OFFICIAL GAZETTE

EXTRAORDINARY
OF SOUTH WEST AFRICA.

BUITENGEWONE

OFFISIËLE KOERANT

VAN SUIDWES-AFRIKA.

UITGAWE OP GESAG. PUBLISHED BY AUTHORITY

10c Friday, 9th August, 1963 WINDHOEK Vrydag, 9 Augustus 1963 No. 2499

CONTENTS

INHOUD Page/Bladsy

Government Notice.

The following Government Notice is published for general information.

C. F. MARAIS,
Secretary for South West Africa.

Administrator's Office,
Windhoek.

No. 138.] [9th August, 1963.

ORDINANCE, 1963: PROMULGATION OF

The Administrator has been pleased to assent, in terms of section *thirty-two* of the South West Africa Constitution Act, 1925 (Act No. 42 of 1925), to the following Ordinance which is hereby published for general information in terms of section *thirty-four* of the said Act:—

No.	*Title*
No. 29	Magistrate's Courts Ordinance 1963 . .

No. 29 of 1963.]

ORDINANCE

To consolidate and amend the Law relating to Magistrates' Courts.

(Assented to 5th August, 1963.)
(English text signed by the Administrator.)

DIVISION OF ORDINANCE.

The Ordinance is divided as follows:—

Definitions (Section 1).

Part I — Courts (Chapters I to V; Sections 2 to 24).

Part II — Civil Matters (Chapters VI to XI; Sections 25 to 87).

Part III — Criminal Matters (Chapters XII to XVI; Sections 88 to 106).

Goewermentskennisgewing.

Die volgende Goewermentskennisgewing word vir algemene inligting gepubliseer.

C. F. MARAIS,
Sekretaris van Suidwes-Afrika.

Kantoor van die Administrateur,
Windhoek.

No. 138.] [9 Augustus 1963.

ORDONNANSIE, 1963: UITVAARDIGING VAN

Dit het die Administrateur behaag om sy goedkeuring te heg, ooreenkomstig artikel *twee-en-dertig* van „De Zuidwest-Afrika Konstitutie Wet 1925" (Wet 42 van 1925), aan die volgende Ordonnansie wat hiermee vir algemene inligting gepubliseer word, ooreenkomstig artikel *vier-en-dertig* van gemelde Wet:—

Titel	*Page/Bladsy*
Ordonnansie op Landdroshowe 1963	1169

No. 29 van 1963.]

ORDONNANSIE

Om die wet op Landdroshowe saam te vat en te wysig.

(Goedgekeur 5 Augustus 1963.)
(Engelse teks deur die Administrateur geteken.)

INDELING VAN ORDONNANSIE.

Hierdie Ordonnansie word soos volg ingedeel:—

Woordbepaling (artikel 1).

Deel I — Howe (hoofstuk I tot V; artikels 2 tot 24).

Deel II — Siviele Sake (hoofstukke VI tot XI; artikels 25 tot 87).

Deel III — Strafsake (hoofstukke XII tot XVI; artikels 88 tot 106).

Part IV — Offences (Chapter XVII; Sections 107 to 110).

Part V — General and Supplementary (Chapter XVIII; Sections 111 to 118).

Schedule — Laws repealed.

BE IT ORDAINED by the Legislative Assembly for the Territory of South West Africa, with the consent of the State President, in so far as such consent is necessary, previously obtained and communicated to the Legislative Assembly by message from the Administrator in accordance with the provisions of section *twenty-six* of the South West Africa Constitution Act, 1925 (Act 42 of 1925), of the Republic of South Africa, as follows:—

1. In this Ordinance, except where the context otherwise indicates —

"Administrator" means, with reference to any matter to be dealt with in the magisterial district of Ovamboland, as defined in the Redefinition of Magisterial Districts' Proclamation, 1950 (Proclamation 15 of 1950), the Okavango Native Territory as defined in the Schedule to the Okavango Native Territory Affairs Proclamation, 1937 (Proclamation 32 of 1937), the land described in the Schedule to the South West Africa Native Affairs Administration Act, 1954 (Act 56 of 1954), the unnamed area between the said Okavango Native Territory and the said magisterial district of Ovamboland set aside as a Native Reserve by Government Notice No. 193 of 1952 and the Kaokoveld Native Reserve as defined in Government Notice No. 374 of 1947, as amended from time to time, the Minister of Bantu Administration and Development of the Republic or any other Minister of State acting on his behalf: Provided that the said Minister of Bantu Administration and Development may by notice in the *Government Gazette* of the Republic and in the *Official Gazette* declare that he will exercise the powers under this Ordinance in respect of any other land or area referred to in section *four* of the South West Africa Native Affairs Administration Act, 1954 (Act 56 of 1954);

"Attorney-General" means the Attorney-General for the Territory;

"court" means a magistrate's court;

"court of appeal" means the Supreme Court;

"judgment", in civil cases, includes a decree, a rule and an order;

"judicial officer" means a magistrate, an additional magistrate or an assistant magistrate;

"magistrate" does not include an assistant magistrate;

"offence" means an act or omission punishable by law;

"police force" means the South African Police;

"practitioner" means an advocate, an attorney or an articled clerk such as is referred to in section *twenty-one;*

"Republic" means the Republic of South Africa;

"State President" means the State President of the Republic;

"Supreme Court" means the South West Africa Division of the Supreme Court of South Africa;

"the district" if used in relation to any court means the district, sub-district or area within which that court has jurisdiction;

"the rules" means the rules referred to in section *twenty-three* or made under section *twenty-four;*

"this Ordinance" includes the rules;

"to record" means to take down in writing or in shorthand or to record by mechanical means and "recorded" has a corresponding meaning.

Deel IV — Misdrywe (hoofstuk XVII; artikels 107 tot 110).

Deel V — Algemene en aanvullende bepalings (hoofstuk XVIII; artikels 111 tot 118).

Bylae — Herroepe wette.

Die Wetgewende Vergadering van die Gebied Suidwes-Afrika, met die toestemming van die Staatspresident dermate sodanige toestemming nodig is, vooraf verkreë en deur boodskap van die Administrateur aan die Wetgewende Vergadering meegedeel ooreenkomstig die bepalings van artikel *ses-en-twintig* van die Zuidwest-Afrika Konstitutie Wet 1925 (Wet 42 van 1925) van die Republiek van Suid-Afrika, VERORDEN:—

1. In hierdie Ordonnansie, tensy uit die samehang anders blyk, beteken —

„Administrateur" met betrekking tot 'n aangeleentheid waarmee gehandel moet word in die landdrosdistrik Ovamboland, soos bepaal in die Proklamasie ter Heromskrywing van Landdrosdistrikte 1950 (Proklamasie 15 van 1950), die Okavango-naturellegebied soos bepaal in die bylae van die Proklamasie op die Okavango Naturellegebied Aangeleenthede 1937 (Proklamasie 32 van 1937), die grond beskryf in die bylae by die Wet op die Administrasie van Naturellesake in Suidwes-Afrika 1954 (Wet 56 van 1954), die naamlose gebied geleë tussen die genoemde Okavango-naturellegebied en die genoemde landdrosdistrik Ovamboland afgesonder as 'n naturellereservaat by Goewermentskennisgewing 193 van 1952 en die Kaokoveldnaturellereservaat soos bepaal in Goewermentskennisgewing 374 van 1947 soos van tyd tot tyd gewysig, die Minister van Bantoe-administrasie en -ontwikkeling van die Republiek of enige ander staatsminister wat namens hom optree: Met dien verstande dat die bedoelde Minister van Bantoeadministrasie en -ontwikkeling by kennisgewing in die *Staatskoerant* van die Republiek en in die Offisiële Koerant kan verklaar dat hy die bevoegdhede ingevolge hierdie Ordonnansie ten opsigte van enige ander grond of oppervlakte bedoel in artikel *vier* van die Wet op die Administrasie van Naturellesake in Suidwes-Afrika 1954 (Wet 56 van 1954) sal uitoefen;

„Prokureur-generaal" die Prokureur-generaal van die Gebied;

„hof" 'n landdroshof;

„hof van appèl" die Hooggeregshof;

„vonnis", in siviele sake ook 'n bevel en 'n order;

„regterlike beampte" 'n landdros, 'n addisionele landdros of 'n assistent-landdros;

„landdros" nie ook 'n assistent-landdros nie;

„misdryf" 'n handeling of versuim wat volgens wet strafbaar is;

„polisiemag" die Suid-Afrikaanse Polisie;

„praktisyn" 'n advokaat, 'n prokureur of 'n klerk onder leerkontrak soos bedoel in artikel *een-en-twintig;*

„Republiek" die Republiek van Suid-Afrika;

„Staatspresident" die Staatspresident van die Republiek;

„Hooggeregshof" die Suidwes-Afrika-afdeling van die Hooggeregshof van Suid-Afrika;

„die distrik" wanneer dit met betrekking tot 'n hof gebesig word, die distrik, subdistrik of gebied waarin daardie hof jurisdiksie het;

„die reëls" die reëls bedoel in artikel *drie-en-twintig* of uitgevaardig kragtens artikel *vier-en-twintig;*

„hierdie Ordonnansie" ook die reëls;

„om te notuleer" om op skrif of snelskrif of op meganiese wyse af te neem, en het „genotuleer" 'n ooreenstemmende betekenis.

