

## ORDER NO. 9 OF 1988

*Subordinate Courts Order, 1988*

## ORDER

To consolidate and amend the law relating to subordinate courts and to provide for matters connected therewith.

*Part I — Preliminary*

1. This Order may be cited as the Subordinate Courts Order, 1988, and shall come into operation on a date to be fixed by the Minister by notice in the Gazette. Short title and commencement
2. In this Order, unless the context otherwise requires, Interpretation
  - "court" means a subordinate court established under section 3(1);
  - "district" means the area within which a court has jurisdiction in accordance with section 15(2);
  - "High Court" means the High Court established under section 2 of the High Court Act, 1978; A. 5 of 1978
  - "immovable property" includes every right or interest to and in any building and other fixtures erected within Lesotho with the consent of the Government express or implied;
  - "judge" means a judge of the High Court;
  - "judgment" in civil cases includes a sentence, decree, rule or order;
  - "judicial officer" means any officer appointed under section 5 of the Judicial Service Commission Act, 1983; A. 7 of 1983
  - "magistrate" means a person appointed to be a magistrate under section 5;
  - "messenger of court" means any officer duly appointed to execute the sentences, decrees, judgments, writs, summons, rules, orders, commands and processes of a subordinate court and includes a deputy-messenger, assistant messenger, and in the absence of any such appointment, a member of the Royal Lesotho Mounted Police;
  - "Minister" means the Minister responsible for Justice and Prisons;
  - "offence" means an act or omission punishable by law;
  - "sheriff" means any officer duly appointed to execute the sentences, decrees, judgments, writs, summonses, rules,

orders, commands and processes of the High Court, and includes a deputy-sheriff; and, in the absence of any such appointment, a Colonel or a Major of the Royal Lesotho Mounted Police.

## *Part II — Courts*

Constitu-  
tion of  
courts

3. (1) The Minister may, with the concurrence of the Chief Justice, by notice in the Gazette, constitute such courts subordinate to the High Court as he may think fit.

(2) Courts constituted under subsection (1) shall be known as subordinate courts.

Who may  
hold courts,  
etc.

4. (1) A subordinate court shall be presided over by a magistrate appointed under section 5.

(2) Subject to subsection (3), Magistrates shall be entitled to exercise powers and jurisdiction of such class as are conferred by or under this Order, and such additional jurisdiction as may be conferred on them specifically under any other law.

(3) Save as otherwise provided under any other law or the rules made by the Chief Justice under section 81, the court of any class may take cognizance of and make orders in relation to any preliminary or interlocutory proceedings in any case which would otherwise be within the jurisdiction only of a subordinate court of a greater jurisdiction.

(4) A reference in this Order or in any other written law to a subordinate court of the Chief Magistrate, the Senior Resident Magistrate, the Resident Magistrate, the First, Second or Third class magistrates shall be construed as a reference to a subordinate court presided over by a magistrate entitled to exercise powers and jurisdiction of a corresponding class.

Appoint-  
ment and  
classes of  
magistrates.  
A. 7 of 1983

5. (1) Subject to section 5 of the Judicial Service Commission Act, 1983, the King may, in consultation with the Judicial Service Commission, appoint persons to be magistrates or acting magistrates of the classes specified in subsection (3).

(2) A person who, on the commencement of this Order, holds office as a magistrate or acting magistrate of any class, as from that date, holds the corresponding office as if he had been appointed to do so in accordance with this section.

(3) Magistrates shall be of the following classes,

- (a) Chief Magistrate;
- (b) Senior Resident Magistrate;
- (c) Resident Magistrate;
- (d) First Class Magistrate;
- (e) Second Class Magistrate; and
- (f) Third Class Magistrate.



6. (1) Every subordinate court shall be a court of record.

Nature of  
Subordinate  
Courts and  
force and  
effect of  
process

(2) Every summons, subpoena, writ, warrant or other process issued out of any court shall be of force throughout Lesotho and may be served or executed therein by the messenger of that or any other court.

7. (1) Subject to the exceptions provided in this Order or in any other law in force in Lesotho, the proceedings in subordinate courts in all criminal cases and the trial of all defended civil actions shall be carried on in open court, and not otherwise, and the pleadings in civil cases and the record of proceedings in civil as well as criminal cases shall be in the English language:

Courts to be  
open to the  
public with  
exceptions

Provided that the Chief Justice may by rules made under section 81, direct that in any particular court or class of court the pleadings and proceedings of the court may be in the Sesotho language.

(2) Subject to the Children's Protection Act, 1980, the trial of any child who is, in the opinion of the court, less than 18 years of age may be held in camera and in some other place than an ordinary court room:

A. 6 of 1980

Provided that in such case, the parent or guardian of such child shall have the right to be present.

(3) The Court may, in any case, in the interest of good order or public morals, direct that a trial shall be held in camera or that, with such exceptions as the court may direct, female minors or the public generally shall not be permitted to be present.

(4) If any person present in court disturbs the peace or order thereof, the court may order that person to be removed or detained in custody until the rising of the court, or, if in the opinion of the court, peace cannot otherwise be secured, may order the court room to be cleared and the doors thereof to be closed to the public.

(5) Except where it may otherwise be provided by law, every witness in a criminal case shall deliver his evidence *viva voce* and in open court:

Provided that where any witness is unable on account of ill-health or advanced age to attend the court, his evidence may be taken in the presence of the presiding officer, the prosecutor, the accused person and the legal representative, if any, of the accused person, at such place as may seem to the court most convenient.

8. The records and proceedings of the court shall in all cases be accessible to the public under the supervision of an officer of the court at convenient times and upon payment of such fees as may be prescribed by rules:

Public  
access to  
records

Provided that after a period of thirty years has expired from the date of judgment in such proceedings, the Minister may order the removal of such records and proceedings to a central place of custody.

### Part III — Officers of the Court

Clerk of  
court

9. (1) There may be appointed for every court so many clerks of the court and assistant clerks of the court as may be necessary.

(2) A refusal by the clerk of the court to do any act which he is empowered by this Order to do shall be subject to review by the court on application either *ex parte* or on notice as the circumstances may require.

Messengers  
of court

10. Any magistrate may, subject to the approval of the Registrar of the High Court, appoint messengers and deputy-messengers of the court, subject to such conditions as to remuneration and tenure of office as the Registrar of the High Court may determine.

Service of  
process by  
the police

11. Whenever process of the court in a civil case is to be served and no messenger or deputy messenger has been appointed at the place where the court is held, or whenever process of the court in a criminal case is to be served, a member of the Royal Lesotho Mounted Police shall be as qualified to serve all such process and all other documents in such a case as if he had been duly appointed deputy messenger.

