

No. 32, 1952.]

ACT

To amend the Libel Act, 1882 of the Cape of Good Hope, the Shipping Casualties Law, 1883 of Natal, the Better Administration of Justice Act, 1896 of the Cape of Good Hope, the South Africa Act, 1909, the Justices of the Peace and Oaths Act, 1914, the Removal or Modification of Restrictions on Immovable Property Act, 1916, the Marriage Officers' Act, 1916, the Criminal Procedure and Evidence Act, 1917, the South West Africa Affairs Act, 1922, the Female Jurors' Act, 1931, the Attorneys, Notaries and Conveyancers' Admission Act, 1934, the Insolvency Act, 1936, the Arms and Ammunition Act, 1937, the Children's Act, 1937, the General Law Amendment Act, 1949, to the appointment of deputy sheriffs and deputy bailiffs, to wills, to contracts, and to evidence.

(Afrikaans text signed by the Governor-General.)
(Assented to 12th May, 1952.)

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

1. Section *ten* of the Libel Act, 1882, of the Cape of Good Hope, is hereby amended by the substitution for the words "six months" of the words "one year".

Amendment of section 10 of Act 46 of 1882 (Cape).

2. Sections *two* and *four* of the Shipping Casualties Law, 1883, of Natal, are hereby amended by the substitution in each case for the word "Governor" of the words "Minister of Justice."

Amendment of sections 2 and 4 of Law 10 of 1883 (Natal).

3. Section *fifty-five* of the Better Administration of Justice Act, 1896, of the Cape of Good Hope, is hereby amended—

Amendment of section 55 of Act 35 of 1896 (Cape).

(a) by the insertion after the word "jurisdiction" of the words "of the Cape Provincial Division of the Supreme Court";

(b) by the substitution for the words "the respective Judges President" of the words "any judge"; and

(c) by the deletion of the words after the word "courts".

4. Section *one hundred and five* of the South Africa Act, 1909, is hereby repealed and the following new section substituted therefor:

Substitution of new section for section 105 of the South Africa Act, 1909, as amended by section 105 of Act 46 of 1935.

"Appeals from Inferior Courts to Provincial Divisions and to the Appellate Division.

105. (1) In every case, civil or criminal, in which at the establishment of the Union an appeal might have been made from a Court of resident magistrate or other inferior court to a superior court in any of the Colonies, the appeal shall be made to the corresponding division of the Supreme Court of South Africa, but there shall be no further appeal against any judgment given on appeal by such division except to the Appellate Division, and then only if such corresponding division has given special leave to appeal.

(2) (a) If such corresponding division refuses special leave to appeal, the party aggrieved may, within twenty-one days of such refusal or within such extended period as may on good cause be allowed, by petition addressed to the Chief Justice, submit his application for special leave to appeal to the Appellate Division.

(b) The petition may be considered in chambers by the Chief Justice or by any other judge of the Appellate Division to whom it may be referred by the Chief Justice.

(c) The judge considering the petition may—

(i) order that the application be argued before him at a time and place appointed;

or, whether he has acted under this paragraph or not;

- (ii) grant or refuse the application; or
 - (iii) refer the matter to the Appellate Division for consideration, whether upon argument or otherwise, and the Appellate Division may then grant or refuse the application.
- (d) The decision of a judge of the Appellate Division or of the Appellate Division (as the case may be) to grant or refuse the application shall be final.
- (e) Notice shall be given by the Registrar of the Appellate Division to the applicant and the respondent of the date fixed for the hearing of any application under this sub-section and of any place appointed under paragraph (c) for any hearing.

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

5. Section *eight bis* of the Justices of the Peace and Oaths Act, 1914 (Act No. 16 of 1914), is hereby amended by the substitution for sub-section (1) of the following new sub-section:

Amendment of section 8*bis* of Act 16 of 1914, as inserted by section 3 of Act 14 of 1939.