PART I — COURTS

CHAPTER I.

ESTABLISHMENT AND NATURE OF COURTS

2. The Administrator may, by notice in the *Official Gazette* —

(a) create districts and declare the name by which any district shall be known;
(b) create regional divisions consisting of a number of districts, or of a district together with one or more sub-districts, and declare the name by which any regional division shall be known;
(c) define, increase or decrease the local limits of any district;
(d) increase or decrease the limits of any regional division;
(e) for all purposes or for such purposes as he may declare annex any district or any portion thereof to another district;
(f) establish a court for any district;
(g) establish a court for any regional division for the purpose of the trial of persons accused of committing any offence, which shall have increased jurisdiction as hereinafter provided;
(h) appoint one or more places within each district for the holding of a court for such district; of which places if more than one is appointed, one shall be specified as the seat of magistracy;
(i) appoint one or more places in each regional division for the holding of a court for such regional division;
(j) within any district appoint places other than the seat of magistracy for the holding of periodical courts, and prescribe the local limits within which such courts shall have jurisdiction and include within those limits any portion of an adjoining district;
(k) detach a portion of a district or portions of two or more adjoining districts as a sub-district, to form the area of jurisdiction of a detached court, and declare the name by which such sub-district shall be known and appoint the places where such detached court is to be held;
(l) withdraw or vary any notice under this section and abolish any regional division or district or sub-district and the court thereof.

3. (1) The courts and districts existing immediately before the commencement of this Ordinance shall be deemed to have been established under this Ordinance.

(2) All references in any other law to magistrates' courts or courts of resident magistrate shall be read as referring to courts established under this Ordinance.

(3) After the commencement of this Ordinance no new district or sub-district and no regional division shall be created until a report upon the proposal to create such district or sub-district or division has been obtained from the Public Service Commission.

4. (1) Every court shall be a court of record.

(2) Every process issued out of any court shall be of force throughout the Territory.

(3) Any process issued out of any court may be served or executed through the messenger of the court out of which such process is issued or through any other messenger: Provided that no costs shall be payable in excess of the costs of personal service in the cheapest and most effective manner suited to the circumstances.

5. (1) Except where otherwise provided by law, the proceedings in every court in all criminal cases and the trial of all defended civil actions shall be carried on in open court, and recorded by the presiding officer or other officer appointed to record such proceedings.

(2) The court may in any case, in the interests of good order or public morals, 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 shall not be permitted to be present thereat.

DEEL I — HOWE.

HOOFSTUK I.

INSTELLING EN AARD VAN HOWE.

2. Die Administrateur kan by kennisgewing in die *Offisiële Koerant* —

(a) distrikte instel en die naam waaronder enige distrik bekend moet staan, bepaal;
(b) streekafdelings instel bestaande uit 'n aantal distrikte, of uit 'n distrik tesame met een of meer subdistrikte, en die naam bepaal waaronder 'n streekafdeling bekend moet staan;
(c) die plaaslike grense van 'n distrik bepaal, uitbrei of inperk;
(d) die grense van 'n streekafdeling uitbrei of inperk;
(e) 'n distrik of enige gedeelte daarvan vir alle doeleindes of vir sodanige doeleindes soos hy bepaal by 'n ander distrik voeg;
(f) 'n hof vir enige distrik instel;
(g) 'n hof vir 'n streekafdeling instel ten einde persone wat van 'n misdryf beskuldig is, te verhoor, wat verhoogde jurisdiksie soos hieronder bepaal, het;
(h) een of meer plekke in elke distrik vir die hou van hofsittings vir daardie distrik bepaal; as meer as een sodanige plek bepaal word, word een daarvan as die landdrossetel aangewys;
(i) een of meer plekke in elke streekafdeling bepaal vir die hou van hofsittings vir so 'n streekafdeling;
(j) binne 'n distrik ander plekke as die landdrossetel vir die hou van periodieke hofsittings bepaal en die plaaslike grense bepaal waarbinne sodanige howe jurisdiksie het en enige gedeelte van 'n aangrensende distrik binne daardie grense opneem;
(k) 'n gedeelte van 'n distrik of gedeeltes van twee of meer aangrensende distrikte as 'n subdistrik afsonder om die regsgebied van 'n gedetasjeerde hof uit te maak en die naam bepaal waaronder so 'n subdistrik bekend moet staan en die plekke aanwys waar so 'n gedetasjeerde hof sitting moet hou;
(l) enige kennisgewing kragtens hierdie artikel intrek of wysig en enige streekafdeling of distrik of subdistrik en die hof daarvan afskaf.

3. (1) Die howe en distrikte wat onmiddellik voor die inwerkingtreding van hierdie ordonnansie bestaan, word beskou as kragtens hierdie Ordonnansie ingestel.

(2) Alle verwysings in enige ander wet na landdroshowe of residentlanddroshowe word beskou as verwysings na howe kragtens hierdie Ordonnansie ingestel.

(3) Na die inwerkingtreding van hierdie Ordonnansie mag geen nuwe distrik of subdistrik en geen streekafdeling ingestel word voordat 'n verslag oor die voorstel om so 'n distrik of subdistrik of afdeling in te stel, van die Staatsdienskommissie verkry is nie.

4. (1) Elke hof is 'n notulerende hof.

(2) Alle prosesstukke uit 'n hof uitgereik, is deur die hele Gebied van krag.

(3) Prosesstukke uit 'n hof uitgereik, kan bestel of ten uitvoer gelê word deur bemiddeling van die geregsbode van die hof waaruit sodanige prosesstukke uitgereik word of deur bemiddeling van enige ander geregsbode: Met dien verstande dat geen koste betaalbaar is wat die koste van persoonlike bestelling op die goedkoopste en doeltreffendste wyse wat by die omstandighede pas, te bowe gaan nie.

5. (1) Behoudens andersluidende wetsbepalings vind die verrigtinge in elke hof in alle strafsake en die verhoor van alle bestrede siviele sake in die openbaar plaas, en word sodanige verrigtinge genotuleer deur die voorsittende beampte of ander beampte wat aangestel is om sodanige notule te hou.

(2) Ter wille van die goeie orde of openbare sedelikheid kan die hof in enige saak beveel dat 'n verhoor agter geslote deure moet plaasvind of dat (met sodanige uitsonderings soos die hof bepaal) vrouens of minderjariges of die publiek in die algemeen nie daarby aanwesig mag wees nie.

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

(4) Except where otherwise 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 illhealth or advanced age to attend the court, his evidence may be taken in the presence of the presiding judicial officer, the prosecutor, the accused person, and the legal representative (if there be such a representative and he chooses to attend) of the accused person at such place whether within or outside the jurisdiction of the court as may seem to the court most convenient.

6. (1) Either of the official languages may be used at any stage of the proceedings in any court and the evidence shall be recorded in the language so used.

