby amended—

(a) by the insertion in sub-section (1) after the word "person" where it occurs for the first time, of the words "or for the further detention of a person arrested without a warrant", and

(b) by the addition of the following new sub-section at the end of the section:

"(3) When a warrant has been 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".

Amendment of section 51 of Act 31 of 1917. 7. Section *fifty-one* of the principal Act is hereby amended—

(a) by the deletion of sub-section (1) and the substitution therefor of the following sub-section:

"Search for stolen stock or liquor or habit-forming drugs. 51. (1) If any justice or any policeman holding a rank or post to be 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 dealing with the theft of stock or produce) is upon any premises or at any place or that any substance has been placed upon any premises or at any place or is in the custody or possession of any person upon any premises or at any place, in contravention of a provision of any law relating to intoxicating liquor or habit-forming drugs, he may at any time enter upon and search such premises or place and search any person thereupon or thereat, or grant written authority to any person applying therefor, to make such entry and search. Any person in lawful occupation of any land shall in respect of any premises or place upon that land be entitled to exercise the powers conferred by this sub-section upon a justice;"

(b) by the deletion, in sub-section (2) of the words "building, hut, kraal or enclosure" and the substitution therefor of the words "premises or place".

Insertion of new section 53*bis* in Act 31 of 1917. 8. The following new section is hereby inserted in the principal Act after section *fifty-three*:

"Seizure of vehicle or receptacle used in connection with certain offences. 53*bis*. (1) On the arrest of any person on a charge of an offence specified in Part I of the Second Schedule to this Act, 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 con-

veyance 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 include in, Part I of the Second Schedule to this Act the specification of any offence."

Substitution of section 58 of Act 31 of 1917.

9. Section *fifty-eight* of the principal Act is hereby repealed and the following section substituted therefor :

"Summons to appear at preparatory examination.

58. At the request of a public prosecutor who has decided to institute a preparatory examination against any person not in custody, the clerk of the court to which such public prosecutor is attached shall make out 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-nine*."

Amendment of section 59 of Act 31 of 1917.

10. Sub-section (1) of section *fifty-nine* of the principal Act is hereby deleted and the following sub-section substituted therefor :

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

Amendment of section 60 of Act 31 of 1917, as amended by section 10 of Act 39 of 1926.

11. Sub-section (2) of section *sixty* of the principal Act is hereby amended by the deletion of the proviso thereto and the substitution therefor of the following proviso :

"Provided that the evidence given by every 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."

Substitution of section 64 of Act 31 of 1917.

12. Section *sixty-four* of the principal Act is hereby repealed and the following section substituted therefor :

"Subpoenaing of witnesses.

64. (1) A public prosecutor who has decided to institute or has instituted a preparatory examination, or an accused against whom a preparatory examination is being or is to be held (or the latter's representative) may compel the attendance of any person at such preparatory examination to give evidence or to produce any book or document, by means of a subpoena, issued in the manner prescribed by the rules of court, at the instance of the public prosecutor or accused, as the case may be, by the clerk of the magistrate's court of the district in which the preparatory examination is being or is to be held.

(2) If a magistrate holding a preparatory examination believes that any person may be able to give evidence or to produce any book or document which is relevant to the subject of the examination, he may direct the clerk of the magistrate's court to issue, in the manner aforesaid, a subpoena requiring such person to appear before him at a time and place mentioned therein, to give evidence or to produce any book or document.

(3) Any such subpoena shall be served in the manner prescribed by the rules of court, upon the person to whom it is addressed.

(4) A magistrate holding a preparatory examination may call as a witness any person in attendance, although not subpoenaed as a witness, or may recall and re-examine any person already examined as a witness.

(5) Every person subpoenaed to attend a preparatory examination shall obey the subpoena and

remain in attendance throughout the examination unless excused by the magistrate holding the examination."

Substitution of section 65 of Act 31 of 1917.

13. Section *sixty-five* of the principal Act is hereby repealed and the following section substituted therefor:

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

65. (1) If any person subpoenaed to attend a preparatory examination without reasonable excuse fails 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 failed to remain in attendance, the magistrate holding the preparatory examination 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 such magistrate or any other magistrate.

(2) Such warrant may be executed anywhere within the area of jurisdiction of the magistrate who issued it, and if the person to be arrested thereunder is outside that area, the provisions of section *thirty-five* shall, *mutatis mutandis*, apply in regard thereto.

(3) When the person in question has been arrested under the said warrant, he may be detained thereunder before the magistrate who 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 preparatory examination: Provided that the magistrate holding that examination 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 mentioned in sub-section (4).

(4) The magistrate 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 had a reasonable excuse for such failure, the magistrate may sentence him to pay a fine not exceeding twenty-five pounds or to imprisonment without the option of a fine for a period not exceeding one month.

(5) Such sentence shall be enforced and shall be subject to an appeal as if it were a sentence in a criminal case imposed by the magistrate's court of the district in which it was imposed.

(6) If a person who has entered into any recognizance for his appearance to give evidence at a preparatory examination or for his appearance at an enquiry referred to in sub-section (4) fails to so appear, he may, apart from the estreatment of his recognizance, be dealt with as if he had failed to obey a subpoena to attend a preparatory examination."

Amendment of section 69 of Act 31 of 1917, as amended by section 11 of Act 39 of 1926.

14. Section *sixty-nine* of the principal Act is hereby amended by the deletion of sub-sections (2) and (3) and the substitution therefor of the following sub-sections:

" (2) Subject to the proviso to sub-section (2) of section *sixty* and to sections *ninety-five* and *ninety-six*, the evidence given by a witness at a preparatory examination shall be given in the presence of the accused, shall be taken down in writing and shall be read over to the witness who gave it. If such evidence was taken down in shorthand writing, any document purporting to be a transcript of the shorthand record of the said evidence and purporting to have been certified as correct under the hand of the person who took such evidence down, shall *prima facie* be equivalent to that shorthand 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 *ninety-six* 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 on 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 produced by printing or any other method of multiplication any information relating to the said preparatory examination or any information disclosed thereat, unless the magistrate holding the preparatory examination 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) consented in writing to such publication.

(6) Any person contravening sub-section (5) 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."

Amendment of section 76 of Act 31 of 1917 as amended by section 12 of Act 39 of 1926.

15. Sub-section (2) of section *seventy-six* of the principal Act is hereby deleted and the following sub-section substituted therefor:

"(2) If the Attorney-General determines, under the provisions of section *ninety*, to indict the accused for trial in a superior court, for an 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."

Addition to section 84 of Act 31 of 1917.

16. The following new sub-sections are hereby added to section *eighty-four* of the principal Act:

"(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 such offences is being or was held, may deal with any matter relating to any such offence as if all such 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 *ninety*, as if all such 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 magis-

terial 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 he may direct where any such examination shall be held. The Minister's direction under this sub-section 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."

Amendment of section 85 of Act 31 of 1917.

17. Section *eighty-five* of the principal Act is hereby amended

(i) by the deletion of paragraph (b) and the substitution therefor of the following paragraph :

"(b) if it appears to him to be in the interest of good order or public morals or of the administration of justice, direct that the preparatory examination shall be held with 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 permitted to be present thereat, and if a preparatory examination is to be held or is being held on a charge referred to in sub-section (5) of section *sixty-nine*, the magistrate 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 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 allowed to be present thereat ;"

(ii) by the deletion in paragraph (d) of all the words before the words "stop the enquiry" and the substitution therefor of the words "if it appears in the course of the enquiry that the magistrate's court of the district in which the enquiry is held has jurisdiction to deal summarily with the offence which is the subject of the enquiry, and that it is desirable to try the accused summarily."