Messenger's  
returns to be  
evidence

12. The written return of a messenger or of any person authorized to perform any of the functions of a messenger to any process of the court shall be *prima facie* evidence of the matters therein stated.

Suspension  
of messenger  
for mis-  
conduct

13. (1) A messenger who is alleged to have been negligent or dilatory in the service or execution of process, or to have knowingly or wilfully demanded payment of more than his proper fees or expenses, or to have made a false return, or in any other manner to have misconducted himself in connection with his duties, may, pending investigation, be suspended from office and profit by the presiding officer, who may appoint a person to act in his place during the period of suspension.

(2) The presiding officer shall report forthwith to the Registrar of the High Court any action he has taken under this section and the Registrar of the High Court may, after investigation, set aside the order of suspension or may confirm it and may also dismiss from his office the messenger who has been so suspended.

Officers  
appointed  
previously  
to remain in  
office

14. Every officer of the court holding office immediately prior to the commencement of this Order shall be deemed to be duly appointed under this Order and shall be invested with power, duties and authority accordingly.



#### *Part IV — Local Limits of Jurisdiction*

15. (1) The area within which the Chief Magistrate or Senior Resident Magistrate or a Resident Magistrate may exercise powers and jurisdiction conferred by this Order shall extend to the whole country. Local limits of jurisdiction

(2) The area within which any other magistrate may exercise the powers and jurisdiction conferred by this Order or by any other law shall extend to the district to which he is posted.

#### *Part V — Civil Jurisdiction*

16. Save as otherwise provided by this Order or by any other law, the persons in respect of whom the court shall have jurisdiction shall be, Jurisdiction in respect of persons

- (a) any person who resides, carries on business, or is employed within the district;
- (b) any partnership whose business premises are situated, or any member whereof resides, within the district;
- (c) any person whatever, in respect of any proceedings incidental to any action or proceedings instituted in the court by such person himself;
- (d) any person, whether or not he resides, carries on business, or is employed within Lesotho, if the cause of action arose wholly within the district;
- (e) any party to interpleader proceedings, if,
  - (i) the execution creditor and every claimant to the subject matter of the proceedings reside, carry on business, or are employed within the district; or
  - (ii) the subject matter of the proceedings has been attached by process of the court;
- (f) any defendant, whether in convention or reconvention, who appears and takes no objection to the jurisdiction of the court.

17. (1) Subject to this Order, the court, with regard to causes of action, shall have jurisdiction, Jurisdiction in respect of causes of action

- (a) in any action founded upon any bill of exchange, promissory note, good for, bond or other written acknowledgement of debt, commonly called "a liquid document", to an amount not exceeding,
  - (i) in the case of a Chief Magistrate's Court, M10,000 and any interest due thereon;
  - (ii) in the case of a Senior Resident Magistrate's Court, M8,000 and any interest due thereon;
  - (iii) in the case of a Resident Magistrate's Court, M7,000 and any interest due thereon;
  - (iv) in the case of a subordinate court of the First Class, M6,000 and any interest due thereon; and

- (v) in the case of a subordinate court of the Second Class, M5,000 and any interest due thereon;
- (b) in any action in which is claimed the delivery of any property, movable or immovable, where the value of such property does not exceed,
  - (i) in the case of a Chief Magistrate's Court, M10,000;
  - (ii) in the case of a Senior Resident Magistrate's court, M8,000;
  - (iii) in the case of a Resident Magistrate's Court, M7,000;
  - (iv) in the case of a subordinate court of the First Class, M6,000;
  - (v) in the case of a subordinate court of the Second Class, M5,000;

which claim may, subject to section 26, be in lieu of or in addition to any other claim, including a claim for the cancellation of any agreement relating to such property;

- (c) in any action of ejectment against the occupier of any house, land or premises within the district;
- (d) in any action in which the claim or the value of the subject matter in dispute does not exceed the amount specified in paragraph (b) in respect of the jurisdiction of each of the various categories of subordinate courts; or
- (e) such other jurisdiction as shall be specially conferred by any other law.

(2) If, at any time after the issue of summons, it appears to the court that the action is within the jurisdiction of any other court established within Lesotho, other than the High Court, and would be more conveniently dealt with in such other court, the court may transfer the action to such other court.

#### Arrests and interdicts

18. (1) Subject to the limits prescribed by this Order, the court may grant against persons and things, orders for arrest *tanquam suspectus de fuga*, attachments, interdicts and *mandamenten van spolie*.

(2) Confirmation by the court of any such attachment or interdict in the judgment in the action shall operate as an extension of the attachment or interdict until execution or further order of the court.

(3) No order of personal arrest *tanquam suspectus de fuga* shall be made unless the following conditions are complied with,

- (a) the cause of action appears to amount, exclusive of costs, to at least M100;
- (b) the applicant appears to have no security for the debt, or only security falling short of the amount of the debt by at least M100; and
- (c) it appears that the respondent is about to remove from Lesotho.



19. The court may appoint a *curator ad litem* in any case in which a curator is required or allowed by law for a party to any proceedings brought or to be brought before the court. *Curator ad litem*

20. In any action the court may summon to its assistance one or more persons to sit and act as assessors in an advisory capacity. *Assessors*

21. (1) The court may, on the application of the party in whose favour a judgment has been given, rescind or vary such judgment in the absence of the party against whom the judgment was granted, provided such last-mentioned party has received notice of the application and has been given an opportunity to appear at the hearing of the same. *Rescission of judgment*

(2) The court may rescind or vary any judgment granted by it which was *void ab origine* or was obtained by fraud or by mistake common to the parties.

(3) The court may correct patent errors in any judgment in respect of which no appeal is pending.

(4) The court may rescind or vary any judgment in respect of which no appeal lies.

(5) The court may rescind the judgment at the instance of the party against whom judgment has been granted, on good cause shown, on such terms and conditions as the court deems fit:

Provided that the person in whose favour the judgment was granted has received notice of the application by the other party.

22. (1) In actions wherein the sum claimed, being within the jurisdiction, is the balance of an account, the court may inquire into and take evidence if necessary upon the whole account, even though such account contains items and transactions exceeding the amount of the jurisdiction. *Incidental jurisdiction*

(2) Where the amount claimed or other relief sought is within the jurisdiction, such jurisdiction shall not be ousted merely because it is necessary for the court, in order to arrive at a decision, to give a finding upon a matter beyond the jurisdiction.

(3) In considering whether a claim is or is not within the jurisdiction, no prayer for interest on the principal sum claimed or for costs or for general or alternative relief shall be taken into account.