- “(1) (a) Every person appointed by the Government of the Union to hold or to act in any of the following offices, may, during his tenure thereof or while acting therein, within the country in which or at the place at which he exercises the functions of the office, administer any oath or affidavit or take a solemn or attested declaration viz.:—High Commissioner or deputy high commissioner, secretary, assistant secretary, political secretary, chief clerk, principal clerk or senior clerk in the office of a high commissioner; ambassador; minister; chargé d'affaires en titre; chargé d'affaires ad interim; counsellor of legation, secretary (first, second or third) of legation; permanent representative to the United Nations; consul-general; consul; vice-consul; head of a military mission; senior trade commissioner; trade commissioner; assistant trade commissioner; commercial secretary; commissioner; passport control officer or assistant passport control officer.
- (b) The Minister of Justice may, by notice in the *Gazette*, amend paragraph (a) by the deletion of any office mentioned therein or the addition thereto of any office.
- (c) Every person appointed to be a commissioner of the Supreme Court of South Africa in relation to a particular matter may, in relation to that matter, and every person appointed to be a commissioner of the Supreme Court of South Africa generally may, while his appointment remains unrevoked, at any place outside the Union, administer any oath or affidavit or take a solemn or attested declaration.”.

6. Section *two* of the Removal or Modification of Restrictions on Immovable Property Act, 1916, is hereby amended by the substitution in paragraph (a) for the words “the Master or some other person” of the words “some person”.

Amendment of section 2 of Act 2 of 1916, as substituted by section 1 of Act 20 of 1924.

7. (1) Section *one* of the Marriage Officers' Act, 1916 (Act No. 43 of 1916), is hereby amended—

Amendment of section 1 of Act 43 of 1916.

- (a) by the substitution in sub-section (1) for the words “and every detached assistant magistrate” of the words “additional magistrate, assistant magistrate, special justice of the peace, Native Commissioner, additional Native Commissioner or assistant Native Commissioner”;
- (b) by the insertion after the word “officer” where it occurs for the first time, in sub-section (2) of the words “or employee”.

(2) The provisions of sub-section (1) shall be deemed to have been in operation as from the twenty-second day of June, 1916, and where any officer or employee in the public service has been appointed as a marriage officer in terms of sub-section (2) of section *one* of the Marriage Officers' Act, 1916, but has performed certain acts as a marriage officer in anticipation of his appointment as such, such acts are hereby validated.

8. Section *three hundred and sixty-nine* of the Criminal Procedure and Evidence Act, 1917, is hereby amended by the deletion of sub-section (9).

Amendment of section 369 of Act 31 of 1917, as substituted by section 7 of Act 37 of 1948.

9. Section *two* of the South-West Africa Affairs Act, 1922, is hereby amended by the substitution of the following new sub-section, for sub-section (1):

Amendment of section 2 of Act 24 of 1922.

“(1) (a) Whenever an officer in the Union or the territory of South-West Africa lawfully issues—

- (i) a warrant for the apprehension of any person who is alleged to have committed an offence punishable by any court; or
- (ii) an order for the apprehension of a person who is alleged to have failed to fulfil the conditions of any order made by any court or recognizances entered into in pursuance of such order under any law relating to the suspension or postponement of sentences following upon conviction in criminal cases;

and it is made to appear to that officer, or to any other officer who might have lawfully issued such warrant or order, that the person whose apprehension is authorized thereby resides or is for the time being in a district in the said territory or the Union (as the case may be), such officer shall transmit the warrant or order to a magistrate of that district.

- (b) Upon receiving a warrant or order transmitted as provided in paragraph (a), the magistrate in question shall endorse upon the warrant or order his order authorizing the execution of the said warrant or order against the person in respect of whom it has been issued, wherever he may be found in that district, and his conveyance to the court having jurisdiction to try or to the magistrate having jurisdiction to hold a preparatory examination as to the alleged offence, or to the court which suspended or postponed the sentence, as the case may be.
- (c) A warrant or order, endorsed as provided in paragraph (b), shall confer authority on any police officer named therein, or on any other police officer to whom it may be entrusted by such police officer so named, to execute the same, according to its tenor, throughout the district for which it is endorsed.
- (d) As soon as the person against whom the warrant or order has been issued has been brought before the court or magistrate in question in terms of the said warrant or order, he shall be in the same position in respect of admission to bail as he would have been if apprehended in the district wherein that court or magistrate sits: Provided that the magistrate of the district in which such person is apprehended may admit such person to bail, on condition that he appears on or before such date as may be ordered, before the court or the magistrate in question, in fulfilment of the terms of the said warrant or order.”

10. Section *two* of the Female Jurors' Act, 1931, is hereby amended by the substitution for the word “November” of the word “May”.

Amendment of section 2 of Act 20 of 1931.