Amendment of section 86 of Act 31 of 1917.

18. Sub-section (1) of section *eighty-six* of the English version of the principal Act is hereby amended by the deletion of the words "murder or rape" and the substitution therefor of the words "or murder".

Amendment of section 116 of Act 31 of 1917.

19. Sub-section (2) of section *one hundred and sixteen* of the principal Act is hereby deleted and the following sub-section substituted therefor :

"(2) If a person is charged with any offence other than an offence specified in Part II of the Second Schedule to this Act, any policeman holding a rank or post to be 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, admit the said person to 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. 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."

Amendment of section 131 of Act 31 of 1917.

20. Section *one hundred and thirty-one* of the principal Act is hereby amended—

(a) by the addition of the following words at the end of sub-section (1) :

"nor shall it be necessary to allege in any such indictment, summons or charge or to establish at the

trial that the false testimony or statement was material to any issue to be tried in the proceedings in connection wherewith it was given or made, or that it was to the prejudice of any person."

(b) by the addition of the following new sub-section at the end of the section :

"(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 any such firstmentioned statement, he shall be deemed to be guilty of perjury and may, on an indictment, summons or charge alleging that he made the two conflicting statements, be convicted of perjury upon proof of those two statements and without proof as to which of the said statements was false, unless it is proved that when he made each statement he believed it to be true."

Insertion of new section 139bis in Act 31 of 1917.

21. The following new section is hereby inserted in the principal Act after section *one hundred and thirty-nine* :—

"Joint trial of offenders on different charges. 139bis. 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 offences in the same indictment, summons or charge and may be tried thereon jointly."

Substitution of section 143 of Act 31 of 1917.

22. Section *one hundred and forty-three* of the principal Act is hereby repealed and the following section substituted therefor :—

"Commencement of proceedings if accused is in custody. 143. When a person who was arrested upon a criminal charge, is brought before a judicial officer in terms of section *thirty-three* or sub-section (5) of section *thirty-six*, such officer shall forthwith commence his trial or a preparatory examination upon such charge, or if the matter is cognisable by another court or judicial officer, remand him to such court or officer."

Substitution of section 147 of Act 31 of 1917.

23. Section *one hundred and forty-seven* of the principal Act is hereby repealed and the following section substituted therefor :—

"Powers of court on postponement or adjournment. 147. (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 admit him to bail or extend his bail if he has already been admitted to 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 admitted to 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 was postponed or adjourned."

Amendment of section 148 of Act 31 of 1917.

24. Sub-section (1) of section *one hundred and forty-eight* of the principal Act is hereby amended—

(a) by the deletion of the words "At the time appointed for the trial or sentence of the accused upon any indictment, summons or charge, he shall appear" and the substitution therefor of the words: "Subject to the provisions of section *three hundred and fifty-eight*, the accused shall, upon the day appointed for his trial or sentence upon any indictment, summons or charge, appear in court, or if he is in custody, he shall be brought into court";

(b) by the deletion of the words "subject to the provisions of section *three hundred and fifty-eight*".

Amendment of section 167 of Act 31 of 1917 as amended by section 1 of Act 20 of 1931.

25. Section *one hundred and sixty-seven* of the principal Act is hereby amended—

(a) by the deletion, in sub-section (1) of the word "sixty" and the substitution therefor of the words "sixty-five years";

(b) by the deletion in sub-section (1) of the words "salary or wages amounting to not less than one" and the substitution therefor of the words "an income amounting to not less than two".

- Amendment of section 168 of Act 31 of 1917. 26. Section *one hundred and sixty-eight* of the principal Act is hereby amended by the deletion of paragraph (a) and the substitution therefor of the following paragraph:
“(a) any person who is not a Union national”.
- Amendment of section 169 of Act 31 of 1917. 27. Sub-section (1) of section *one hundred and sixty-nine* of the principal Act is hereby amended—
(a) by the addition of the following words at the end of paragraph (m): “or in connection with a hospital”;
(b) by the addition thereto of the following new paragraphs:
“(o) persons accredited in the Union as consuls;
(p) persons in the service of His Majesty the King in any of his Governments”.
- Amendment of section 172 of Act 31 of 1917. 28. Section *one hundred and seventy-two* of the principal Act is hereby amended by the deletion of the words “On or before the first day of February, 1918, and thereafter on or before the first day of January, 1921, and every third year thereafter” and the substitution therefor of the following words: “During the month of January in the year 1936 and in every fourth year thereafter.”
- Amendment of section 179 of Act 31 of 1917. 29. Section *one hundred and seventy-nine* of the principal Act is hereby amended by the deletion of the word “triennial” and the substitution therefor of the word “quadrennial”.
- Substitution of section 181 of Act 31 of 1917. 30. Section *one hundred and eighty-one* of the principal Act is hereby repealed and the following section substituted therefor:
“Transmission of revised list to sheriff. 181. When revising and completing a jury list as aforesaid, the magistrate holding the revision court shall number consecutively the names appearing on the list and shall thereafter certify the correctness of the revised and completed list and transmit it to the sheriff or deputy-sheriff whose duty it will be to summon jurors whose names are included in that list, as hereinafter provided.”
- Amendment of section 183 of Act 31 of 1917, as amended by section 24 of Act 39 of 1926. 31. Sub-section (1) of section *one hundred and eighty-three* of the principal Act is hereby deleted and the following sub-section substituted therefor:
“(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 qualified jurors or such number exceeding twenty-seven 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.”
- Amendment of sections 183 (2), 186 and 187 of Act 31 of 1917. 32. Sub-section (2) of section *one hundred and eighty-three*, paragraph (3) of section *one hundred and eighty-six* and paragraph (3) of section *one hundred and eighty-seven* of the principal Act are hereby amended by the deletion, in each sub-section, of the words “jurors’ book” and the substitution therefor of the words “jury list”.
- Amendment of section 188 of Act 31 of 1917. 33. Section *one hundred and eighty-eight* of the principal Act is hereby amended by the deletion of the words “or the jury books”.

Amendment of section 206 of Act 31 of 1917.

34. Section *two hundred and six* of the principal Act is hereby amended by the addition thereto of the following new sub-section, the existing section becoming sub-section (1):

“(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.

Amendment of section 215 of Act 31 of 1917.

35. Section *two hundred and fifteen* of the principal Act is hereby amended—

- (a) by the deletion, in sub-section (1), of the words “any offence specified in the Second Schedule to this Act” and the substitution therefor of the words “treason, sedition or public violence”; and
- (b) by the deletion, in sub-section (2), of the words “the Second Schedule to this Act” and the substitution therefor of the words “sub-section (1)”; and
- (c) by the addition of the following proviso at the end of sub-section (5):

Provided that if such special criminal court is unable, as required by sub-section (3), to agree on a decision on any charge in the indictment, and the person 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 such person on such indictment.

Substitution of section 216 of Act 31 of 1917.

36. Section *two hundred and sixteen* of the principal Act is hereby repealed and the following section substituted therefor:

“Trial by judge without a jury.

216 (1) When a person committed for trial has received a notice that he will be tried upon any indictment before a provincial or local division of the Supreme Court, he may by notice given to the registrar of that division upon a date not later than seven days before the date appointed for the trial, demand that he be tried by a judge without a jury: Provided that the judge presiding at the trial may, if he thinks fit, act upon any such notice although given later than the first-mentioned date: Provided further that if two or more persons are charged jointly in the same indictment, such notice shall not be effective unless given by all such persons.