23. (1) In order to bring a claim within the jurisdiction, a plaintiff may, in his summons or at any time thereafter, explicitly abandon part of such claim. *Abandonment of part of claim*

(2) If any part of a claim is so abandoned it shall be thereby finally extinguished:

Provided that if the claim is upheld in part only, the abandonment shall be deemed first to take effect upon that part of which the claim is not upheld.

Deductions  
of admitted  
debt

24. In order to bring a claim within the jurisdiction, a plaintiff may, in his summons or at any time after the issue thereof, deduct from his claim, whether liquidated or unliquidated, any amount admitted by him to be due by himself to the defendant.

Splitting of  
claims dis-  
allowed

25. A substantive claim exceeding the jurisdiction may not be split with the object of recovering the same in more than one action, if the parties to all such actions would be the same and the point at issue in all such actions would also be the same.

Jurisdiction  
cumulative

26. (1) If two or more claims, each based upon a different cause of action, are combined in one summons, the court shall have the same jurisdiction to decide each such claim as it would have had if each claim had formed the sole subject of a separate action.

(2) If a claim for the confirmation of an interdict or arrest granted *pendente lite* is joined in the same summons with a claim for relief of any other character, the court shall have the same jurisdiction to decide each such claim as it would have had if each claim had formed the sole subject of a separate action, even though all the claims arise from the same cause of action.

Application  
of sections  
20 to 26 to  
claims in  
reconven-  
tion

27. In sections 20 to 26 inclusive, "action", "claim", and "summons" include "claim in reconvention" and "plaintiff" and "defendant" include "plaintiff in reconvention" respectively.

Jurisdiction  
by consent  
of parties

28. Subject to section 29, the court shall have jurisdiction to determine any action or proceeding otherwise beyond the jurisdiction, if the parties consent in writing thereto.

Matters  
beyond  
jurisdiction  
of subordi-  
nate courts

29. The court shall have no jurisdiction in matters,

- (a) in which the dissolution of a marriage or separation from bed and board or of goods of married persons is sought, save as provided by any other law;
- (b) in which the validity or interpretation of a will or other testamentary document is in question;
- (c) in which the status of a person in respect of mental capacity is sought to be affected; except as provided by any law relating to mental health;
- (d) in which is sought the specific performance of an act without an alternative of payment of damages, except the rendering of an account in respect of which the claim does not exceed an amount within the jurisdic-



tion of the court, or the delivery or transfer of property not exceeding in value the jurisdiction of the court;

- (e) in which is sought a decree of perpetual silence;
- (f) in which provisional sentence is sought.

30. (1) When in answer to a claim within the jurisdiction, the defendant sets up a counterclaim exceeding the jurisdiction, the claim shall not on that account be dismissed; but the court may, if satisfied that the defendant has reasonable prospect of recovering an amount exceeding such jurisdiction, stay the action for a reasonable period in order to enable him to institute an action in a competent court.

Counter-  
claim  
exceeding  
jurisdiction

The plaintiff in the court in which the action was originally instituted may, notwithstanding his action therein, counterclaim in such competent court, and in that event all questions as to the costs incurred shall be decided by that competent court.

(2) If the period for which such action has been so stayed has expired and the defendant has failed to issue and serve a summons in a competent court in relation to the matters the subject of such counterclaim, the court in which the action was originally instituted shall, upon application, either,

- (a) stay the action for a further reasonable period; or
- (b) dismiss the counterclaim, whether the defendant does or does not reduce such counterclaim to an amount within the jurisdiction of the court.

(3) If the defendant has failed to institute action within such further period, or if the action instituted by the defendant is stayed, dismissed, withdrawn, or abandoned, or if the competent court has granted absolution from the instance thereon, the court in which the action was originally instituted shall, upon application, dismiss the counterclaim and shall proceed to determine the claim.

31. The court may, as the result of the trial of an action, grant,

Judgment

- (a) judgment for the plaintiff in respect of his claim in so far as he has proved the same;
- (b) judgment for the defendant in respect of his defence in so far as he has proved the same;
- (c) absolution from the instance, if it appears to the court that the evidence does not justify the giving of judgment for either party;
- (d) such judgment as to costs as may be just.

*Part VI — Witnesses and Evidence in Civil Actions*

Modes of  
procuring  
attendance  
of witnesses  
and penalty  
for non-at-  
tendance

32. (1) Any party to any civil action or other proceeding where the attendance of witnesses is required may procure the attendance of any witness, whether residing within or is for the time being within the district or not, in the manner in the rules provided.

(2) If any person,

(a) being duly subpoenaed to give evidence or to produce any books, papers or documents in his possession or under his control, which the party requiring his attendance desires to show in evidence, fails, without lawful excuse, to attend or to give evidence or to produce those books, papers or documents according to the subpoena; or

(b) unless duly excused, fails to remain in attendance throughout the trial,

the court may, upon being satisfied upon oath or by the written return of the messenger that such person has been duly subpoenaed and that his reasonable expenses have been paid or offered to him, impose upon the said person a fine of M50 for his default, and in default of payment, imprisonment for a period of one month.

(3) If a person so subpoenaed fails to appear or, unless duly excused, to remain in attendance throughout the trial, the court may also, upon being satisfied as aforesaid and in case no lawful excuse for such failure seems to the court to exist, issue a warrant for his apprehension in order that he may be brought up to give his evidence and to be otherwise dealt with according to law.

(4) The court may, on cause shown, remit the whole or any part of any fine or imprisonment which it may have imposed under this section.

(5) The court may order the costs of any postponement or adjournment occasioned by the default of a witness, or any portion of such costs, to be paid out of any fine imposed upon such witness.

Interroga-  
tories

33. (1) Whenever a witness resides or is in a district other than that wherein the case is being heard, the court may, if it appears to be consistent with the ends of justice, upon the application of either party, approve of such interrogatories as either party shall desire to have put to such witness and shall transmit the same, together with any further interrogatories framed by the court, to the court of the district within which such witness resides or is.

(2) The last-mentioned court shall thereupon subpoena such witness to appear, and upon his appearance shall take his evidence in manner and form as if he were a witness in a case



pending before that court, and shall put to the witness the said interrogatories and such other questions as may seem to it necessary to obtain full and true answers to the interrogatories, and shall record the evidence of the witness and shall transmit such record to the court in which such case is pending. The said record shall, subject to all lawful objections, be received as evidence in that case.