(2) If, in a criminal case, evidence is given in a language with which the accused is not in the opinion of the court sufficiently conversant, a competent interpreter shall be called by the court in order to translate such evidence into a language with which the accused professes or appears to the court to be sufficiently conversant irrespective of whether the language in which the evidence is given, is one of the official languages or of whether the representative of the accused is conversant with the language used in the evidence or not.

7. Subject to the rules the records of the court shall be accessible to the public under supervision of the clerk of the court at convenient times and upon payment of such fees as may be prescribed by such rules; and for this purpose and for all other purposes the records of any court of magistrate or resident magistrate which has at any time existed within the Territory shall be preserved at the seat of magistracy of the district containing the place where such court was held, and shall be deemed to be records of the court of such district: Provided that after three years from the date of passing sentence in the case of proceedings in which sentence was passed in terms of sub-section (5) of section *three hundred and thirty-seven* of the Criminal Procedure Ordinance, 1963, or after fifteen years from the date of the judgment in the case of any other proceedings, the records of such proceedings may upon the order of the Secretary for the Territory be removed to a central place of custody or be destroyed or otherwise disposed of.

CHAPTER II.

JUDICIAL OFFICERS

8. Every court held under this Ordinance shall be presided over by a judicial officer appointed in the manner provided by this Ordinance.

9. (1) Subject to the provisions of the law governing the public service and of section *ten*, the Administrator may appoint for any district of sub-district a magistrate, one or more additional magistrates or one or more assistant magistrates, and for every regional division a magistrate or magistrates: Provided that —

(i) a magistrate of a regional division may also be the magistrate of a district; and

(ii) no person shall be appointed as a magistrate or acting magistrate of a regional division unless he has obtained by examination the degree of Bachelor of Laws from any university in the Republic or has passed the Civil Service Higher Law Examination or an examination deemed by the Public Service Commission to be equivalent thereto and has served as a magistrate, additional magistrate or assistant magistrate for not less than ten years.

(2) (a) Subject to the provisions of paragraph (c), no person holding any appointment under sub-section (1) shall perform the functions of a judicial officer in any

(3) As iemand wat by 'n hofsitting aanwesig is, die rus of orde verstoor, kan die hof so iemand laat verwyder en laat aanhou totdat die hof verdaag, of die hof kan, as hy meen dat die orde nie anders gehandhaaf kan word nie, die hofsaal laat ontruim en die publiek laat uitsluit.

(4) Behoudens andersluidende wetsbepalings moet elke getuie in 'n strafsaak sy getuienis mondelings en in die openbaar voor die hof aflê: Met dien verstande dat wanneer 'n getuie weens swak gesondheid of gevorderde leeftyd nie die hofsitting kan bywoon nie, sy getuienis in die teenwoordigheid van die voorsittende regterlike beampte, die aanklaer, die beskuldigde en die regsverteenwoordiger van die beskuldigde (as daar so 'n verteenwoordiger is en hy verkies om teenwoordig te wees) afgeneem kan word op 'n plek, hetsy binne of buite die regsgebied van die hof, wat die hof die geskikste ag.

6. (1) Die een of die ander van die amptelike tale kan in enige stadium van die verrigtinge in 'n hof gebesig word en die getuienis word in die aldus gebesigde taal genotuleer.

(2) As getuienis in 'n strafsaak afgelê word in 'n taal waarmee, na die mening van die hof, die beskuldigde nie genoegsaam vertroud is nie, moet die hof 'n bevoegde tolk inroep om sodanige getuienis oor te sit in 'n taal waarmee die beskuldigde voorgee of aan die hof blyk genoegsaam vertroud te wees ongeag of die taal waarin die getuienis afgelê word een van die amptelike tale is en of die beskuldigde se verteenwoordiger vertroud is met die taal wat in die getuienis gebesig word of nie.

7. Behoudens die bepalings van die reëls lê die stukke van die hof op gepaste tye en teen betaling van die gelde deur die reëls voorgeskryf ter insae van die publiek onder toesig van die klerk van die hof; en vir hierdie doel en alle ander doeleindes word die stukke van 'n landdroshof of resident-landdroshof wat te eniger tyd in die Gebied bestaan het, bewaar by die landdrossetel van die distrik waarin die plek waar sodanige hof sitting gehou het, geleë is, en word hulle beskou as stukke van die hof van daardie distrik: Met dien verstande dat na drie jaar vanaf die datum van vonnisvelling in die geval van verrigtinge waarby vonnis gevel is ingevolge subartikel (5) van artikel *driehonderd sewe-en-dertig* van die Strafprosesordonnansie 1963, of na vyftien jaar vanaf die datum van vonnisvelling in die geval van enige ander verrigtinge, die stukke in daardie verrigtinge op las van die Sekretaris van die Gebied na 'n sentrale bewaarplek oorgebring kan word of vernietig kan word of anders daaroor beskik kan word.

HOOFSTUK II

REGTERLIKE BEAMPTES.

8. Die voorsittende beampte by elke hofsitting wat kragtens hierdie Ordonnansie gehou word, moet 'n regterlike beampte wees wat aangestel is soos deur hierdie Ordonnansie bepaal.

9. (1) Behoudens die wetsbepalings op die staatsdiens en die bepalings van artikel *tien* kan die Administrateur vir enige distrik of subdistrik 'n landdros, een of meer addisionele landdroste of een of meer assistentlanddroste aanstel, en vir elke streekafdeling 'n landdros of landdroste:
Met dien verstande dat —

(i) 'n landdros van 'n streekafdeling ook die landdros van 'n distrik kan wees; en

(ii) niemand as 'n landdros of waarnemende landdros van 'n streekafdeling aangestel mag word nie tensy hy by 'n eksamen die graad van Baccalaureus Legum van 'n universiteit in die Republiek verkry het, of geslaag het in die Hoër Wetseksamen van die Staatsdiens of 'n eksamen wat die Staatsdienskommissie as gelykwaardig daarmee beskou, en minstens tien jaar lank as landdros, addisionele landdros of assistentlanddros diens gedoen het.

(2) (a) Behoudens die bepalings van paragraaf (c) mag niemand wat ingevolge subartikel (1) 'n betrekking beklee die werksaamhede van 'n regterlike beampte in 'n

magistrate's court, unless he has taken an oath or made an affirmation subscribed by him, in the form set out below, namely —

"I, ...
(full name)
do hereby swear/solemnly and sincerely affirm and declare that whenever I may be called upon to perform the functions of a judicial officer in any magistrate's court, I will administer justice to all persons alike without fear, favour or prejudice and in accordance with the law and customs of the Territory."

(b) Any such oath or affirmation shall be taken or made in open court before the senior available magistrate of the district concerned or a commissioner of oaths, who shall at the foot thereof endorse a statement of the fact that it was taken or made before him and of the date on which it was so taken or made and append his signature thereto.

(c) The provisions of paragraph (a) shall apply in respect of any person who held an appointment under subsection (1) before the date of commencement of this Ordinance only after the expiration of three months after the said date.

(3) Whenever by reason of absence or incapacity a magistrate, additional magistrate or assistant magistrate is unable to carry out the functions of his office or whenever such office becomes vacant, the Administrator, or, if delegated thereto by the Administrator, the Secretary, Deputy Secretary or Under Secretary for the Territory may authorize any other competent officer of the public service or any competent retired officer of the public service to act in the place of the absent or incapacitated officer during such absence or incapacity or to act in the vacant office until the vacancy is filled: Provided that when any such vacancy has remained unfilled for a continuous period exceeding six months the fact shall be reported to the Public Service Commission.

(4) The Administrator, or, if delegated thereto by the Administrator, the Secretary, Deputy Secretary or Under Secretary for the Territory may appoint temporarily any competent person to act either generally or in a particular matter as magistrate of a regional division in addition to any magistrate or acting magistrate of that division or as additional or assistant magistrate for any district or sub-district in addition to the magistrate or any other additional or assistant magistrate.

(5) In applying this section to a district, sub-district or area under the administrative control of the Minister of Bantu Administration and Development of the Republic the words "Secretary, Deputy Secretary or Under Secretary for Bantu Administration and Development" shall be substituted for the words "Secretary, Deputy Secretary or Under Secretary for the Territory".