(2) Thereupon the judge presiding at the trial, shall try the accused person or persons upon the said indictment without a jury, and he may summon to his assistance any person who has, or any two persons who have, in the opinion of such 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 person or persons is or are 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 sub-section (5) the judge who is to preside at the trial 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 paragraph (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 made under paragraph (d).

(4) If any such assessor is not an officer in the public service 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 may determine.

(5) When a person committed for trial is to be tried before a provincial or local division of the Supreme Court upon an indictment charging him with having committed or attempted to commit any offence under Chapter I of the Riotous Assemblies and Criminal Law Amendment Act, 1914 (Act No. 27 of 1914), or any offence under any law relating to illicit dealing in or possession of precious metal or precious stones or to the supply of intoxicating liquor to natives or coloured persons, or to insolvency or assignment of estates, or with having committed or attempted to commit any offence towards or in connection with a non-European if the accused is a European or towards or in connection with a European if the accused is a non-European the Minister may, by a notification on or attached to the notice of trial, direct that the accused be tried by a judge without a jury.

(6) Thereupon the provisions of sub-sections (2), (3) and (4) shall apply.

(7) 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."

Amendment of section 220 of Act 31 of 1917.

37. Sub-section (4) of section *two hundred and twenty* of the principal Act is hereby deleted and the following sub-section substituted therefor:

"(4) A superior court may, whenever it thinks fit and any 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 permitted to be present thereat; and if an accused person is to be tried or is on trial on a charge referred to in sub-section (5) of section *sixty-nine*, 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 permitted to be present thereat."

Insertion of new section 220bis in Act 31 of 1917.

38. The following new section is hereby inserted in the principal Act after section *two hundred and twenty* :

"No information of trial of certain offences to be published.

220bis. (1) If an accused is tried upon a charge referred to in sub-section (5) of section *sixty-nine* no person shall at any time (subject to the provisions of sub-section (3)) publish by radio or in any document produced by printing or any other method of multiplication 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) Any persons contravening sub-section (1) shall be guilty of an offence and liable on conviction to a fine not exceeding fifty pounds or to imprisonment not exceeding three months or to both such fine and imprisonment.

(3) 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: Provided that 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 of any witness at the trial."

Amendment of section 221 of Act 31 of 1917.

39. Sub-section (4) of section *two hundred and twenty-one* of the principal Act is hereby amended by the insertion of the words "(or his legal representative)" after the words "if more than one".

Amendment of section 228 of Act 31 of 1917.

40. Sub-section (2) of section *two hundred and twenty-eight* of the principal Act is hereby amended by the addition of the following proviso at the end thereof :

"Provided that with the consent of the accused or his representative, the magistrate may dispense with the reading of any such evidence or deposition".

Amendment of section 229 of Act 31 of 1917, as amended by section 26 of Act 39 of 1926.

41. Sub-section (2) of section *two hundred and twenty-nine* of the principal Act is hereby amended by the addition of the following words at the end 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 *two hundred and sixteen*."

Insertion of new section 230 bis in Act 31 of 1917.

42. The following new section is hereby inserted in the principal Act after section *two hundred and thirty* :

"On fraud charge Court may convict of certain other offences.

230bis. If an accused is tried upon an indictment, summons or 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, the jury or court trying him may, if it acquits him of the first-mentioned offence, convict him of having committed or attempted to commit such other offence as if he had been charged therewith".

Amendment of section 234 of Act 31 of 1917.

43. Section *two hundred and thirty-four* of the principal Act is hereby amended by the addition at the end thereof, of the following new sub-section :

“(3) If at the trial of any person upon an indictment, summons or 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 has been proved 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.”

Substitution of section 235 of Act 31 of 1917.

44. Section *two hundred and thirty-five* of the principal Act is hereby repealed and the following section substituted therefor:

“Exposing an infant or concealment of birth. 235. If at the trial of any accused upon a charge of murder or culpable homicide, it has been proved that the person alleged to have been killed was a recently born child and it has not been proved that the accused killed the child, 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”.

Substitution of section 252 of Act 31 of 1917.

45. Section *two hundred and fifty-two* of the principal Act is hereby repealed and the following section substituted therefor:

“Compelling witness to attend and give evidence. 252. The provisions of section *sixty-five* shall *mutatis mutandis* apply in connection with any person subpoenaed to attend any trial as a witness”.

Amendment of section 255 of Act 31 of 1917.

46. (a) Sub-section (1) of section *two hundred and fifty-five* of the principal Act is hereby deleted and the following new sub-sections substituted therefor:

“(1) Any person who has attended any criminal proceedings as a witness for the Crown shall be entitled to such allowance as may be prescribed by regulation under sub-section (2): 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.

(1)*bis*. Subject to any regulation made under sub-section (2) 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.”

(b) This section shall be deemed to have come into operation on the first day of January, 1918.

Amendment of section 263 of Act 31 of 1917, as amended by section 29 of Act 39 of 1926.

47. Sub-section (2) of section *two hundred and sixty-three* of the principal Act is hereby amended by the addition of the following words at the end thereof:

“or for any offence under the Immorality Act, 1927 (Act No. 5 of 1927)”.

Substitution of section 268 of Act 31 of 1917, as amended by section 30 of Act 39 of 1926 and Act 7 of 1927.

48. Section *two hundred and sixty-eight* of the principal Act is hereby repealed and the following section substituted therefor:—

“Proof of certain facts by affidavit. 268. (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 statement 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 came to his knowledge or that he 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 (5), 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 (5) 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 (5), 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 (5), 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) 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.

(6) Nothing in this section contained shall affect any provision of any law under which any certificate or other document is made admissible in evidence, and the provision of this section shall be deemed to be additional to, and not in substitution for, any such provision: Provided that if any provision of any law in operation upon the date when this section comes into force, which deals with any matter dealt with in this section, is at variance with any provision of this section, the provision of this section shall prevail."

Amendment of section 273 of Act 31 of 1917.

49. Section *two hundred and seventy-three* of the principal Act is hereby amended by the addition thereto of the following new sub-section (2), the existing section as hereby amended becoming sub-section (1):

"(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."

Insertion of new section 281bis in Act 31 of 1917.

50. The following new section is hereby inserted in the principal Act after section *two hundred and eighty-one*:—

"Proof of 281bis. In any criminal proceedings any document—
signature of public officer not necessary.

- (a) purporting to bear the signature of any person holding office under the Crown; 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 have been signed by such person, unless it is proved not to have been signed by him."

Substitution of section 286 of Act 31 of 1917.

51. Section *two hundred and eighty-six* of the principal Act is hereby repealed and the following section substituted therefor:

"Conviction of accused on plea of guilty or evidence of confession. 286. (1) If a person arraigned before any court upon any charge has pleaded guilty to that charge or has pleaded guilty to having committed any offence (of which he might be found guilty on the indictment, summons or charge) other than the offence with which he is charged and the prosecutor has accepted that plea, the court may, in its discretion—

- (a) if it is a superior court, and the accused has pleaded 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 has pleaded 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 has pleaded guilty is such that the court is of opinion that the offence 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 which is trying any person on a charge of any offence may convict him of any offence alleged against him in the indictment,

summons or charge under trial, 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 that the offence has, by competent evidence, other than such confession, been proved to have been actually committed”.

Insertion of new section 286bis in Act 31 of 1917.

52. The following new section is hereby inserted in the principal Act after section *two hundred and eighty-six* :

“ Admission in writing before trial of minor offence. 286bis. (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-eight*) 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-eight* 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 eighty-six*, 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 also the accused, if he so desires) to subpoena witnesses.

(7) If the accused pleaded not guilty, as aforesaid, the admission of guilt signed by him shall not be admissible in evidence against him at such trial.

Amendment of section 300 of Act 31 of 1917, as amended by section 33 of Act 39 of 1926.