(3) Every witness so subpoenaed to appear shall be liable to the like penalties in case of non-attendance or failure to give evidence or to produce books, papers or documents as if he had been subpoenaed to give evidence in the court of the district in which he resides or for the time being, within which he is.

34. (1) The court may, in any case which is pending before it, where it may be necessary or expedient and consistent with the ends of justice so to do, appoint a person to be a Commissioner to take the evidence of any witness, whether within Lesotho or elsewhere, upon the request of one of the parties to such case and after due notice to the other party.

Commis-  
sions  
de bene esse

(2) The person so appointed shall put to such witness such questions as have been transmitted to him on agreement between the parties, or otherwise shall allow the parties to examine such witness, and shall be permitted himself to examine such witness as if the witness were being examined in court, and shall record the evidence or cause it to be recorded, whereupon the evidence taken down shall be read over to the witness and shall be signed by him.

(3) The said record shall, subject to all lawful objections, be received in evidence in the case.

### *Part VII — Execution of Judgments*

35. Any court which has jurisdiction to try any action against any party thereto shall have jurisdiction to issue against any party thereto any form of process in execution of its judgment in such action.

Jurisdiction  
of courts to  
issue execu-  
tion

36. (1) A judgment shall become superannuated by the lapse of five years from the day on which it was pronounced, and execution against property may not thereafter be issued upon it; but it may be revived for the purpose of the issue of such execution on the application and at the expense of the judgment creditor, after due notice to the judgment debtor to show cause why it should not be revived, either in the court in which judgment was pronounced or in any court having jurisdiction in respect of the judgment debtor.

Super-  
annuation  
of judgments  
and revival  
thereof and  
force of  
warrants of  
execution

(2) A warrant of execution once issued shall remain in force until the judgment on account of which it was issued has been satisfied.

Setting  
aside  
of warrant

37. The court may, on good cause shown, stay or set aside any warrant of execution or arrest issued by such court.

Execution in  
case of  
judgment  
debt ceded

38. Any person who has, either by cession or by operation of law, become entitled to the benefit of a judgment debt may, after notice to the judgment creditor and the judgment debtor, be substituted on the record for the judgment creditor and may obtain execution or process in aid in the manner provided for judgment creditor.

Manner of  
execution

39. (1) Whenever a court gives judgment for the payment of money the amount shall be recoverable, in case of failure to pay the same forthwith or at the time or times in the manner ordered by the court, by execution against the movable property, and if there is insufficient movable property to satisfy the judgment, then against the immovable property of the party against whom such judgment has been given.

(2) Where it is required that immovable property subject to any claim ranking in priority to that of the judgment creditor be sold in execution, such property shall be sold only through the sheriff after process in aid to that end shall have been granted by the High Court.

Property  
exempt from  
execution

40. In respect of any process of execution issued out of any court, the following property shall be protected from seizure and shall not be attached or sold,

- (a) the necessary beds, bedding and wearing apparel of the person against whose property execution is levied and of his family;
- (b) the necessary furniture and household utensils in so far as the same do not exceed in value the sum of M700;
- (c) the supply of food and drink in the house sufficient for the needs of such person and of his family during one month;
- (d) tools and implements of trade, and tools necessarily used in the cultivation of land, in so far as any such tools or implements do not exceed in value the sum of M700;
- (e) professional books, documents, or instruments, necessarily used by such person in his profession, in so far as the same do not exceed in value the sum of M700;
- (f) a dwelling house erected on a site allocated for the purpose of residence:

Provided that this paragraph shall not apply where the dwelling house has been bonded as security for a loan and the judgment is in respect of such bond.

Property  
executable

41. (1) The messenger executing any process of execution against movable property may, by virtue of such process, also seize and take any money or bank notes, and may seize,



take and sell in execution, cheques, bills of exchange, promissory notes, bonds or securities for money belonging to any person against whom any such execution shall have been issued as aforesaid.

(2) The messenger may also hold any cheques, bills of exchange, promissory notes, bonds or securities for money which shall have been seized or taken, as security for the benefit of the execution creditor for the amount directed to be levied by the execution so far as it is still unsatisfied and the execution creditor may, when the time of payment shall have arrived, sue in the name of the execution debtor, or in the name of any person in whose name the execution debtor might have sued, for the recovery of the sum secured or made payable thereby.

(3) The messenger may also under any process of execution against movable property attach and sell in execution the interest of the execution debtor in any movable property belonging to him and pledged or sold under a suspensive condition to a third person, and may also sell the interest of the execution debtor in property movable or immovable leased to the execution debtor or sold to him under any hire purchase contract or under a suspensive condition.

(4) Whenever, if the sale had not been in execution, it would have been necessary for the execution debtor to endorse a document or to execute a cession in order to pass the property to a purchaser, the messenger may so endorse the document or execute the cession, as to any property sold by him in execution.

(5) The messenger may also, as to immovable property sold by him in execution, do anything necessary to effect registration of transfer.

(6) Anything done by the messenger under subsection (4) or (5) shall be as valid and effectual as if he were the execution debtor.

(7) Where judgment is given against a member of a partnership or syndicate in an action in which he individually was plaintiff or defendant, his interest in the partnership or syndicate may be attached and sold in execution.

42. (1) Where any person, not being the judgment debtor, makes any claim to or in respect of any property attached or about to be attached in execution under the process of any court, or to the proceeds of such property sold in execution, his claim shall be adjudicated upon after issue of a summons in the manner provided by the rules.

Inter-  
pleader  
claims

(2) Upon the issue of such summons any action which may have been brought in any court whatsoever in respect of such claim shall be stayed, and the court in which such action has been brought or any judicial officer thereof may, on proof of the issue of such summons, order the party bringing such action to pay the costs of all the proceedings in such action

after the issue of the aforesaid summons, and such action shall abide the result of the proceedings taken upon such summons.

Sale in execution gives good title

43. A sale in execution by the messenger shall not, in the case of movable property after delivery thereof or in the case of immovable property after registration of transfer, be liable to be impeached as against a purchaser in good faith and without notice of any defect.

Surplus after execution

44. If, after a sale in execution, there remains any surplus in the hands of the messenger, it shall be liable to attachment for any other unsatisfied judgment debt.

Debt, salary or wages may be attached

45. (1) The court may order the attachment of any debt, salary or wages actually due to a judgment debtor by any other person residing, carrying on business or employed within the district to the amount necessary to satisfy the judgment and the costs of the proceedings for the attachment, whether such judgment has been obtained in such court or in any other subordinate court, and may order such other person (hereinafter called the "garnishee") to pay to the messenger of the court so much of the debt, salary or wages appearing at the time of making the order to be due and payable as may be sufficient to satisfy the said judgment and costs, and may enforce the order as if it were a judgment of the court.