10. Subject to the provisions of the law governing the public service and of section *eleven* —

(a) a person who has not before the commencement of this Ordinance held a substantive appointment as magistrate shall not hold such an appointment and a person who has not before the commencement of this Ordinance held a substantive appointment as assistant magistrate shall not hold such an appointment, unless in either case he has passed the Civil Service Lower Law Examination or an examination declared by the Public Service Commission to be equivalent thereto;

(b) in recommending any person for appointment as a magistrate, additional magistrate or assistant magistrate the Public Service Commission may give preference to a person who holds a degree in law of a university in South Africa, or has passed the Civil Service Higher Law Examination or an examination deemed by the Commission to be equivalent thereto.

11. (1) All magistrates, additional magistrates and assistant magistrates holding office at the commencement of this Ordinance shall be deemed to have been appointed under this Ordinance.

landdroshof uitvoer nie tensy hy 'n eed of plegtige verklaring afgelê het wat hy onderteken het in die onderstaande vorm, te wete —

„Ek ..... verklaar
(naam voluit)
hierby onder eed/plegtig en opreg dat wanneer ek ook al die werksaamhede van 'n regterlike beampte in 'n landdroshof moet verrig, ek aan alle persone op gelyke voet reg sal laat geskied sonder vrees, begunstiging of vooroordeel en ooreenkomstig die reg en gebruike van die Gebied."

(b) So 'n eed of plegtige verklaring moet afgelê word in die ope hof voor die mees senior beskikbare landdros van die betrokke distrik of 'n kommissaris van ede wat onderaan 'n verklaring moet endosseer dat dit voor hom afgelê is, en die datum van aflegging daarvan moet vermeld en dit moet onderteken.

(c) Die bepalings van paragraaf (a) is, ten opsigte van iemand wat voor die datum van inwerkingtreding van hierdie Ordonnansie 'n aanstelling kragtens subartikel (1) gehad het van toepassing eers na die verstryking van drie maande na die genoemde datum.

(3) Wanneer 'n landdros, 'n addisionele landdros of 'n assistent-landdros weens afwesigheid of onvermoë nie sy ampswerksaamhede kan verrig nie, of wanneer so 'n amp vakant word, kan die Administrateur of, indien deur die Administrateur daartoe gemagtig, die Sekretaris, Adjunk-Sekretaris of Ondersekretaris van die Gebied, enige ander bevoegde beampte in die staatsdiens of enige bevoegde afgetrede beampte van die staatsdiens magtig om in die plek van die afwesige of onvermoënde beampte gedurende sodanige afwesigheid of tydperk van onvermoë op te tree of om die vakante amp waar te neem totdat die vakature gevul word: Met dien verstande dat wanneer so 'n vakature gedurende 'n tydperk van meer as ses maande ononderbroke ongevul gebly het, die feit aan die Staatsdienskommissie meegedeel moet word.

(4) Die Administrateur of, indien deur die Administrateur daartoe gemagtig, die Sekretaris, die Adjunk-Sekretaris of Ondersekretaris van die Gebied kan tydelik enige bevoegde persoon aanstel om, hetsy in die algemeen of in 'n bepaalde aangeleentheid, op te tree as landdros van 'n streekafdeling, benewens 'n landdros of waarnemende landdros van daardie afdeling, of as addisionele landdros of assistent-landdros van 'n distrik of subdistrik benewens die landdros of enige ander addisionele landdros of assistent-landdros.

(5) By die toepassing van hierdie artikel op 'n distrik, subdistrik of gebied onder die administratiewe beheer van die Minister van Bantoe-administrasie en -ontwikkeling van die Republiek vervang die woorde „Sekretaris, Adjunk-Sekretaris of Ondersekretaris van Bantoe-administrasie en -ontwikkeling" die woorde „Sekretaris, Adjunk-Sekretaris of Ondersekretaris van die Gebied".

10. Behoudens die wetsbepalings op die staatsdiens en die bepalings van artikel *elf* —

(a) mag niemand wat nie voor die inwerkingtreding van hierdie Ordonnansie 'n substantiewe betrekking as landdros beklee het nie, so 'n betrekking beklee nie, en mag niemand wat nie voor die inwerkingtreding van hierdie Ordonnansie 'n substantiewe betrekking as assistent-landdros beklee het nie, so 'n betrekking beklee nie, tensy so iemand in die een of ander geval in die Laer Wetseksamen van die Staatsdiens of 'n eksamen wat volgens verklaring van die Staatsdienskommissie daarmee gelyk staan, geslaag het;

(b) kan die Staatsdienskommissie wanneer hy iemand aanbeveel vir aanstelling as 'n landdros, addisionele landdros of assistent-landdros, voorkeur gee aan iemand wat 'n graad in die regte van 'n universiteit in Suid-Afrika besit, of wat in die Hoër Wetseksamen van die Staatsdiens of 'n eksamen wat die Staatsdienskommissie as gelykwaardig daarmee beskou, geslaag het.

11. (1) Alle landdroste, addisionele landdroste en assistent-landdroste wat hul amp by die inwerkingtreding van hierdie Ordonnansie beklee, word beskou as kragtens hierdie Ordonnansie aangestel.

(2) References in any other law to chief magistrates, resident magistrates, magistrates, additional magistrates, civil magistrates or criminal magistrates, shall be read as referring to magistrates appointed under this Ordinance.

(3) All such references to assistant resident magistrates or to assistant magistrates shall be read as referring to assitant magistrates appointed under this Ordinance.

12. (1) A magistrate —

(a) may hold a court, provided that a court of a regional division may only be held by a magistrate of the regional division;
(b) shall possess the powers and perform the duties conferred or imposed upon magistrates by any law for the time being in force within the Territory.

(2) An additional magistrate or an assistant magistrate —

(a) may hold a court;
(b) shall possess such powers and perform such duties conferred or imposed upon magistrates as he is not expressly prohibited from exercising or performing either by the Administrator or by the magistrate of the district.

(3) An acting magistrate, additional magistrate, or assistant magistrate, respectively, shall possess the powers and jurisdiction and perform the duties of the magistrate, additional magistrate, or assistant magistrate in whose place he is appointed to act, for the particular case or during the time or in the circumstances for which he is appointed to act.

(4) Every additional magistrate and every assistant magistrate shall in each district for which he has been appointed, be subject to the administrative direction of the magistrate; and the magistrate shall allocate the work among the additional magistrates and assistant magistrates.

CHAPTER III.

OFFICERS OF THE COURT

13. (1) There shall 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 by any law empowered to do shall be subject to review by the court on application either *ex parte* or on notice, as the circumstances may require.

14. (1) Subject to the provisions of the law governing the public service, the Administrator may appoint for every court, or if more than one place is appointed in any district for the holding of a court for such district, in respect of every place so appointed, a person who is an officer of the said service as a messenger of such court and so many persons who are such officers as deputy-messengers of such court, as may be necessary: Provided that if the duties to be performed by any such messenger or deputy-messenger 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 such messenger or deputy-messenger in addition to his ordinary duties, or if, in the opinion of the Administrator the duties of such messenger or deputy-messenger can be performed satisfactorily and at less cost to the state by a person who is not such an officer, the Administrator may, without reference to the said law, appoint any person who is not an officer of the said service, as such messenger or deputy-messenger at such remuneration and upon such conditions as the Administrator may determine.

(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-messenger for whom he shall be responsible.

(3) All fees payable to a messenger of the court who is an officer of the public service, shall be paid into the

(2) Verwysings in enige ander wet na hooflanddroste, resident-landdroste, landdroste, addisionele landdroste, siviele landdroste of strafregtelike landdroste word beskou as verwysings na landdroste wat kragtens hierdie Ordonnansie aangestel is.

(3) Alle sodanige verwysings na assistent-resident-landdroste of na assistent-landdroste word beskou as verwysings na assistent-landdroste wat kragtens hierdie Ordonnansie aangestel is.

12. (1) 'n Landdros —

(a) kan hofsittings hou: Met dien verstande dat 'n sitting van 'n hof van 'n streekafdeling net deur 'n landdros van die streekafdeling gehou kan word;
(b) besit die bevoegdhede en verrig die pligte verleen of opgelê aan landdroste by enige wet wat as dan in die Gebied van krag is.