53. Section *three hundred* of the principal Act is hereby amended by the deletion of the proviso thereto and the substitution therefor of the following proviso :

“ 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."

Amendment of section 305 of Act 31 of 1917.

54. Section *three hundred and five* of the principal Act is hereby amended by the addition thereto of the following new sub-section (2), the existing section becoming sub-section (1) :

"(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 *three hundred and four* for the proof of the existence of a lawful and binding marriage of a person charged with bigamy."

Substitution of section 318 of Act 31 of 1917.

55. Section *three hundred and eighteen* of the principal Act is hereby repealed and the following section substituted therefor :

"Admissions. 318. (1) In any criminal proceedings the accused or his representative in his presence, may 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 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."

Insertion of new section 318bis in Act 31 of 1917.

56. The following new section is hereby inserted in the principal Act after section *three hundred and eighteen* :

"Presumption that accused possessed particular qualification or acted in particular capacity.

318bis. 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 an indictment, summons or charge alleging that he possessed such qualification 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".

Amendment of section 319 of Act 31 of 1917.

57. Section *three hundred and nineteen* of the principal Act is hereby amended by the addition of the following proviso at the end thereof:

"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 testimony 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 testimony is inconsistent."

Insertion of new section 319bis in Act 31 of 1917.

58. The following new section is hereby inserted in the principal Act after section *three hundred and nineteen* :

"Onus of proof in prosecutions under taxation laws 319bis. 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."

Insertion of new section 319ter in Act 31 of 1917.

59. The following new section is hereby inserted in the principal Act after section *three hundred and nineteen bis* :

"Onus of proof in prosecutions under laws prescribing licences, etc.

319ter. (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 some other person 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."

Insertion of new section 321bis in Act 31 of 1917.

60. The following new section is hereby inserted in the principal Act after section *three hundred and twenty* :

"Compound- ing of certain minor offences.

321bis (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 established 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 to this Act, 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) 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.

(3) The Minister may from time to time by notice in the *Gazette* add the designation of any offence to the offences mentioned in Part III of the Second Schedule to this Act, or remove therefrom the designation of any offence mentioned therein.

(4) 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."

(5) The Governor-General 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."

Amendment of section 338 of Act 31 of 1917, as amended by section 36 of Act 39 of 1926.

61. Section *three hundred and thirty-eight* of the principal Act is hereby amended—

- (a) by the deletion in the proviso to sub-section (1) of the words "the court may in its discretion impose a sentence other than that of sentence of death" and the substitution therefor of the following words: "or where the jury, in convicting the accused of murder, has, in terms of sub-section (2) of section *two hundred and six* expressed 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";
- (b) by the insertion in sub-section (3) before the word "Nothing" of the words "Subject to the provisions of section *three hundred and forty-five*";
- (c) by the deletion of the proviso to sub-section (3).

Amendment of section 341 of Act 31 of 1917.

62. Section *three hundred and forty-one* of the principal Act is hereby amended by the addition of the following new sub-section at the end thereof:

"(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 carrying out of sentences of capital punishment, 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)."

Substitution of section 345 of Act 31 of 1917.

63. Section *three hundred and forty-five* of the principal Act is hereby repealed and the following section substituted therefor:

"Imprisonment in default of payment of fines.

345. (1) Whenever a court has convicted an offender of any offence punishable by a fine (whether with or without any other direct or alternative punishment) it may, in imposing a sentence of a fine upon the offender, impose, as a punishment alternative to such fine, a sentence of imprisonment with or without hard labour, of any duration 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 offender a sentence of a fine without an alternative sentence of imprisonment and the fine has not been paid in full or not been recovered in full by a levy made in terms of section *three hundred and forty-six*, the court which passed sentence on the offender (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 upon which this section comes into operation, 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 that 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."

Amendment of section 353 of Act 31 of 1917.

64. Section *three hundred and fifty-three* of the principal Act is hereby amended—

- (a) by the deletion of the word "child" where it occurs for the first and second times and the substitution therefor of the word "person";
- (b) by the deletion of the word "sixteen" and the substitution therefor of the word "twenty-one";
- (c) by the deletion of the word "child" where it occurs for the last time and the substitution therefor of the words "first-mentioned person".

Substitution of section 358 of Act 31 of 1917.

65. (1) Section *three hundred and fifty-eight* of the principal Act is hereby repealed and the following new section substituted therefor :

"Payment of fine without appearance in court.

358. (1) When any person has been summoned or warned to appear in an inferior court or has been arrested or has been 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 to be 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,

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 has not been 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 forty-six*.

(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 by or on behalf of such person shall be returned to the person who made the deposit."

(2) Any person who was, immediately before the commencement of this Act, a "prescribed officer" in terms of the said section *three hundred and fifty-eight* shall after such commencement be deemed to have been designated by the Minister in terms of sub-section (1) of the new section *three hundred and fifty-eight*.

Amendment of section 359 of Act 31 of 1917.

66. Section *three hundred and fifty-nine* of the principal Act is hereby amended by the deletion of all the words preceding sub-paragraph (i), and the substitution therefor of the following words: "Whenever a person is convicted of any offence before any inferior court and the court is of the opinion that by reason of the circumstances of the case it is not necessary or desirable to impose upon the offender a punishment of a whipping or imprisonment without the option of a fine or a fine exceeding fifteen pounds, the court may in its discretion".

Amendment of section 360 of Act 31 of 1917 as amended by section 42 of Act 39 of 1926.

67. Section *three hundred and sixty* of the principal Act is hereby amended—

- (i) by the deletion of the words "if no previous conviction for any offence whatever (other than an offence described in section *three hundred and fifty-eight*) is alleged or proved against the offender";
- (ii) by the deletion of the words "six months" in paragraph (a) and the substitution therefor of the words "three years"; and
- (iii) by the deletion of the last sentence of the section and the substitution therefor of the following provision:—
"If an offender has been discharged with a caution or reprimand under paragraph (v) of section *three hundred and fifty-nine* or under paragraph (d) of this section, the discharge shall have the effect of an acquittal, except for the purpose of the last paragraph of sub-section (3) and sub-section (4) of section *three hundred and thirty-one*".

Amendment of section 363 of Act 31 of 1917.

68. Sub-sections (4) and (5) of section *three hundred and sixty-three* of the principal Act are hereby deleted and the following sub-sections substituted therefor:

"(4) 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, and when a superior court has made any such award, the registrar of that 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.

(5) 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 the Native High Court of Natal, according to the scale, in civil cases, of magistrates' courts".

Amendment of section 366 of Act 31 of 1917.

69. The following new sub-sections are hereby added at the end of section *three hundred and sixty-six* of the principal Act:

"(3) The court convicting any person of any offence specified in Part I of the Second Schedule to this Act, who was arrested while in possession or custody of any vehicle or receptacle used in the conveyance of, or containing any article or substance in connection wherewith the said offence was committed, may, if it thinks fit, declare that vehicle or receptacle, or the convicted person's rights thereto, to be forfeited to the Crown: 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 conveyance of, or as a receptacle for, the said article or substance, or that he could not prevent such use.

(4) During the trial resulting in any such declaration of forfeiture and at any time after the making of such declaration, the court which is holding or which held the trial may 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 Crown, 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 Government an amount equal to the value of those rights but not exceeding the proceeds of the sale of those rights."

Amendment of section 374 of Act 31 of 1917. **70.** Section *three hundred and seventy-four* of the principal Act is hereby amended—

(i) by the addition at the end of paragraph (d) of the following words: "impose such punishment (whether more or less severe or of a different nature than the punishment imposed by the court below) as ought to have been imposed at the trial; or"

(ii) by the deletion of the proviso and the substitution therefor of the following proviso:

"Provided that notwithstanding that the court of appeal is of the 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 therefrom"

Insertion of new clause 383bis in Act 31 of 1917.