(2) No such order in respect of salary or wages shall be granted unless the court is satisfied upon sworn information that sufficient means will, after satisfaction of the order, be left to the judgment debtor to maintain himself and those dependent on him.

(3) If, after any such order in respect of salary or wages has been granted, it is shown to the satisfaction of the court that sufficient means to maintain himself and those dependent upon him will not, after satisfaction of such order, be left to the judgment debtor, the court shall vary or set aside such order in such manner that such order will only affect the balance of such salary or wages over and above such sufficient means.

Future and accruing earnings when attachable

46. (1) Nothing in this Order contained shall be construed as authorising the attachment of future or accruing earnings otherwise than with the consent in writing or in open court of the judgment debtor; but upon such consent being given, the court, if satisfied upon sworn information that sufficient means will, after satisfaction of the order, be left to the judgment debtor to maintain himself and those dependent on him, may grant a garnishee order in respect of such earnings as if they were actually payable.

(2) Such an order may require the garnishee to pay periodically to the messenger definite amounts out of the earnings of the judgment debtor.

(3) Section 45 (3) shall apply to any order made under this section only if the judgment debtor proves to the satisfac-



tion of the court that, after he gave such consent as aforesaid, his financial position changed substantially for the worse otherwise than by his own serious and wilful default.

47. (1) If the garnishee disputes that the debt sought to be attached is owing or accruing, or alleges that it is subject to a set-off or belongs to or is subject to a claim by some third person, the court may determine the rights and liabilities of all the parties and may declare the claim of the third person to be barred, provided that the claim or value of the matter in dispute is otherwise within the jurisdiction of the court.

Jurisdiction to decide disputes arising out of garnishee orders

(2) If it is proved that such third person neither resides nor carries his business nor is employed within Lesotho, and that he has a *prima facie* claim to the debt, the court shall not have jurisdiction under this section.

48. Payment made by or execution levied upon the garnishee under this Order shall be a valid discharge of the debt or amount of salary or wages due from him to the judgment debtor to the extent of the amount paid or levied.

Execution or payment is discharge *pro tanto*

49. Nothing in this Order contained shall be construed as authorising the attachment of any debt, salary or wages or any moneys or property specially declared by any law not to be liable to attachment.

Saving of existing law prohibiting attachment of certain property

50. (1) The court may, upon the application of any judgment debtor and if convinced that the debtor is unable to satisfy the judgment in full at once, but is able to pay periodical instalments towards satisfaction of the judgment, suspend execution against that debtor in respect of any household furniture of the value of M50 or less, in addition to the goods mentioned in section 40, for so long as the debtor continues to pay the debt by such instalments and at such periods as the court may fix.

Order for payment by instalments

(2) Nothing in this section contained shall be construed as authorising the court to suspend the execution of a judgment upon goods subject to a hypothec for the judgment debt existing irrespective of attachment in execution.

51. Where an appeal has been noted or an application to rescind, correct or vary a judgment has been made, the court may direct either that the judgment shall be carried into execution or that execution thereof shall be suspended pending the decision upon the appeal or application. The direction shall be made upon such terms, if any, as the court may determine as to security for the due performance of any judgment which may be given upon the appeal or application.

Execution or suspension in case of appeal

*Part VIII — Appeals in Civil Cases*

Decision of  
subordi-  
nate court  
may be final

52. No appeal shall lie from the decision of a court if, before the hearing is commenced, the parties lodge with the court an agreement in writing that the decision of the court shall be final.

Appeals  
from subor-  
dinate  
courts

53. Subject to section 52, a party to any civil suit or proceeding in a subordinate court may appeal to the High Court against,

- (a) any judgment of the nature described in section 31;
- (b) any rule or order made in such suit or proceeding and having the effect of a final and definite sentence, including any order as to costs;
- (c) any decision overruling or upholding an exception, when the parties concerned consent to such an appeal before proceeding further in an action, or when it is appealed from in conjunction with the principal case, or when it includes an order as to costs.

Time,  
manner and  
conditions of  
appeal

54. Every party so appealing shall do so within the period and in the manner prescribed by the rules, but the High Court may in any case extend such period.

Right of  
appeal not  
lost by  
satisfaction  
of judgment

55. A party shall not lose the right to appeal through satisfying or offering to satisfy the judgment in respect of which he appeals or any part thereof or by accepting any benefit from such judgment, decree or order.

Respondent  
may aban-  
don  
judgment

56. (1) The respondent to an appeal may, by notice in writing, abandon the whole or any part of the judgment against which appeal is noted.

(2) Where the party so abandoning was the plaintiff or applicant, judgment in respect of the part abandoned shall be entered for the defendant or respondent with costs.

(3) Where the party so abandoning was the defendant or respondent, judgment in respect of the part abandoned shall be entered for the plaintiff or applicant in terms of the claim in the summons or application.

(4) A judgment so entered shall have the same effect in all respects as if it had been the judgment originally pronounced by the court in the action or matter.

(5) This section shall not apply to any action for affiliation, defamation or seduction.

Powers of  
High Court  
on appeal

57. The High Court may, on appeal,

- (a) confirm, vary or reverse the judgment appealed from, as justice may require;



- (b) if the record does not furnish sufficient evidence or information for the determination of the appeal, remit the matter to the court from which the appeal is brought, with instructions in regard to the taking of further evidence or the setting out of further information;
- (c) order the parties or either of them to produce at some convenient time in the High Court such further proof as shall to it seem necessary or desirable;
- (d) take any other course which may lead to the just, speedy and, as much as may be, inexpensive settlement of the case; and
- (e) make such order as to costs as justice may require.

58. The judgment of the High Court on appeal shall be recorded in the court appealed from, and shall be enforced as if it had been given in such last-mentioned court.

Execution of  
judgment of  
High Court  
on appeal

#### *Part IX — Criminal Jurisdiction*

59. The court shall have jurisdiction over all offences except treason, murder and sedition.

Jurisdiction  
in respect of  
classes of  
crime and  
offences

60. (1) Subject to section 59, any person charged with any offence committed within any administrative district shall, unless there is, in the opinion of the magistrate, good reason to the contrary, or unless some other provision of this section applies, be tried in that administrative district:

Local limits  
of juris-  
diction in  
respect of  
crimes

Provided that the Chief Justice or Judge of the High Court, may for good cause shown, order that any criminal case be transferred for trial from the district in which the offence was committed to any other district.