(2) 'n Addisionele landdros of 'n assistent-landdros—

(a) kan hofsittings hou;
(b) besit sodanige bevoegdhede en verrig sodanige pligte soos aan landdroste verleen of opgelê word vir sover die uitoefening of verrigting daarvan hom nie deur die Administrateur of die landdros van die distrik uitdruklik ontsê is nie.

(3) 'n Waarnemende landdros, addisionele landdros of assistent-landdros besit onderskeidelik die bevoegdhede en jurisdiksie en verrig die pligte van die landdros, addisionele landdros of assistent-landdros in wie se plek hy aangestel is om vir die bepaalde saak of gedurende die tydperk of in die omstandighede waarvoor hy aangestel is, op te tree.

(4) Elke addisionele landdros en elke assistent-landdros is in elke distrik waarvoor hy aangestel is, onderworpe aan die administratiewe beheer van die landdros; en die landdros verdeel die werk onder die addisionele landdroste en assistent-landdroste.

HOOFSTUK III

BEAMPTES VAN DIE HOF.

13. (1) Daar word vir elke hof soveel klerke van die hof en assistent-klerke van die hof aangestel soos nodig is.

(2) As die klerk van die hof weier om 'n handeling waartoe hy by wet gemagtig is, te verrig, is sodanige weiering onderhewig aan hersiening deur die hof op aansoek gedoen òf *ex parte* òf na kennisgewing, na gelang van die omstandighede.

14. (1) Behoudens die wetsbepalings op die staatsdiens kan die Administrateur vir elke hof of as daar in 'n distrik meer as een plek bepaal word vir die hou van hofsittings vir daardie distrik, dan ten opsigte van elke aldus bepaalde plek, iemand wat 'n beampte in die bedoelde diens is as geregsbode van sodanige hof en soveel persone wat sodanige beamptes is soos nodig is as adjunk-geregsbode van sodanige hof aanstel: Met dien verstande dat as die werksaamhede wat so 'n geregsbode of adjunk-geregsbode sou verrig, na die mening van die Staatsdienskommissie nie voldoende is om minstens een persoon gedurende die hele jaar ten volle besig te hou nie, en geen beampte in die bedoelde diens, na die mening van die bedoelde Kommissie, die werksaamhede van so 'n geregsbode of adjunk-geregsbode tesame met sy gewone werksaamhede kan verrig nie, of as die Administrateur meen dat die werksaamhede van so 'n geregsbode of adjunk-geregsbode bevredigend en teen minder koste vir die Staat deur iemand wat nie so 'n beampte is nie, verrig kan word, die Administrateur sonder inagneming van die voormelde wetsbepalings iemand wat nie 'n beampte in die bedoelde diens is nie, as so 'n geregsbode of adjunk-geregsbode kan aanstel teen die besoldiging en op die voorwaardes wat die Administrateur bepaal.

(2) 'n Geregsbode van 'n hof, wat nie 'n beampte in die staatsdiens is nie, kan met die voorafgaande goedkeuring van die landdros van daardie hof, een of meer adjunk-geregsbodes, vir wie hy verantwoordelik is, aanstel.

(3) Alle lone betaalbaar aan 'n geregsbode wat 'n beampte in die staatsdiens is, word in die Inkomstefonds

Territory Revenue Fund or the Consolidated Revenue Fund of the Republic, as the case may be.

(4) The State shall be liable for any loss or damage resulting from any act performed by a messenger of the court who is an officer of the public service, within the scope of his employment as messenger, or by any deputy-messenger 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.

(5) No person shall be appointed a messenger of the court or deputy-messenger of the court who is an attorney practising in the district, or is a clerk or employee of any such attorney.

(6) Whenever in any matter objection is made to the service or execution of process by a messenger of the court or his deputy by reason of the interest of such messenger or deputy in such matter or of the relation of such messenger or deputy 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 messenger, or for any other good and sufficient reason, it is necessary to appoint an acting messenger, the magistrate may appoint a person so to act.

(7) A messenger of the court receiving any process for service or execution from a practitioner or plaintiff by whom there is due and payable to the messenger any sum of money in respect of services performed more than three months previously in the execution of any duty of his office, and which notwithstanding request has not been paid, may refer such process to the magistrate of the court out of which the process was issued with particulars of the sum due and payable by the practitioner or plaintiff ;and the magistrate may, if he is satisfied that a sum is due and payable by the practitioner or plaintiff to the messenger as aforesaid which notwithstanding request has not been paid, by writing under his hand authorize the messenger to refuse to serve or execute such process until the sum due and payable to the messenger has been paid.

(8) A magistrate granting any such authority shall forthwith transmit a copy thereof to the practitioner or plaintiff concerned and a messenger of the court receiving any such authority shall forthwith return to the practitioner or plaintiff the process to which such authority refers with an intimation of his refusal to serve or execute the same and of the grounds for such refusal.

15. (1) Whenever process of the court in a civil case is to be served or executed in a district for which no messenger of the court has been appointed and whenever process of any court in a criminal case is to be served, a member of the police force shall be as qualified to serve or execute all such process and all other documents in such a case as if he had been duly appointed messenger. The fees payable in respect of or in connection with any such service to a messenger of the court shall in any such case be chargeable but shall be paid into the Consolidated Revenue Fund of the Republic.

(2) Whenever under any law a public body has the right to prosecute privately in respect of any offence or whenever under any law any fine imposed on conviction in respect of any offence is to be paid into the revenue of a public body, the process of the court and all other documents in the case in which prosecution takes place for such offence shall be served either by a person duly authorised in writing by such public body or with the consent of the Administrator by a member of the police force. If the service is made by a member of the police force, fees in accordance with the scale set out in the rules shall be paid by the public body or such compounded amount in respect of all such process and other documents in any year as may be agreed between the said public body and the Administrator. Such fees or such amount shall be paid into the Consolidated Revenue Fund of the Republic.

van die Gebied of die Gekonsolideerde Inkomstefonds van die Republiek, na gelang, betaal.

(4) Die Staat is aanspreeklik vir alle verlies of skade wat voortspruit uit 'n handeling van 'n geregsbode wat 'n beampte in die staatsdiens is, verrig binne sy amptelike werkbestek as geregsbode, of deur 'n adjunk van so 'n geregsbode, of uit pligsversuim aan die kant van so 'n geregsbode, of adjunk-geregsbode, as die bedoelde geregsbode self weens sodanige verlies of skade aanspreeklik sou gewees het as hy nie 'n beampte in die staatsdiens was nie.

(5) Niemand wat as prokureur in die distrik praktiseer, of wat 'n klerk of werknemer van sodanige prokureer is, mag as geregsbode of adjunk-geregsbode aangestel word nie.

(6) Wanneer in enige saak beswaar gemaak word teen die bestelling of tenuitvoerlegging van 'n prosesstuk deur 'n geregsbode of sy adjunk op grond van die belang van so 'n geregsbode of adjunk by so 'n saak, of van die verwantskap van so 'n geregsbode of adjunk aan een van die partye in die saak of om enige ander gegronde rede van wraking of wanneer dit weens die siekte of afwesigheid van die geregsbode of weens enige ander goeie en voldoende rede nodig is om 'n waarnemende geregsbode aan te stel, kan die landdros iemand aanstel om aldus waar te neem.

(7) 'n Geregsbode wat 'n prosesstuk ontvang om te bestel of ten uitvoer te lê van 'n praktisyn of eiser deur wie daar aan die geregsbode ten opsigte van dienste meer as drie maande tevore by die uitvoering van sy ampswerksaamhede verrig, 'n bedrag geld verskuldig en betaalbaar is wat, ondanks 'n versoek daarom, nog nie betaal is nie, kan daardie prosesstuk verwys na die landdros van die hof waaruit die prosesstuk uitgereik is, met besonderhede van die bedrag wat deur die praktisyn of die eiser verskuldig en betaalbaar is; en die landdros kan by oortuiging dat daar soos voormeld deur die praktisyn of die eiser aan die geregsbode 'n bedrag verskuldig en betaalbaar is wat ondanks 'n versoek daarom, nie betaal is nie, by 'n geskrif wat hy onderteken, die geregsbode magtig om te weier om daardie prosesstuk te bestel of ten uitvoer te lê totdat die bedrag wat aan die geregsbode verskuldig en betaalbaar is, betaal is.