71. The following new section is hereby inserted in the principal Act after section *three hundred and eighty-three*:—

383bis. Whenever a person who made statement in a criminal case entitled to copy thereof. 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".

Substitution of section 386 of Act 31 of 1917.

72. Section *three hundred and eighty-six* of the principal Act is hereby repealed and the following section substituted therefor:

386. 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."

Substitution of section 388 of Act 31 of 1917.

73. Section *three hundred and eighty-eight* of the principal Act is hereby repealed and the following section substituted therefor:

388. Whenever the Minister may invoke Appellate Division's decision on point of law. 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".

Substitution of Second Schedule to Act 31 of 1917.

74. The Second Schedule to the principal Act is hereby repealed and the provisions contained in Schedule A to this Act substituted therefor.

- Substitution of Fourth Schedule to Act 31 of 1917. 75. The Fourth Schedule to the principal Act is hereby repealed and the provisions contained in Schedule B to this Act substituted therefor.
- Amendment of Fifth Schedule to Act 31 of 1917. 76. (1) Form No. 2 in the Fifth Schedule to the principal Act is hereby amended by the deletion of the words: "NOTE.— If there are previous convictions, insert following in margin:— 'For previous convictions see statement at end of record'." (2) Form No. 26 of the said Schedule is hereby amended by the deletion of the words "Clerk of the Court" and the substitution therefor of the word "Magistrate".
- Amendment of section 6 of Act 49 of 1898 (Natal). 77. Section *six* of the Courts Act, 1898, of Natal, is hereby amended by the substitution for paragraph (*d*) (deleted by section *three* of Act No. 30 of 1910 of Natal) of the following paragraph: " (*d*) Any case in which a native is charged jointly with a non-native in the same indictment or charge."
- Amendment of section 28 of Act 38 of 1916. 78. Sub-section (1) of section *twenty-eight* of the Mental Disorders Act, 1916, is hereby amended:— (a) by the insertion, after the word "If," of the words "during a preparatory examination held against any person or"; (b) by the insertion, before the word "trial" where it occurs for the second and last times, of the words "preparatory examination or".
- Amendment of section 3 of Act 2 of 1918. 79. Section *three* of the Special Justices of the Peace Act, 1918, is hereby amended— (a) by the addition of the following words at the end of sub-section (1): "Provided, further, that when a person under arrest is brought before a court of a special justice of the peace upon a charge in respect whereof that court has no jurisdiction or which is to be tried by another court, it may remand him for trial to a competent court"; (b) by the substitution of the word "twenty-one" for the word "sixteen" in sub-section (2).
- Insertion of new section *9bis* in Act 2 of 1918. 80. The following section is hereby inserted in the Special Justices of the Peace Act, 1918, after section *nine*:— "Amendment of First Schedule. *9bis*. The Minister of Justice may, from time to time by notice in the *Gazette*, add any offence to the offences defined in the First Schedule to this Act or remove any offence from that Schedule."
- Amendment of First Schedule to Act 2 of 1918. 81. The First Schedule to the Special Justices of the Peace Act, 1918, is hereby amended by the insertion of the following new item after item (7):— "(7)*bis*. Any offence punishable under sub-section (3) of section *twenty* of the National Parks Act, 1926 (Act No. 56 of 1926)".
- Amendment of section 9 of Act 16 of 1914. 82. Section *nine* of the Justices of the Peace and Oaths Act, 1914, is hereby amended by the deletion of the words "corruptly or maliciously, or makes such statement knowing it to be false and with the intention of injuring another person or benefiting himself" and the substitution therefor of the words "knowing it to be false";
- Substitution of section 8 of Act 32 of 1917 as amended by section 1 of Act 17 of 1932. 83. Section *eight* of the Magistrates' Courts Act, 1917, is hereby repealed and the following section substituted therefor: "Appointment of magistrates. 8. (1) Subject to the provisions of the law governing the public service of the Union and of section *nine*, the Minister may appoint for any district or sub-district a magistrate and an additional magistrate or two or more additional magistrates and an assistant magistrate, or two or more assistant magistrates, who shall all be officers of the said service before such appointment. (2) Whenever by reason of the absence or incapacity from any cause whatever any magistrate, additional magistrate or assistant magistrate is unable to carry out the functions of his office or whenever the office of any magistrate, additional magistrate or assistant magistrate becomes vacant, the Minister, or if delegated by the Minister, the Secretary for Justice or the Under Secretary for Justice, may authorize any other competent officer of the public service of the Union to act in the place of the absent or incapacitated officer until he resumes the functions of his office, or, as the case

may be, to act in the vacant office until the vacancy is filled: Provided that when any such vacancy has remained continuously unfilled for a period exceeding six months the fact shall be reported to the Public Service Commission.

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

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

Amendment of section 13 of Act 32 of 1917 as amended by section 51 of Act 39 of 1926.

84. (a) Sub-sections (1) and (2) of section *thirteen* of the Magistrates' Courts Act, 1917, are hereby deleted and the following sub-sections substituted therefor:

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

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

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

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

(b) The provisions of sub-section (a) shall not affect any messenger or deputy-messenger holding office as such at the commencement of this Act, whose rights and obligations shall be governed by the law applicable thereto at the commencement of this Act as if this section had not been enacted; and whenever the office held by any such messenger becomes vacant, the Minister may appoint to the vacancy an officer of the public service, in terms of sub-section (1) of the aforesaid section *thirteen*, as substituted by sub-section (a) of this section, or he may transfer the messenger or any deputy-messenger of any other court, who held office as such at the commencement

of this Act, and appoint him to the vacancy at such remuneration and upon such conditions as the Minister may determine.

Amendment of section 24 of Act 32 of 1917.

85. Sub-section (3) of section *twenty-four* of the Magistrates' Courts Act, 1917, is hereby amended by the deletion of all the words after the word "Act".

Amendment of section 66 of Act 32 of 1917, as amended by Act 9 of 1923 and section 3 of Act 17 of 1932.

86. Sub-section (1) of section *sixty-six* of the Magistrates' Courts Act, 1917, is hereby amended by the addition at the end thereof, of the following words:

"Provided that when so suspending execution, the court may simultaneously pronounce against that debtor a decree of civil imprisonment, which shall be suspended as long as the instalments are duly paid".

Amendment of section 68 of Act 32 of 1917, as amended by section 4 of Act 17 of 1932.

87. Sub-section (1) of section *sixty-eight* of the Magistrates' Courts Act, 1917, is hereby deleted and the following sub-section substituted therefor:

"(1) If a judgment has remained unsatisfied during a period of seven days or if the judgment debtor has admitted in court or in writing or if it appears from the return of the messenger to any process of execution that the judgment debtor has not sufficient property liable to attachment in execution to satisfy the judgment debt and costs, the judgment creditor may summon the judgment debtor to show cause why the court should not make a decree of civil imprisonment against him."

Amendment of section 69 of Act 32 of 1917.

88. Section *sixty-nine* of the Magistrates' Courts Act, 1917, is hereby amended by the addition of the following new paragraph at the end thereof:

"(4) a judgment debtor shall not be liable for any costs incurred by the judgment creditor in any proceedings in connection with a decree of civil imprisonment against such debtor (other than fees or charges which accrue to the State or to the messenger of the court).