(2) When any person is charged with any offence,

- (a) committed in Lesotho within the distance of two miles beyond the boundary of the district;
- (b) committed in or upon any vehicle employed on a journey any part whereof was performed within the distance of two miles of the district; or

(c) begun or completed within the district,  
such person may be tried by the court of the district as if such person had been charged with an offence committed within the district.

(3) Where it is uncertain in which of several jurisdictions an offence has been committed, it may be tried in any of such jurisdictions.

(4) A person charged with any offence may be tried by the court of the district wherein any act or omission or event which is an element of the offence took place.

(5) A person charged with theft of any property or with obtaining by any offence any property or with any offence which involves the receiving of any property by him may also be tried by the court of any district wherein he has or had any part of the property in his possession.

(6) A person charged with kidnapping, child-stealing or abduction may be tried by the court of the district in which this took place or of any district through or in which he conveyed or concealed or detained the person kidnapped, stolen or abducted.

(7) Where by any special provision of law a subordinate court has jurisdiction in respect of any offence committed beyond the local limits of the district, such court shall not be deprived of such jurisdiction by any of the provisions of this section.

Jurisdiction  
in the matter  
of punish-  
ment

61. (1) Subject to this Order and to any other law in force in Lesotho, subordinate courts may punish any person convicted of any offence in the following manner and, save as is specially provided by this Order or any other law, in no other or more severe manner, that is to say,

- (a) a Chief Magistrate's court,
  - (i) a fine of M10,000 and imprisonment for a period of 10 years;
  - (ii) whipping, subject to section 71, and to any other provisions of this Order, not exceeding 15 strokes with a cane;
- (b) a Senior Resident Magistrate's court,
  - (i) a fine of M8,000 and imprisonment for a period of 8 years;
  - (ii) whipping, subject to section 71, and to any other provisions of this Order, not exceeding 15 strokes with a cane;
- (c) a Resident Magistrate's court,
  - (i) a fine of M7,000 and imprisonment for a period of 7 years;
  - (ii) whipping, subject to section 71, and to any other provisions of this Order, not exceeding 15 strokes with a cane;
- (d) a Subordinate Court of the First Class,
  - (i) a fine of M6,000 and imprisonment for a period of 6 years;
  - (ii) whipping, subject to section 71, and to any other provisions of this Order, not exceeding 15 strokes with a cane;
- (e) a Subordinate Court of the Second Class,
  - (i) a fine of M5,000 and imprisonment for a period of 5 years;



(ii) whipping, subject to section 71 and to any other provisions of this Order, not exceeding 8 strokes with a cane;

(f) a Subordinate court of the Third Class, a fine of M2,000 and imprisonment for a period of 2 years.

A subordinate court of the Third Class shall have no power to impose a punishment of whipping except as provided for by section 308 of the Criminal Procedure and Evidence Act, 1981. **A. 7 of 1981**

(2) A person convicted of any offence may be punished by both such fine and such imprisonment or by both such imprisonment and such whipping.

(3) The court may, in imposing punishment of both fine and imprisonment under this section, sentence the accused to a further period of imprisonment if the fine is not paid; provided that the maximum period of imprisonment laid down in subsection (1) is not exceeded.

(4) Subject to sections 308 and 309 of the Criminal Procedure and Evidence Act, 1981, and to section 71, the punishment of whipping shall only be imposed for,

- (a) assault of an aggravated or indecent nature or with intent to do grievous bodily harm;
- (b) culpable homicide, robbery, bestiality or an act of gross indecency committed by one male person with another or any attempt to commit any such offence; or
- (c) any statutory offence for which whipping may be imposed as a punishment:

Provided that, notwithstanding anything to the contrary in any other law, the punishment of whipping shall not be imposed more than once for the same offence.

(5) Where any law provides that for any offence there may be imposed any forfeiture or confiscation, the court before which such offence is prosecuted may impose such forfeiture or confiscation in addition to any other penalty.

(6) Nothing in this section contained shall be construed as authorising a court to impose for any offence a punishment greater than may by law be imposed for such offence, or as preventing a court from imposing, as often as it is specially authorized by any law so to do, any other or more severe punishment than the punishment mentioned in subsection (1).

62. When in the course of any trial it appears that the offence under trial is from its nature or magnitude only subject to the jurisdiction or more proper for the cognizance of the High Court, or when the public prosecutor so requests, the presiding officer shall stop the trial, and the proceedings shall thereupon be those of a preparatory examination.

**When summary trial to be turned into preparatory examination**

### Part X — Remittal of Cases

Cases re-  
mitted for  
trial or  
sentence

63. 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, 1981 and shall have the power, in respect of each offence or count to which the remittal refers, to impose a sentence in accordance with section 61 if the remittal is expressed to be under the ordinary jurisdiction of such court or a sentence in accordance with section 64 if the remittal is expressed to be under the increased jurisdiction given by section 64.

Jurisdiction  
in respect of  
punish-  
ments in  
remitted  
cases

64. (1) When a case has been so remitted and the remittal is expressed to be under the increased jurisdiction given by this section, the jurisdiction of the court in respect of punishments as expressed in section 61 shall be increased in the manner following,

- (a) a Chief Magistrate's court: the maximum amount of fine shall be M15,000; the maximum period of imprisonment shall be 15 years;
- (b) a Senior Resident Magistrate's court: the maximum amount of fine shall be M12,000, the maximum period of imprisonment shall be 12 years;
- (c) a Resident Magistrate's court: the maximum amount of fine shall be M9,000; the maximum period of imprisonment shall be 9 years;
- (d) a Subordinate court of the First Class: the maximum fine shall be M8,000; the maximum period of imprisonment shall be 8 years;
- (e) a Subordinate Court of the Second Class: the maximum fine shall be M6,000; the maximum period of imprisonment shall be 6 years.

(2) The court may, in imposing a punishment of both fine and imprisonment under this section, sentence the accused to a further period of imprisonment if the fine is not paid, provided that the said maximum period of imprisonment is not exceeded.

### Part XI — Review as of Course

Review of  
sentences  
imposed by  
a subordi-  
nate court  
of the Third  
Class

65. All sentences in criminal cases imposed by a subordinate court of the Third Class shall be subject to review as of course by a Chief Magistrate, a Senior Resident Magistrate, a Resident Magistrate or a Magistrate of the First Class but without prejudice to the right of appeal against such sentence whether before or after confirmation of the sentence by the officer reviewing the same.