11. The Attorneys Notaries and Conveyancers Admission Act, 1934, is hereby amended by the insertion of the following section after section *seventeen*:

Insertion of new section 17bis in Act 23 of 1934.

“Cession of articles registered in South-West Africa. 17bis. (1) Articles registered in the territory of South-West Africa in terms of the Law Society (South-West Africa) Private Proclamation, 1921 (Proclamation No. 32 of 1921 of South-West Africa), may be ceded to an attorney practising in the Union, if the article clerk has served not less than one year of such articles in the said territory, and any period so served in the territory shall be accepted as a portion of the term required to be served under the provisions of section six: Provided that the said clerk serves not less than one year of such term in the Union.

(2) Service under articles in the Union after cession in terms of sub-section (1) shall be deemed, for the purposes of the said proclamation to be service under articles with an attorney practising in the said territory.”

12. Section *thirty-four* of the Insolvency Act, 1936, is hereby amended by the deletion of sub-section (1) and the substitution thereof of the following new sub-section: Amendment of section 34 of Act 24 of 1936.

“(1) If a trader alienates any business belonging to him, or the goodwill of such business or any goods or property forming part thereof (except in the ordinary course of that business) and such trader does not publish a notice of such intended alienation in the *Gazette*, and in two issues of an Afrikaans and two issues of an English newspaper circulating in the district in which that business is carried on, within a period not less than thirty days and not more than sixty days before the date of such alienation, the said alienation shall be void as against his creditors for a period of six months after such alienation, and shall be void against the trustee of his estate, if his estate is sequestrated at any time within the said period.”

13. Section *one hundred* of the Insolvency Act, 1936, is hereby amended— Amendment of section 100 of Act 24 of 1936.

(a) by the substitution for the word “fifty” in sub-section (1) of the words “one hundred”;

(b) by the addition to the said sub-section of the following paragraph:

“For the purposes of this sub-section a commercial traveller engaged on a commission basis shall be deemed to be an employee engaged by the month, and his commission earned during any calendar month shall be regarded as his salary or wages.”;

(c) by the substitution in sub-section (2) for the word “fourteen” of the words “twenty-one”.

14. Section *one hundred and thirty-five* of the Insolvency Act, 1936, is hereby amended by the insertion in paragraph (b) of sub-section (3) after the word “dependents” of the words “or being a trader, alienated any business belonging to him, or the goodwill of such business or any goods or property forming part thereof not in the ordinary course of that business, without publishing a notification of his intention so to alienate in the *Gazette*, and in a newspaper, in terms of the provisions of sub-section (1) of section *thirty-four*”. Amendment of section 135 of Act 24 of 1936.

15. Section *two* of the Arms and Ammunition Act, 1937, is hereby amended by the addition at the end thereof of the following sub-sections: Amendment of section 2 of Act 28 of 1937.

“(6) No person shall import into the Union (whether for use therein or for transit through any part of the Union) any arm which has no manufacturers’ serial number or other number by which it may be identified, stamped or engraved on the metal of the arm.

(7) No person shall, after the expiry of a period of six months as from the coming into operation of the provisions of sub-section (6), be in possession of any arm referred to in the said sub-section.”

16. Section *eight* of the Arms and Ammunition Act, 1937, is hereby amended by the insertion of the following new sub-section after sub-section (4): Amendment of section 8 of Act 28 of 1937

“(4)bis. (a) For the purposes of the said enquiry the magistrate may summon any witness, and take on oath any evidence he may deem necessary.

- (b) In regard to the summoning of such witnesses, the law relating to the compulsion of the attendance of witnesses at criminal trials shall apply *mutatis mutandis* in all respects."

17. Section *twenty-three* of the Arms and Ammunition Act, 1937, is hereby amended— Amendment of section 23 of Act 28 of 1937.

- (a) by the insertion in sub-section (2), before the word "any", of the words "or be in possession of";
- (b) by the insertion in the said sub-section, before the word "unless", where it occurs for the second time, of the words "except in pursuance of a permit granted under sub-section (3),"; and
- (c) by the addition at the end thereof, of the following sub-section:
- “(3) A magistrate may, on application, grant to any person a permit to acquire or to be in possession of any ammunition as a curiosity or ornament, without being in lawful possession of an arm capable of firing that ammunition.”.

18. Section *thirty-two* of the Arms and Ammunition Act, 1937, is hereby amended by the deletion of the words "and any person in possession of any ammunition", and of the words "to have acquired such". Amendment of section 32 of Act 28 of 1937.