(8) Wanneer 'n landdros sodanige magtiging verleen, moet hy onverwyld 'n afskrif daarvan aan die betrokke praktisyn of eiser deurstuur, en wanneer 'n geregsbode sodanige magtiging ontvang, moet hy die prosesstuk waarop die magtiging betrekking het onverwyld aan die praktisyn of eiser teruggee en hom meedeel dat hy weier om dit te bestel of ten uitvoer te lê en die redes vir sodanige weiering aangee.

15. (1) Wanneer prosesstukke van die hof in 'n siviele saak bestel of ten uitvoer gelê moet word in 'n distrik waarvoor geen geregsbode aangestel is nie en wanneer prosesstukke van enige hof in 'n strafsaak bestel moet word, is 'n lid van die polisiemag ewe bevoeg om alle sodanige prosesstukke en alle ander stukke in so 'n saak te bestel of ten uitvoer te lê asof hy behoorlik as geregsbode aangestel was. Die lone wat ten opsigte van of in verband met so 'n bestelling aan 'n geregsbode betaalbaar is, is in elke so 'n geval betaalbaar, maar word in die Gekonsolideerde Inkomstefonds van die Republiek gestort.

(2) Wanneer 'n openbare liggaam kragtens enige wet die reg het om weens 'n misdryf privaat te vervolg, of wanneer kragtens enige wet 'n boete wat opgelê word by skuldigbevinding ten opsigte van 'n misdryf in die inkomste van 'n openbare liggaam gestort moet word, word die prosesstukke van die hof en alle ander stukke in die saak waarin die vervolging weens so 'n misdryf plaasvind, bestel òf deur iemand wat behoorlik op skrif deur sodanige openbare liggaam daartoe gemagtig is òf met die toestemming van die Administrateur deur 'n lid van die polisiemag. Geskied die bestelling deur 'n lid van die polisiemag, dan word lone deur die openbare liggaam betaal ooreenkomstig die tarief in die reëls uiteengesit, of so 'n saamgestelde bedrag ten opsigte van alle sodanige prosesstukke en ander stukke in 'n jaar soos tussen die bedoelde openbare liggaam en die Administrateur ooreengekom word. Sodanige lone of sodanige bedrag word in die Gekonsolideerde Inkomstefonds van die Republiek gestort.

16. The messenger of the court shall receive and cause to be lodged in prison all persons arrested by such messenger or committed to his custody.

17. The return of a messenger of the court 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.

18. A messenger of the court who is alleged to have been negligent or dilatory in the service or execution of process, or wilfully to have 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 magistrate, who may appoint a person to act in his place during the period of suspension. The magistrate shall forthwith report to the Administrator any action he has taken under this section and the Administrator 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.

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

CHAPTER IV.

PRACTITIONERS

20. An advocate or attorney of the Supreme Court may appear in any proceeding in any court.

21. An articled clerk referred to in sub-section (3) of section *twenty-one* of the Attorneys, Notaries and Conveyancers Admission Act, 1934 (Act 23 of 1934) of the Republic as applied to the Territory by Ordinance No. 7 of 1959, may appear instead and on behalf of the attorney to whom he has been articled in any proceeding in any court other than the court of a regional division established under section *two*.

22. Whenever in the opinion of a judicial officer a practitioner has been guilty of misconduct or dishonourable practice he shall report the fact —

(a) in the case of an advocate, to the branch of the Society of Advocates or Bar Council at the centre in which such advocate practises; and

(b) in the case of all other practitioners, to the law society concerned.

CHAPTER V.

RULES OF COURT

23. The rules for the better carrying out of the purposes of this Ordinance, shall, until repealed in terms of section *twenty-four*, be the rules contained in the Second Schedule to the Magistrates' Courts Proclamation, 1935 (Proclamation No. 31 of 1935).

24. (1) The Administrator shall have power —

(a) to make, alter or repeal rules regulating the following matters in respect of magistrates' courts in the Territory —

(i) practice and procedure, including procedure in appealing;
(ii) fees and costs;
(iii) appointment of assessors;
(iv) the giving of security;
(v) the duties of officers of the court; and
(vi) such other matters as are necessary or useful for carrying out the purposes of this Ordinance or the Criminal Procedure Ordinance, 1963, in relation to magistrates' courts; and

(b) to alter or repeal any of the rules contained in the Second Schedule to the Magistrates' Courts Proclamation, 1935 (Proclamation No. 31 of 1935).

(2) Different rules may be made as to different classes of cases.

16. Die geregsbode moet elkeen wat deur hom in hegtenis geneem is of wat in sy bewaring gestel is, ontvang en in 'n gevangenis laat sit.

17. Die relaas op 'n prosesstuk van die hof, gemaak deur 'n geregsbode of deur iemand wat gemagtig is om enige van die werksaamhede van 'n geregsbode te verrig, is bewys *prima facie* van die verklarings wat daarin voorkom.

18. 'n Geregsbode wat na bewering nalatig of vertragend was met die bestelling of tenuitvoerlegging van prosesstukke of wat na bewering opsetlik betaling geëis het van meer lone of uitgawes as wat hom toekom of 'n valse relaas gemaak het of hom op enige ander wyse in verband met sy werksaamhede aan wangedrag skuldig gemaak het, kan in afwagting van ondersoek, deur die landdros in sy amp en wins geskors word, en die landdros kan iemand aanstel om solank die skorsing duur as geregsbode op te tree. Die landdros doen onverwyld aan die Administrateur verslag van wat hy kragtens hierdie artikel gedoen het, en die Administrateur kan, na ondersoek, die bevel van skorsing ophef of bekragtig en ook die aldus geskorste geregsbode uit sy amp ontslaan.

19. Elke beampte van die hof wat onmiddellik voor die inwerkingtreding van hierdie Ordonnansie in diens is, word beskou as behoorlik kragtens hierdie Ordonnansie aangestel en geniet en oefen sy bevoegdhede, pligte en gesag dienooreenkomstig uit.

HOOFSTUK IV

PRAKTISYNS.

20. 'n Advokaat of prokureur van die Hooggeregshof kan in enige verrigtinge in enige hof verskyn.

21. 'n Klerk onder leerkontrak soos bedoel in subartikel (3) van artikel *een-en-twintig* van die Toelating van Prokureurs, Notarisse en Transportbesorgers Wet 1934 (Wet 23 van 1934) van die Republiek, soos toegepas op die Gebied by Ordonnansie 7 van 1959, kan in plaas van en namens die prokureur by wie hy onder leerkontrak in diens is, verskyn in enige verrigtinge in 'n hof buiten die hof van 'n streekafdeling ingestel kragtens artikel *twee*.

22. Wanneer 'n regterlike beampte meen dat 'n praktisyn hom aan wangedrag of oneerbare praktyk skuldig gemaak het, moet hy die geval aanmeld —

(a) in die geval van 'n advokaat aan die tak van die vereniging van advokate of van die Balieraad op die plek waar sodanige advokaat praktiseer; en

(b) in die geval van alle ander praktisyns, aan die betrokke prokureursorde.

HOOFSTUK V

REËLS VAN DIE HOF.

23. Die reëls vir die doeltreffender verwesenliking van die oogmerke van hierdie Ordonnansie is, totdat hulle kragtens artikel *vier-en-twintig* herroep word, die reëls wat in die tweede bylae van die Landdroshowe Proklamasie 1935 (Proklamasie 31 van 1935) verskyn.

24. (1) Die Administrateur het die bevoegdheid —

(a) om reëls uit te vaardig, te wysig of te herroep tot reëling van die volgende aangeleenthede ten opsigte van landdroshowe in die Gebied:—

(i) die praktyk en die prosedure, met inbegrip van die prosedure wanneer geappelleer word;
(ii) lone, gelde en koste;
(iii) die aanstelling van assessore;
(iv) die stel van sekerheid;
(v) die pligte van beamptes van die hof; en
(vi) sodanige ander aangeleenthede soos nodig of nuttig is ter verwesenliking van die doeleindes van hierdie Ordonnansie of die Strafprosesordonnansie 1963 met betrekking tot landdroshowe; en

(b) om enige van die reëls in die tweede bylae van die Landdroshowe Proklamasie 1935 (Proklamasie 31 van 1935) te wysig of te herroep.