66. All sentences in criminal cases in which the punishment awarded is a fine or imprisonment, including detention in a reformatory, industrial school, inebriate reformatory, refuge, rescue home or other similar institutions,

Sentence subject to automatic review by the High Court

- (a) in the case of a Resident Magistrate's Court, a fine of R2,000 and imprisonment for a period of 2 years;
- (b) in the case of a subordinate court of the First Class, a fine of M1,800; and imprisonment for a period of 18 months; and
- (c) in the case of a subordinate court of the Second Class, a fine of M1,000 and imprisonment for a period of 1 year or any whipping save in any case in which a male person under the age of 18 years has been sentenced under section 308 of the Criminal Procedure and Evidence Act, 1981,

shall be subject in the ordinary course, to review by the High Court, but without prejudice to the right of appeal against such sentence whether before or after confirmation of the sentence by the High Court.

67. (1) Whenever a subordinate court of the Third Class imposes a punishment upon any person convicted of an offence, the officer so imposing the punishment shall forthwith transmit the proceedings to the magistrate who has power to review the sentence in terms of section 65 together with such remarks, if any, as he may desire to append thereto.

Submission of records and remarks to magistrate or judge for consideration

(2) Whenever a subordinate court imposes upon any person convicted of an offence any such punishment as is in section 65 mentioned, the clerk of the court shall transmit to the Registrar of the High Court, not later than one week next after the determination of the case, the record of the proceedings in the case together with such remarks, if any, as the presiding officer may desire to append thereto, and with any written statements or arguments which the accused may, within three days after the sentence, supply to the clerk of the court, and the Registrar shall, with all convenient speed, lay the same before a judge, in chambers, for his consideration.

68. (1) If, upon considering the proceedings as are mentioned in section 67 and any further information or evidence which may, by the direction of the magistrate who has power to review sentence in terms of section 65 or the judge, be supplied or taken by the lower court, it appears to the magistrate or judge, as the case may be, that they are in accordance with justice, he shall endorse his certificate to that effect upon the record thereof, and the said record shall then be returned to the court from which the same was transmitted.

Proceedings on review

(2) If, upon considering the proceedings aforesaid, it appears to the magistrate or the judge, as the case may be, that the same are not in accordance with justice or that doubts

exist whether or not they are in such accordance,

- (a) the magistrate who has power to review sentence in terms of section 65 may,
  - (i) alter or reverse the conviction or reduce or vary the sentence of the court which imposed the punishment;
  - (ii) where it appears necessary to do so, remit such case to the court which imposed the sentence with such instructions relative to the taking of further evidence and generally to the further proceedings to be had in such case as the magistrate thinks fit, and make such order touching the suspension of the execution of any sentence against the person convicted or the admitting of such person to bail, or, generally touching any matter or thing connected with such person or the proceedings in regard to him as to the magistrate seems calculated to promote the ends of justice; or
  - (iii) submit the proceedings to the judge for review as if the case were one falling under section 67 (2); and
- (b) the judge may,
  - (i) alter or reverse the conviction or increase or reduce or vary the sentence of the court which imposed the punishment; or
  - (ii) where it appears necessary to do so, remit such case to the court which imposed the sentence with such instructions relative to the taking of further evidence and generally to the further proceedings to be had in such case as the judge thinks fit, and may make such order touching the suspension of the execution of any sentence against the person convicted or the admitting of such person to bail, or, generally, touching any matter or thing connected with such person or the proceedings in regard to him as to the judge seems calculated to promote the ends of justice:

Provided that in the event of any conviction being reversed or proceedings set aside on any ground mentioned in section 72(6), that section in respect of the institution of fresh proceedings shall *mutatis mutandis* apply.

(3) If in any case the judge desires to have any question of law or fact arising in any such case argued at the bar, he may direct the same to be argued by the Director of Public Prosecutions and by such other person as the judge may appoint.

(4) If in any criminal case in which a court has imposed a sentence which is not subject to review in the ordinary course in terms of section 65, it is brought to the notice of the judge that the proceedings in which the sentence was imposed were



not in accordance with justice, the judge shall have the same powers in respect of such proceedings as if the record thereof had been laid before him in terms of section 67.

### *Part XII — Execution of Sentences*

69. (1) Any person sentenced to undergo the punishment of imprisonment shall be committed to the prison of the district for the purpose of punishment by a warrant under the hand of a judicial officer specifying any punishment to which the accused has been sentenced.

**Warrant  
required for  
commitment  
to prison**

(2) Such warrant may be signed either by the judicial officer who passed the sentence or by any other judicial officer for the same district.

70. (1) The execution of any sentence of fine or of imprisonment shall not be suspended by the transmission of or the obligation to transmit the record for review unless the person sentenced shall give sufficient bail to pay the fine imposed upon him or to surrender himself in order to undergo such imprisonment, as the case may be, in case the proceedings in the case shall be approved as aforesaid and in case a written notice to pay or to surrender, as the case may be, signed by the clerk of the court, shall be served upon or for such person at some place to be mentioned in the bail bond or recognizance.

**Execution of  
sentence  
suspended  
under  
certain  
conditions**

(2) Every such notice requiring the payment of the fine or the surrender of such person, as the case may be, shall be served in like manner as is prescribed by the rules in regard to the service of the summons on a defendant in a civil case.

71. (1) The punishment of whipping shall in no case, except where a male child under the age of twenty one years has been sentenced under the Criminal Procedure and Evidence Act, 1981, be inflicted until either the proceedings in the case have been returned with such a certificate as is in section 68(1) mentioned or the High Court has affirmed the sentence of the subordinate court.

**Person  
sentenced to  
whipping to  
be detained  
pending  
review**

(2) If in any case a person sentenced to receive any number of strokes shall not be also condemned to be imprisoned for such a period as shall allow time for the judge's certificate to be received before inflicting the said strokes, such person, in case he shall not give sufficient bail to appear after being served at some place to be mentioned in the bail bond or recognizance with a written notice signed by the clerk of the court requiring him so to do, shall be detained in custody until either the proceedings in the case have been returned as aforesaid, or the sentence has been affirmed as aforesaid.

(3) In every case in which any person sentenced as aforesaid shall give bail as aforesaid, the judicial officer, should he so think fit, may take bail also for the cost and charge of serving such notice as aforesaid, which cost and charge shall be the same as that of serving a summons in a civil case against the same person at the same place.

### Part XIII — Criminal Appeals

#### Appeals

72. (1) Any person convicted of any offence by the judgment of any subordinate court including a person discharged after conviction under any provision of the Criminal Procedure and Evidence Act, 1981, may appeal against such conviction and against any sentence or order of the court following thereupon to the High Court. Every person giving notice of appeal to the High Court against the decision of a subordinate court in any criminal matter shall deposit the sum of M10.00:

Provided that a judge may, if he is of the opinion that the appeal is not of a frivolous nature, or for any other cause, order the deposit, or portion of it, to be refunded.