19. Section *thirty-five* of the Arms and Ammunition Act, 1937, is hereby amended by the substitution for paragraph (g) of the following new paragraph: Amendment of section 35 of Act 28 of 1937.

- “(g) if he is a person of the age of eighteen years or more, who has not been declared to be unfit to possess an arm, in terms of section *eight* or *nine*, on the instruction of his employer (including, in the case of a corporate body, a duly authorized official of such corporate body) or of his parent or grandparent, possess an arm for which such official, parent or grandparent holds a licence, for the purpose of protecting any property belonging to or in the care or custody of such licensed person, parent or grandparent, or any premises occupied by such person, or for the purpose of protecting any game on any land owned or occupied by such person: Provided that a person who is not a European shall not possess an arm in terms of this paragraph, unless the magistrate of the district in which the property, premises or land is situated—

- (i) is satisfied that the possession of an arm by the person in question is necessary for any purpose set out as aforesaid; and
- (ii) is satisfied that the said person is not likely to abuse the right to possess an arm; and
- (iii) has authorized that person, in writing, to possess an arm for the purpose of protecting any property, premises or game as aforesaid;

provided further that such magistrate may at any time cancel any such authority; and provided further that these provisions shall apply to Natives who are living on land owned by the South African Native Trust and who for the purposes of this paragraph shall be taken to be employees of the Trust.”.

20. The following new section is hereby inserted in the Children's Act, 1937 (Act No. 31 of 1937), after section *one hundred and seven*: Insertion of new section 107bis in Act 31 of 1937.

“Conviction of child not to operate as disqualification. **107bis.** A conviction of a child, whether before or after the commencement of the General Law Amendment Act, 1952, shall not disqualify such child for employment in the service of the State or of a local authority or for employment in or the exercise of any profession, trade or occupation.”.

21. Section *nine* of the General Law Amendment Act, 1949, is hereby amended by the deletion of paragraph (ii) of the proviso to sub-section (1). Amendment of section 9 of Act 54 of 1949.

22. Section *ten* of the General Law Amendment Act, 1949, is hereby amended by the deletion of sub-section (5). Amendment of section 10 of Act 54 of 1949.

23. Whenever in any matter objection is made to the service or execution of process of a superior court by a deputy sheriff by reason of the interest of such deputy sheriff in such Appointment of acting deputy sheriffs and acting deputy bailiffs.

matter, of his relationship to a party to such matter, or of any other good cause of challenge, or whenever, by reason of the illness or absence of a deputy sheriff or of the deputy bailiff of the Native High Court of Natal, or for any other good and sufficient reason, it is necessary to appoint an acting deputy sheriff, or acting deputy bailiff, the sheriff concerned, or the bailiff of the said Native High Court, as the case may be, may, in his discretion, appoint a person so to act: Provided that any acting appointment made as aforesaid shall, in respect of any period exceeding one month, be subject to the approval of the Minister of Justice.

24. Whenever according to the terms of the will of a testator who dies after the date of commencement of this Act, a predeceased child of that testator would have become entitled to any benefit under that will if he had survived the testator, the lawful descendants of that child shall be entitled *per stirpes* to that benefit, unless the terms of the will indicate a contrary intention.

Descendants of predeceased child of testator entitled to benefit under will.

25. In the provinces of Natal and the Transvaal no contract shall be void or voidable by reason merely of *laesio enormis* sustained by either of the parties to such contract.

The doctrine of *laesio enormis* abolished in Natal and the Transvaal.

26. (1) In any proceedings in which the time at which the sun rose or set at a particular place in the Union or a particular day is relevant, the tables described in sub-section (2) shall on their mere production by a party to the proceedings, be admissible as evidence of the time at which the sun rose or set, as the case may be, at that place on that day.

Tables of sunrise and sunset.

(2) The tables referred to in sub-section (1) are tables relating to sunrise and sunset in the Union or in any part thereof, which may be prepared from time to time by an astronomer in charge of the Union observatory (or of any official observatory which may hereafter be established), and published with the approval of the Minister of Justice, signified by notice in the *Gazette*.

(3) The Minister of Justice may at any time withdraw any notice under sub-section (2) and thereupon the tables to which it relates shall, for the purposes of this section, cease to be tables approved by him.

27. This Act shall be called the General Law Amendment Act, 1952.

Short title.