(a) if the judgment debt arose from the purchase on credit of goods other than foodstuffs or medicines or from any liability to pay any money under a hire purchase agreement or from a loan of money, unless it is proved that the seller of those goods was induced to grant such credit or the lessor under the hire purchase agreement was induced to deliver the asset let by him or the lender was induced to lend the money, as the case may be, by wilful misrepresentation made by or on behalf of the judgment debtor; or

(b) if the rights of the judgment creditor against the judgment debtor accrue to the judgment creditor by virtue of a cession."

Amendment of section 89 of Act 32 of 1917 as amended by section 53 of Act 39 of 1926.

89. Sub-section (3) of section *eighty-nine* of the Magistrates' Courts Act, 1917, is hereby amended by the insertion of the words "culpable homicide" before the word "robbery" in sub-paragraph (ii) of paragraph (a).

Substitution of section 91 of Act 32 of 1917.

90. Section *ninety-one* of the Magistrates' Courts Act, 1917 is hereby repealed and the following section substituted therefor:

"Cases remitted for trial or sentence.

91. When a case in which a preparatory examination was held, has been remitted for trial or sentence, the court to which it has been remitted shall deal therewith as prescribed by the Criminal Procedure and Evidence Act, 1917 (Act No. 31 of 1917), and shall have power, in respect of each offence or count to which the remittal refers, to impose a sentence in accordance with the provisions of section *eighty-nine* of this Act, if the remittal is expressed to be under the ordinary jurisdiction of such court, or a sentence in accordance with the provisions of section *ninety-two* of this Act, if the remittal is expressed to be under the increased jurisdiction conferred by the said section *ninety-two*."

Amendment of section 93 of Act 32 of 1917, as amended by section 5 of Act 17 of 1932.

91. Section *ninety-three* of the Magistrates' Courts Act, 1917, is hereby amended by the deletion of the words "child under the age of eighteen" and the substitution therefor of the words "person of an age not exceeding twenty-one."

Amendment of section 95 of Act 32 of 1917, as amended by section 55 of Act 39 of 1926.

92. Sub-section (2) of section *ninety-five* of the Magistrates' Courts Act, 1917, is hereby deleted and the following sub-section substituted therefor:—

“(2) If, upon considering the proceedings aforesaid, it shall appear to the judge that they are not in accordance with justice or that doubts exist whether or not they are in accordance with justice, then such judge shall lay them before the court of appeal for its consideration; and the said court at any sitting thereof may hear any evidence and for that purpose the said court may summon any person to appear and give evidence or produce any document or other article, and whether it has or has not heard any such evidence, it may affirm, alter, or quash the conviction, or affirm, reduce, alter or set aside the sentence or any order of the magistrate's court (and if the accused was convicted on one of two or more alternative counts, it may, when quashing that conviction, convict the accused on the other alternative count or on one or other of the other alternative counts) or it may set aside or correct the proceedings of the magistrate's court, or generally give such judgment or impose such sentence or make such order as the magistrate's court ought to have given, imposed or made on any matter which was before it at the trial of the case in question, or may remit the case to the magistrate's court with instructions to deal with any such matter in such manner as the court of appeal may think fit, and may make such order touching the suspension of the execution of any sentence against the person convicted or the admitting him to bail, or, generally, touching any matter or thing connected with him or the proceedings in regard to him as to the said court seems calculated to promote the ends of justice: Provided that in the event of any conviction being quashed or proceedings being set aside on any ground mentioned in sub-section (7) of section *one hundred*, the provisions of that sub-section in respect of the institution of fresh proceedings shall *mutatis mutandis* apply.”

Amendment of section 99 of Act 32 of 1917, as amended by section 6 of Act 17 of 1932.

93. Sub-section (1) of section *ninety-nine* of the Magistrates' Courts Act, 1917, is hereby amended by the deletion of the words “child under the age of eighteen” and the substitution therefor of the words “person of an age not exceeding twenty-one.”

Amendment of section 100 of Act 32 of 1917, as amended by section 56 of Act 39 of 1926.

94. Section *one hundred* of the Magistrates' Courts Act, 1917, is hereby amended—

(a) by the insertion in sub-section (4) after the words “*ninety-five*,” of the words “and unless the appeal is based solely upon a question of law, the court of appeal shall, in addition to those powers, have the power to increase any sentence imposed upon the appellant or impose any other form of sentence in lieu of or in addition to such sentence”;

(b) by the deletion, in sub-section (4) of the words “or that the accused has been prejudiced thereby”.

Insertion of new sections 100*bis* and 100*ter* in Act 32 of 1917.

95. The following new sections are hereby inserted in the Magistrates' Courts Act, 1917, after section *one hundred*:

“Appeal by prosecutor. 100*bis*. (1) When a magistrate's court has in any criminal proceedings given a decision in favour of the accused on any matter of law, the Attorney-General, or if a person or a body other than the Attorney-General or his representative was the prosecutor in those proceedings, then that other prosecutor may require the magistrate to state a case for the consideration of the court of appeal, setting forth the question of law and his decision thereon, and, if evidence has been heard, his findings of fact, in so far as they are material to the question of law.

(2) When such case has been stated, the Attorney-General, or other prosecutor, as the case may be, may appeal from that decision to the court of appeal referred to in sub-section (1) of section *one hundred*.

(3) Sub-section (3) of section *one hundred* shall apply to an appeal under sub-section (2) of this section.

(4) If an appeal under sub-section (2) is allowed, the magistrate's court which gave the decision appealed from shall, subject to the provisions of sub-section (5), after giving sufficient notice to both parties, reopen the case in which the decision was given and deal with it in the same manner as it should have dealt therewith if it had given a decision in accordance with the law as laid down by the court of appeal.

(5) In allowing such appeal, whether wholly or in part, the court of appeal may itself impose such sentence upon the respondent or make such order as the magistrate's court ought to have imposed or made, or it may remit the case to the magistrate's court and direct that court to take such further steps as the court of appeal thinks proper.

Appeal to
appellate
division of
Supreme
Court.

100ter. (1) When in any criminal appeal, whether brought by the accused or by the Attorney-General or other prosecutor, the court of appeal has given a decision in favour of the accused on a matter of law, the Attorney-General or other prosecutor against whom that decision was given may appeal to the appellate division of the Supreme Court, which shall, if it decides the matter in issue in favour of the appellant, set aside or vary the decision appealed from and—

(a) if the matter was brought before the provincial or local division of the Supreme Court in terms of sub-section (1) of section *one hundred*, reinstate the conviction, sentence or order of the magistrate's court appealed from, either in its original form or in such a modified form as the appellate division may think desirable ; or

(b) if the matter was brought before the provincial or local division in terms of sub-section (2) of section *one hundred bis*, give such decision or take such action as the provincial or local division ought, in the opinion of the appellate division, to have given or taken (including any action under sub-section (5) of section *one hundred bis*) and thereupon the provisions of sub-section (4) of that section shall *mutatis mutandis* apply.

(2) If any appeal brought by the Attorney-General or other prosecutor under this section or under section *one hundred bis* is disallowed, the court disallowing the appeal may order that the appellant pay to the respondent the costs to which the respondent may have been put in opposing the appeal, taxed according to the scale in civil cases of that court : Provided that, if the Attorney-General was the appellant, the costs which he is so ordered to pay shall be paid by the State."

Amendment of
section 103 of
Act 32 of 1917.

96. Sub-section (1) of section *one hundred and three* of the Magistrates' Courts Act, 1917, is hereby amended by the addition of the following words at the end thereof :—

"In this sub-section the word 'court' includes a preparatory examination held under the law relating to criminal procedure."

Insertion of new
section 103bis
in Act 32 of 1917.