(2) Verskillende reëls kan ten aansien van verskillende soorte sake uitgevaardig word.

(3) No new rule or any alteration or rescission of a rule shall take effect unless it has been published in three consecutive ordinary issues of the *Official Gazette* so that the last publication thereof shall be at least one month before the day upon which it is expressed to take effect.

(4) Every new rule and every alteration or rescission of a rule shall, within fourteen days after it has taken effect, be laid upon the Table of the Legislative Assembly of the Territory, if the Assembly be then in session, or if it be not then in session, within fourteen days after the commencement of its next ensuing session.

PART II — CIVIL MATTERS

CHAPTER VI.

CIVIL JURISDICTION

25. (1) Except where it is otherwise by law provided, the area of jurisdiction of a court shall be the district or sub-district for which such court is established.

(2) Where in any district a sub-district has been created the court of the district shall have no jurisdiction in the sub-district.

26. The jurisdiction of a periodical court within the area for which it has been appointed shall be subject to the following provisions —

(a) the court of a district within which the said area or any part thereof is situate shall retain concurrent jurisdiction with the periodical court within such portions of such area as shall be situate within such district; and

(b) no person shall, without his own consent, be liable to appear as a party before any periodical court to answer any claim unless he resides nearer to the place where the periodical court is held than to the seat of magistracy of the district.

27. (1) Saving any other jurisdiction assigned to a court by this Ordinance or by any other law, the persons in respect of whom the court shall have jurisdiction shall be the following and no other —

(a) any person who resides, carries on business or is employed within the district;

(b) any partnership which has business premises situated or any member whereof resides within the district;

(c) any person whatever, in respect of any proceedings incidental to any action or proceeding instituted in the court by such person himself;

(d) any person, whether or not he resides, carries on business or is employed within the district, 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; or

(iii) such proceedings are taken under sub-section (2) of section *sixty-eight* and the person therein referred to as the "third party" resides, carries on business, or is employed within the district; or

(iv) all the parties consent to the jurisdiction of the court;

(f) any defendant (whether in convention or reconvention) who appears and takes no objection to the jurisdiction of the court;

(g) any person who owns immovable property within the district in actions in respect of such property or in respect of mortgage bonds thereon.

(2) "Person" and "defendant" in this section include the State.

28. (1) Subject to the provisions of this Ordinance the court in respect of causes of action shall have jurisdiction —

(3) Geen nuwe reël of geen wysiging of herroeping van 'n reël tree in werking nie tensy dit in drie agtereenvolgende gewone uitgawes van die *Offisiële Koerant* gepubliseer is sodat die laaste publikasie daarvan geskied minstens een maand voor die dag waarop dit na verklaring in werking tree.

(4) Elke nuwe reël en elke wysiging of herroeping van 'n reël moet binne veertien dae nadat dit in werking getree het, in die Wetgewende Vergadering van die Gebied ter tafel gelê word as die Wetgewende Vergadering dan in sitting is, of as dit nie dan in sitting is nie, binne veertien dae na die aanvang van sy eersvolgende sitting.

DEEL II — SIVIELE SAKE

HOOFSTUK VI

SIVIELE JURISDIKSIE.

25. (1) Buiten waar by wet anders bepaal word, omvat die regsgebied van 'n hof die distrik of subdistrik waarvoor daardie hof ingestel is.

(2) Waar daar in 'n distrik 'n subdistrik ingestel is, het die hof van die distrik geen jurisdiksie in die subdistrik nie.

26. Die jurisdiksie van 'n periodieke hof binne die gebied waarvoor hy ingestel is, is aan die onderstaande bepalings onderworpe:—

(a) die hof van 'n distrik waarin bedoelde gebied of enige gedeelte daarvan geleë is, behou naas die periodieke hof konkurrente jurisdiksie binne sodanige gedeeltes van daardie gebied soos in sodanige distrik geleë is; en

(b) niemand kan sonder sy eie toestemming verplig word om as verweerder voor 'n periodieke hof te verskyn nie, tensy hy nader aan die plek woon waar die periodieke hof sitting hou as aan die plek waar die landdrossetel van die distrik gevestig is.

27. (1) Behoudens enige ander jurisdiksie wat by hierdie Ordonnansie of enige ander wet aan 'n hof verleen word, het die hof jurisdiksie ten aansien van die ondervermelde persone en niemand anders nie:—

(a) 'n persoon wat in die distrik woon, besigheid dryf of in diens is;

(b) 'n vennootskap waarvan 'n sakeperseel geleë is of waarvan 'n lid woon, in die distrik;

(c) enige persoon hoegenaamd ten opsigte van enige verrigtinge wat in verband staan met 'n aksie of verrigting deur sodanige persoon self in die hof ingestel;

(d) enige persoon, hetsy hy in die distrik woon, besigheid dryf of in diens is, al dan nie, as die skuldoorsaak geheel en al in die distrik ontstaan het;

(e) 'n party by 'n tussenpleitgeding, as —

(i) die eksekusie-skuldeiser en elke reklamant van die onderwerp van die geding in die distrik woon, besigheid dryf of in diens is; of

(ii) die onderwerp van die geding geregtelik in beslag geneem is; of

(iii) sodanige geding ingevolge subartikel (2) van artikel *agt-en-sestig* ingestel is en die persoon na wie daarin verwys word as die „derde" in die distrik woon, besigheid dryf of in diens is; of

(iv) al die partye in die jurisdiksie van die hof toestem;

(f) 'n verweerder (hetsy in konvensie of in rekonvensie) wat verskyn en geen beswaar teen die jurisdiksie van die hof opper nie;

(g) 'n persoon wat die eienaar is van onroerende goedere in die distrik, in aksies ten opsigte van bedoelde goedere of ten opsigte van verbande daarop.

(2) „Persoon" en „verweerder" omvat in hierdie artikel ook die Staat.

28. (1) Behoudens die bepalings van hierdie Ordonnansie het die hof ten aansien van skuldoorsake jurisdiksie in —

(a) in actions in which is claimed the delivery or transfer of any property movable or immovable, not exceeding one thousand rand in value;

(b) in actions of ejectment against the occupier of any premises or land within the district: Provided that, where the right of occupation of any such premises or land is in dispute between the parties, such right does not exceed one thousand rand in clear value to the occupier;

(c) notwithstanding the provisions of section *forty-five,* in actions for the determination of a right of way;

(d) in actions on a liquid document or a mortgage bond for the recovery of an amount not exceeding two thousand rand;

(e) in actions on any agreement as defined in sub-section (1) of section *one* of the Hire Purchase Ordinance, 1942 (Ordinance No. 7 of 1942), where the claim or the value of the property in dispute does not exceed two thousand rand;

(f) in actions other than those already in this section mentioned, where the claim or the value of the matter in dispute does not exceed one thousand rand.

(2) In sub-section (1), "action" includes a claim in reconvention.

29. (1) Subject to the limits of jurisdiction prescribed by this Ordinance 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 —

(a) the cause of action appears to amount, exclusive of costs, to at least forty rand;

(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 forty rand;

(c) it appears that the respondent is about to remove from the Territory.

30. (1) When a summons is issued in which is claimed the rent of any premises, the plaintiff may include in such summons a notice prohibiting any person from removing any of the furniture or other effects thereon which are subject to the plaintiff's hypothec for rent until an order relative thereto has been made by the court.

(2) The messenger of the court shall, if required by the plaintiff and at such plaintiff's expense, make an inventory of such furniture or effects.

(3) Such notice shall operate to interdict any person having knowledge thereof from removing any such furniture or effects.

(4) Any person affected by such notice may apply to the court to have the same set aside.