(2) Whenever a criminal summons or charge is dismissed at any stage of the proceedings on exception or on the ground that it is bad in law or that it discloses no offence, the Director of Public Prosecutions may, in like manner, appeal against such dismissal.

(3) Any such appeal shall be noted and prosecuted within the period and in the manner prescribed by the rules; but the High Court may in any case extend such period.

(4) The High Court shall thereupon exercise the powers conferred by section 329 of the Criminal Procedure and Evidence Act, 1981:

Provided that, notwithstanding that the High Court is of opinion that any point raised might be decided in favour of the appellant, no conviction or sentence shall be reversed or altered by reason of any irregularity or defect in the record or proceedings unless it appears to the High Court that a failure of justice has in fact resulted therefrom or that the accused has been prejudiced thereby.

(5) When an appeal under this section is noted, sections 69 and 70 shall apply *mutatis mutandis* to the sentence appealed against.

(6) If the Director of Public Prosecutions or his representative or a private prosecutor is dissatisfied with any judgment of a subordinate court on any matter of fact or law, he may appeal against such judgment to the High Court.

(7) Subsection (3) shall apply to an appeal under subsection (6).

(8) The court shall, if it allows an appeal against the conviction or the acquittal, exercise its powers under section 329 of the Criminal Procedure and Evidence Act, 1981.

### Part XIV — Offences and Penalties

#### Penalty for disobedience of order of court

73. A person who wilfully disobeys or neglects to comply with any order of a subordinate court is guilty of a contempt of court and shall, upon conviction, be liable to a fine of M500 or, in default of payment, to imprisonment for a period of 6 months, or to such imprisonment without the option of a fine.



74. A person who,

Offences  
relating to  
execution

- (a) obstructs a messenger or deputy messenger in the execution of his duty;
- (b) being aware that goods are under arrest, interdict, or attachment by the court, makes away with or disposes of those goods in any manner not authorized by law, or knowingly permits those goods, if in his possession or under his control, to be made away with or disposed of in any such manner;
- (c) being a judgment debtor and being required by a messenger or deputy messenger to point out property to satisfy any warrant issued in execution of judgment against such person, either,
  - (i) falsely declares to that messenger or deputy messenger that he possesses no property or not sufficient property to satisfy the warrant; or
  - (ii) although owning such property, neglects or refuses to point out the same; or
- (d) being a judgment debtor refuses or neglects to comply with any requirement of a messenger or deputy messenger in regard to the delivery of documents in his possession or under his control relating to the title of the immovable property under execution,

is, upon conviction, liable to a fine of R500 and imprisonment for a period of 6 months.

75. (1) If any person, whether in custody or not, wilfully insults any judicial officer during his sitting or any clerk or messenger or other officer during his attendance at such sitting, or wilfully interrupts the proceedings of the court or otherwise misbehaves himself in the place where such court is held, he shall, in addition to his liability to being removed and detained as is provided in section 7(3), be liable to a fine of M100 and to imprisonment for a period of one month.

Custody and  
punish-  
ment for  
contempt of  
court

(2) In any case in which the court commits or fines any person under this section, the judicial officer shall, without delay, transmit to the Registrar of the High Court, for the consideration and review of the judge in chambers, a statement, certified by such judicial officer to be true and correct, of the grounds and reasons of his proceedings, and shall also furnish to the party committed a copy of such statement.

#### *Part XV — General and Supplementary*

76. No subordinate court shall have jurisdiction to pronounce upon the validity of any law, other than a regulation, rule, order or by-law made under any enactment.

Jurisdiction  
as to plea of  
*ultra vires*

77. (1) In any proceedings, whether civil or criminal, the court may, at any time before judgment, amend any summons or other document forming part of the record:

Amendment  
of pro-  
ceedings

Provided that no amendment shall be made by which any party other than the party applying for such amendment may, notwithstanding adjournment, be prejudiced in the conduct of his action or defence.

(2) In civil proceedings, an amendment may be made upon such terms as to costs and otherwise as the court may judge reasonable.

(3) No misnomer in regard to the name of any person or place shall vitiate any proceedings of the court if the person or place be described so as to be commonly known.

**Review of  
decisions**

78. Whenever a decision is given by a subordinate court in a criminal case on a matter of law and the Director of Public Prosecutions is dissatisfied with such decision he may seek the ruling thereon of the High Court, and the High Court may set down the matter to be argued before it.

**Savings and  
non-appli-  
cation of  
Order**

79. (1) Nothing in this Order contained shall be construed as affecting the operation of the Criminal Procedure and Evidence Act, 1981.

(2) Nothing in this Order contained shall be construed as depriving the High Court of any power to review and correct the proceedings of any subordinate court.

**Saving  
existing  
custom of  
summoning  
accused  
person or  
witnesses**

80. Nothing in this Order contained shall affect the existing custom whereby the attendance of a person accused or witness or party to a civil action in any court in Lesotho may be secured through a chief or headman by warning, either in writing or by messenger of such chief or headman.

**Power to  
make rules**

81. (1) The Chief Justice may, from time to time, by notice in the Gazette, make rules,

- (a) regulating the practice and procedure of subordinate courts in all matters before such courts;
- (b) prescribing the time within which any requirement of the rules is to be complied with;
- (c) prescribing the fees payable in, the costs and charges of, and incidental to, any proceedings in subordinate courts;
- (d) prescribing the forms required to be used under this Order;
- (e) regarding any other matter which appears to the Chief Justice to be necessary and suitable.

(2) Different rules may be made in respect of different classes of court.

**Adminis-  
tration of  
oath or af-  
firmation**

82. (1) Every officer or person entitled or appointed under section 5 to hold a court is empowered to administer an oath or affirmation to any witness in any proceedings, whether civil or criminal, in such court, or at any preparatory examination.



(2) The oath or affirmation 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 officer, or, if the witness is to give his evidence through an interpreter, by that officer through the interpreter, or by the interpreter in the officer's presence.

(3) The oaths and affirmations previously administered by such officers and persons in all such proceedings and preparatory examinations are declared to be valid.

83. (1) The Subordinate Courts Proclamation 1938, is repealed.

Repeals and  
savings  
P. 58 of  
1938.

(2) Notwithstanding subsection (1), any rule made, or notice issued or anything whatsoever done under the Proclamation repealed by this section and in force immediately before the commencement of this Order shall, so far as it is not inconsistent with this Order, continue in force as if made, issued or done under this Order.

Moshoeshoe II