97. The following new section is hereby inserted in the Magistrate's Courts Act, 1917, after section *one hundred and three* :—

"Judgment
debtor to
inform
court of his
address.

103bis. Any person against whom a court has, in a civil case, given any judgment or made any order, who has not satisfied in full such judgment or order and all costs for which he is liable in connection therewith, shall be guilty of an offence and liable on conviction to a fine not exceeding twenty-five pounds or to imprisonment for a period not exceeding three months, if he has vacated his place of residence and fails to give, within a period of fourteen days as from the date of every such vacation,

to the clerk of the court which gave such judgment or made such order, a notice in writing setting forth clearly, fully and correctly the new place of residence to which he has removed".

Insertion of section 105bis in Act 32 of 1917.

98. The following new section is hereby inserted in the Magistrates' Courts Act, 1917, after section *one hundred and five*:

"Adminis-
tration of
oath or
affirmation.

105bis. The oath to be taken by any witness in any proceedings, whether civil or criminal, in any court or at any preparatory examination shall be administered by the officer presiding at such proceedings or by the clerk of the court (or any person acting in his stead) in the presence of the said officer, or if the witness is to give his evidence through an interpreter, by the said officer through the interpreter or by the interpreter in the said officer's presence."

Amendment of section 110 of Act 32 of 1917.

99. Section *one hundred and ten*, of the Magistrates' Courts Act, 1917, is hereby amended by the deletion of the definition of "Minister" and the substitution therefor of the following definition:

" 'Minister', in sub-section (2) of section *fourteen* and in section *one hundred and seven* means the Minister of Justice; in any other provision of this Act 'Minister', in relation to any matter to be dealt with in a district administered under the administrative control of the Minister of Justice, means that Minister, and in relation to any matter to be dealt with in a district under the administrative control of the Minister of Native Affairs means the latter Minister."

Amendment of Second Schedule of Act No. 32 of 1917.

100. Rule 1 of Order No. II contained in the Second Schedule to the Magistrates' Courts Act, 1917, is hereby amended by the insertion after the word "court" of the words "who is not an officer of the public service of the Union".

Amendment of certain rules of evidence.

101. (1) The provisions contained in the proviso to section *three hundred* of the principal Act as amended by section *fifty-three* of this Act, shall apply in any civil proceedings.

(2) The provisions added by section *fifty-seven* of this Act to section *three hundred and nineteen* of the principal Act shall *mutatis mutandis* apply in any civil proceedings.

(3) For the purposes of rebutting the presumption that a child to which a married woman has given birth is the offspring of her husband, she or her husband or both of them may in any proceedings, whether civil or criminal, give evidence that they had no sexual intercourse with one another during the period when the child was conceived.

Court may determine future or contingent rights.

102. Any provincial or local division of the Supreme Court may, in its discretion, at the instance of any interested person inquire into and determine any existing, future or contingent right or obligation, notwithstanding that such person cannot claim any relief consequential upon such determination.

Preserving testimony.

103. (1) Any person who will under the circumstances alleged by him to exist become entitled, upon the happening of any future event, to any interest in any asset the right or claim to which cannot by him be brought to trial before the happening of such event, may after notice to every other person who may have an interest in such asset apply to any division of the Supreme Court having jurisdiction for an order allowing any evidence which may be material for establishing such right or claim to be taken on oath before a commission appointed by the said division, and the said division may refuse the application or grant it on such conditions as it may think fit to impose.

(2) If the said division grants the application, the rules of such division relating to the taking of evidence on commission in trial actions shall *mutatis mutandis* apply to the taking of such evidence.

(3) Evidence taken in terms of this section which would be admissible if given in Court shall be admissible in any civil proceedings brought after the happening of the future event to which the application for leave to take such evidence relates, if the parties to such civil proceedings are the same as the parties to such application or are the legal representatives or successors in title to the parties to such application: Provided that, if the person who gave such evidence is available as a witness the Court in question may refuse to admit such evidence.

Amendment of section 103 of the South Africa Act.

104. Section *one hundred and three* of the South Africa Act, 1909, is hereby amended—

- (a) by the deletion of the words "as well as any appeal in criminal cases from any such superior court or the special reference by any such court of any point of law in a criminal case"; and
- (b) by the substitution of the words "such provincial division" for the words "the Appellate Division" where these words occur for the last time in the said section; and
- (c) by the insertion of the following proviso at the end of the said section: "Provided that if such provincial division shall have refused special leave to appeal, the Appellate Division may, on application being made thereto, grant such special leave and may vary any order as to costs made by such provincial division in refusing such special leave"; and
- (d) by the addition thereto of the following new sub-section (2) (the existing section as hereby amended becoming sub-section (1)) :—

"(2) If any court grants special leave to appeal under the provisions of sub-section (1) the court may order the appellant to find security for the costs of appeal in such an amount as may be fixed by such court and may fix the time within which such security shall be found."

Amendment of section 105 of the South Africa Act.

105. Section *one hundred and five* of the South Africa Act, 1909, is hereby amended—

- (a) by the substitution of the words "such corresponding division" for the words "the Appellate Division" where those words occur for the last time in the said section; and
- (b) by the insertion of the following proviso at the end of the said section: "Provided that if such corresponding division shall have refused special leave to appeal, the Appellate Division may on application being made thereto grant such special leave and may vary any order as to costs made by such corresponding division in refusing such special leave"; and
- (c) by the addition thereto of the following new sub-section (2) the existing section as hereby amended becoming sub-section (1) :—

(2) If any court grants special leave to appeal under the provisions of sub-section (1) the court may order the appellant to find security for the costs of appeal in such an amount as may be fixed by such court and may fix the time within which such security shall be found.

Amendment of section 3 of Act 1 of 1911.

106. Section *three* of the Appellate Division Further Jurisdiction Act, 1911, is hereby amended—

- (i) by inserting the following words at the end of paragraph (a) :—

"or by reason only of the fact that the matter in dispute is incapable of being valued in money"; and
- (ii) by adding the following new paragraph at the end of the section :—

"(c) For the purpose of determining the question whether an appeal does or does not lie from any order or judgment of a judge or court, the words 'civil case' or 'civil suit' or 'civil action' in any law shall, subject to the provisions of paragraph (b) and subject to the provisions of any law which specially limits the right of appeal in any particular matter, be deemed to include any civil proceedings whatsoever."

Amendment of section 5 of Act 1 of 1911.

107. Section *five* of the Appellate Division Further Jurisdiction Act, 1911, is hereby amended by the deletion of the words "or the prosecutor and accused in criminal proceedings" and of the last sentence thereof.

Substitution of section 3 of Act 12 of 1920.

108. Section *three* of the Appellate Division Act, 1920, is hereby repealed and the following section substituted therefor :—

- "Appeal from South-West Africa.
3. The appellate division shall have jurisdiction to hear and determine appeals and applications for leave to appeal in civil and criminal matters from the High Court of the mandated territory of South-West Africa and from any circuit court of that territory in the same circumstances and subject

to the same conditions as such division has jurisdiction to hear and determine appeals and applications for leave to appeal in such matters from a provincial division of the Supreme Court, and whenever in any matter an appeal to the appellate division is subject to the granting of the leave of a provincial division, the said High Court or circuit court shall have jurisdiction in any similar matter determined by it, to grant such leave and to impose such conditions as to the finding of security as may be imposed by a provincial division."

Saving as to pending appeals.

109. If the appellate division of the Supreme Court has, prior to the commencement of this Act, granted leave to appeal in any matter it shall not be necessary in respect of that matter to obtain, from the court appealed from, leave to appeal, in terms of any provision of this Act.

Failure to comply with maintenance order made by Court.

110. (1) Subject to the provisions of sub-section (3), any person against whom an order has been made by any court of law for the periodical payment of sums of money towards the maintenance of any person, who fails to make any particular payment in terms of such order, 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 one year, or to such imprisonment without the option of a fine.

(2) Subject to the provisions of sub-section (3), any person who has been convicted or acquitted on a charge under this section of failing to make any payment, and who fails—

(a) within two months after such conviction or acquittal ;
or

(b) if upon such conviction he was sentenced to and has undergone imprisonment, within two months after his release in respect of such imprisonment,

to make that payment, shall be liable to be again prosecuted under sub-section (1) and his previous conviction or acquittal shall not be a bar to his conviction on the later charge.

(3) Proof that any failure which is the subject of a charge under this section was due to lack of means and that such lack of means was not due to unwillingness to work or misconduct on the part of the person charged, shall be a good defence to any such charge.

(4) A magistrate's court shall have jurisdiction to impose summarily the full penalty for any offence under this section.

Amendment of section 123 of Act 30 of 1928.

111. Section *one hundred and twenty-three* of the Liquor Act, 1928, is hereby amended—

(i) by the deletion of sub-section (1) and the substitution therefor of the following sub-section :

"(1) No person shall supply to any native—

(a) yeast in any form, except under a permit issued by an officer in charge of a police station (which permit shall specify the name of the native to be supplied, the quantity of yeast to be supplied, and the date upon which or the period during which and the intervals at which the yeast may be supplied), and subject to any regulation made under sub-section (3) ; or

(b) any substance or thing adapted or in the opinion of the Governor-General adaptable for the production of any alcoholic concoction, which the Governor-General may specify by proclamation in the *Gazette* ; or

(c) malt in any form other than malted kaffir corn "

(ii) by the deletion in sub-section (2) of the words "any yeast" ;

(iii) by the deletion, in sub-section (3), of the words "the supply of which to natives is prohibited in terms of sub-section (1) " ;

(iv) by the insertion in paragraph (a) of sub-section (3) of the word "manufacture" before the word "importation" ;

(v) by the insertion in paragraph (b) of sub-section (3) of the words "factories and of" before the word "sales" ;

(vi) by the deletion, in sub-section (4), of the words "yeast or other", where they occur for the second time.

Substitution of section 31 of Act 14 of 1912.

112. Section *thirty-one* of the Police Act, 1912, is hereby repealed and the following new section substituted therefor :

- “ Appoint-
ment of
special
constables.
31. (1) Whenever there are not in any locality sufficient ordinary members of the force available to perform police duties or any particular police duty therein, or to convey any person in lawful custody from such locality to any other place, the Minister or, if authorized thereto by the Minister either generally or in any particular case, any commissioned officer, magistrate, additional magistrate, assistant magistrate, native commissioner, additional native commissioner or assistant native commissioner in that locality may appoint as special constables to act as such during a specified time so many fit and proper persons as may be necessary for the performance of any such duty as aforesaid.
- (2) Any special constable shall, while acting as such, be deemed to be a member of the force and may be paid such remuneration for his services as the Minister may determine.”
- Concealment of
birth of a child.
113. (1) Any person who disposes of the body of any child with intent to conceal the fact of its birth, whether the child died before, during or after birth, 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 three years.
- (2) Whenever a person disposes of the body of any such child which was recently born, otherwise than under a lawful burial order, he shall be deemed to have disposed of such body with intent to conceal the fact of the child's birth, unless it is proved that he had no such intent.
- (3) A person may be convicted under sub-section (1) although it has not been proved that the child in question died before its body was disposed of.
- Pointing of fire-
arm or air gun
made an offence.
114. Any person who knowingly and without lawful cause points a firearm or an air gun or air pistol at any other person shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding six months or to a fine not exceeding fifty pounds.
- Repeal of laws.
115. The laws set forth in Schedule C to this Act are hereby repealed to the extent indicated in the fourth column of that Schedule.
- Short title.
116. This Act shall be known as the General Law Amendment Act, 1935.

Schedule A.

(Substituted for the Second Schedule to Act 31 of 1917.)

“ SECOND SCHEDULE

PART I.

OFFENCES IN CONNECTION WHEREWITH VEHICLES AND RECEPTACLES MAY BE SEIZED AND CONFISCATED UNDER SECTIONS 53*bis* AND 366.

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 metal or precious stones.

PART II.

OFFENCES IN CONNECTION WHEREWITH BAIL MAY NOT BE GRANTED UNDER SUB-SECTION (2) OF SECTION 116.

1. Treason.
2. Sedition.
3. Murder.
4. Rape.
5. Robbery.
6. Assault in which a dangerous injury is inflicted.
7. Arson.
8. Breaking or entering any premises with intent to commit an offence, whether at common law or in contravention of any statute.
9. Theft, receiving any stolen property knowing that it has been stolen, fraud, forgery or uttering a forged document knowing it to be forged, if the amount or value involved in any such offence exceeds one hundred pounds.
10. Any offence under any law relating to illicit possession of or dealing in precious metal or precious stones.
11. Any offence relating to the coinage.
12. Any conspiracy, incitement or attempt to commit any of the above-mentioned offences.

"PART III.

OFFENCES WHICH MAY BE COMPOUNDED UNDER SECTION 321 *bis*.

Any contravention of a bye-law or regulation made by or for a council, board or committee referred to in section 321 *bis*.

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."

Schedule B.

(Substituted for Fourth Schedule to Act 31 of 1917.)

"FOURTH SCHEDULE.

OFFENCES ON CONVICTION WHEREOF THE OFFENDER CANNOT BE DEALT WITH UNDER SECTION 360.

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."

Schedule C.

LAWS REPEALED BY SECTION 116 OF THIS ACT.

Province or Union.	No. and year of law.	Title or subject of law.	Extent of repeal.
Cape ..	Ord. No. 10 of 1845.	Concealment of Birth.	In so far as it is still unrepealed.
Natal ..	Ord. No. 10 of 1845.	Concealment of Birth.	In so far as it is still unrepealed.
" ..	Act No. 37 of 1899.	"For the better protection of women and children."	In so far as it is still unrepealed.
Transvaal	Law No. 4 of 1892.	Concealment of Birth.	In so far as it is still unrepealed.
"	Act No. 38 of 1909.	Criminal Law Amendment Act, 1909.	Paragraph (3) of section three.
Orange Free State.	Law Book, Chapter 119.	"Wet over den Diamanhandel"	Section <i>thirty-one</i> .
"	Law Book, Chapter 141.	Concealment of Birth.	In so far as it is still unrepealed.
Union ..	Act No. 31 of 1917.	Criminal Procedure and Evidence Act, 1917.	Sections <i>sixty-one</i> ; <i>one hundred and seventy-four</i> ; <i>one hundred and eighty-two</i> ; the proviso to sub-section (1) of section <i>three hundred and fifty</i> .
" ..	Act No. 32 of 1917.	Magistrates' Courts Act 1917.	Section <i>one hundred and six</i> .
" ..	Act No. 13 of 1921.	Magistrates' Courts Act Amendment Act, 1921.	Section <i>five</i> .
" ..	Act No. 39 of 1926.	Criminal and Magistrates' Courts Procedure (Amendment) Act, 1926.	Sub-sections (2), (3), (4) and (5) of section <i>one</i> .
" ..	Act No. 30 of 1928.	Liquor Act, 1928.	Sub-section (3) of section <i>one hundred and seventy-one</i> .
" ..	Act No. 17 of 1932.	Magistrates' Courts (Amendment) Act, 1932.	Sections <i>four</i> , <i>seven</i> and <i>eight</i> .