31. (1) Upon an affidavit by or on behalf of the landlord of any premises situate within the district, that an amount of rent not exceeding the jurisdiction of the court is due and in arrear in regard to the said premises, and that the said rent has been demanded in writing for the space of seven days and upwards, or, if not so demanded, that the deponent believes that the tenant is about to remove the movable property upon the said premises in order to avoid the payment of such rent, and upon security being given to the satisfaction of the clerk of the court to pay all damages, costs and charges which the tenant of such premises, or any other person, may sustain or incur by reason of the attachment hereinafter mentioned, if the said attachment be thereafter set aside, the court may, upon application, issue an order to the messenger of the court requiring him to attach so much of the movable property upon the premises in question and subject

(a) aksies tot lewering of oordrag van roerende of onroerende goedere waarvan die waarde hoogstens duisend rand is;

(b) aksies tot uitsetting teen die okkupeerder van 'n perseel of van grond in die distrik: Met dien verstande dat waar die reg van okkupasie van enige sodanige perseel of grond tussen die partye in geskil is, die suiwere waarde van daardie reg vir die okkupeerder hoogstens duisend rand mag bedra;

(c) nieteenstaande die bepalings van artikel *vyf-en-veertig,* aksies tot vasstelling van 'n deurgangsreg;

(d) aksies op 'n likwiede dokument of 'n verband ter vordering van 'n bedrag van hoogstens tweeduisend rand;

(e) aksies op 'n kontrak soos bepaal in subartikel (1) van artikel *een* van die Huurkoopordonnansie 1942 (Ordonnansie 7 van 1942) waar die vordering of die waarde van die goedere in geskil hoogstens tweeduisend rand bedra;

(f) ander aksies as dié wat reeds in hierdie artikel vermeld is, waar die vordering of die waarde van die onderwerp in geskil hoogstens duisend rand bedra.

(2) In subartikel (1) omvat „aksie" 'n vordering in rekonvensie.

29. (1) Die hof kan, binne die grense van die bevoegdheid by hierdie Ordonnansie aan hom verleen, bevele vir arres *tanquam suspectus de fuga,* beslaglegging, interdikte en *mandamente van spolie* teen persone en sake verleen.

(2) Die bekragtiging van so 'n beslaglegging of interdik deur die hof in die vonnis in die aksie gevel, het tot gevolg dat die beslaglegging of interdik van krag bly totdat die tenuitvoerlegging geskied het of tot nadere bevel van die hof.

(3) Geen bevel vir persoonlike arres *tanquam suspectus de fuga* word verleen nie, tensy —

(a) die skuldoorsaak, met uitsluiting van koste, minstens veertig rand blyk te bedra; en

(b) die applikant geen sekerheid vir die skuld blyk te hê nie of slegs sekerheid wat minstens veertig rand aan die bedrag van die skuld te kort skiet; en

(c) dit blyk dat die respondent op die punt staan om die Gebied te verlaat.

30. (1) Wanneer 'n dagvaarding uitgereik word waarin die huurgeld van 'n perseel gevorder word, kan die eiser by daardie dagvaarding 'n kennisgewing insluit waarby iedereen verbied word om die meubels of ander besittings daarop, wat aan die eiser se huurverband onderhewig is, te verwyder totdat 'n bevel met betrekking daartoe deur die hof verleen is.

(2) As die eiser dit verlang, moet die geregsbode op koste van die eiser 'n inventaris opstel van die bedoelde meubels of besittings.

(3) Sodanige kennisgewing dien as 'n interdik wat iedereen wat daarvan kennis dra verbied om sodanige meubels of besittings te verwyder.

(4) Iedereen wat deur so 'n kennisgewing getref word, kan by die hof om die tersydestelling daarvan aansoek doen.

31. (1) Op grond van 'n beëdigde verklaring deur of namens die verhuurder van 'n perseel in die distrik geleë dat 'n bedrag aan huurgeld wat nie die jurisdiksie van die hof te bowe gaan nie, ten opsigte van daardie perseel verskuldig en agterstallig is, en dat die betaling van sodanige huurgeld sedert sewe dae of langer skriftelik geëis is, of, by gebreke aan sodanige opeising, dat die verklaarder glo dat die huurder op die punt staan om die roerende goedere op die betrokke perseel te verwyder ten einde betaling van sodanige huurgeld te ontduik, en mits sekerheid ten genoeë van die klerk van die hof gestel word vir alle skade, koste en onkoste wat die huurder van sodanige perseel, of iemand anders, kan ly of oploop ten gevolge van die hieronder vermelde beslaglegging as sodanige beslaglegging later ter syde gestel word, kan die hof op aansoek daartoe by bevel die geregsbode gelas om beslag te lê op 'n genoegsame hoeveelheid van die roerende goedere wat aan die verhuurder se huurverband onderhewig is en op die betrokke perseel

to the landlord's hypothec for rent as may be sufficient to satisfy the amount of such rent, together with the costs of such application and of any action for the said rent.

(2) Any person affected by such order may apply to have it set aside.

(3) A respondent whose property has been so attached may by notice in writing to the clerk of the court admit that such property is subject to the landlord's hypothec for an amount to be specified in such notice and may consent that such property (other than property protected from seizure by the provisions of section *sixty-six*) be sold in satisfaction of such amount and costs; and such notice shall have the same effect as a consent to judgment for the amount specified.

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

33. In any action the court may, upon the application of either party, summon to its assistance one or two persons of skill and experience in the matter to which the action relates who may be willing to sit and act as assessors in an advisory capacity.

34. (1) An action or proceeding may, with the consent of all the parties thereto, or upon the application of any party thereto, and upon its being made to appear that the trial of such action or proceeding in the court wherein summons has been issued may result in undue expense or inconvenience to such party, be transferred by the court to any other court.

(2) An interpleader summons, if issued in the court of the district in which the property was attached, may, at the discretion of the court, be remitted for trial to the court in which the judgment was given.

(3) An action commenced in a periodical court may, at the discretion of the court, be transferred to the court of the district, or (subject to the provisions of paragraph (b) of section *twenty-six*) *vice versa*.

35. The court may, upon application by any person affected thereby, or, in cases falling under paragraph (c), *suo motu* —

(a) rescind or vary any judgment granted by it in the absence of the person against whom that judgment was granted;

(b) 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;

(c) correct patent errors in any judgment in respect of which no appeal is pending;

(d) rescind or vary any judgment in respect of which no appeal lies.

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

37. (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.

(2) If any part of a claim be so abandoned it shall thereby be finally extinguished: Provided that, if the claim be upheld in part only, the abandonment shall be deemed first to take effect upon that part of the claim which is not upheld.

is om die bedrag van sodanige huurgeld, tesame met die koste van sodanige aansoek en van 'n aksie vir bedoelde huurgeld, te dek.

(2) Iedereen wat deur so 'n bevel getref word, kan om die tersydestelling daarvan aansoek doen.

(3) 'n Respondent op wie se goedere aldus beslag gelê is, kan by skriftelike kennisgewing aan die klerk van die hof erken dat sodanige goedere aan die verhuurder se huurverband onderhewig is vir 'n bedrag wat in die kennisgewing vermeld moet word, en kan toestemming daartoe verleen dat die betrokke goedere (behalwe goedere wat deur die bepalings van artikel *ses-en-sestig* teen beslaglegging beskerm word) ter voldoening aan bedoelde bedrag en die koste verkoop word; en so 'n kennisgewing het dieselfde uitwerking as 'n toestemming tot vonnis vir die bepaalde bedrag.

32. Die hof kan 'n *curator ad litem* benoem in enige geval waarin 'n party by 'n proses wat in daardie hof ingestel is of gaan word, volgens wet so 'n kurator moet of mag hê.

33. Die hof kan in enige aksie op aansoek van een van die partye die hulp inroep van een of twee persone wat in die saak waarop die aksie betrekking het, kundig en ervare is, en ook bereid is om in 'n raadgewende hoedanigheid as assessore sitting te neem en te dien.

34. (1) 'n Aksie of proses kan met die toestemming van al die partye daarby of op aansoek van een van die partye, en nadat aangetoon is dat die verhoor van sodanige aksie of proses in die hof waarin die dagvaarding uitgereik is, daardie party onmatige uitgawe of ongerief kan veroorsaak, deur die hof na enige ander hof oorgeplaas word.

(2) 'n Tussenpleitdagvaarding wat uitgereik is in die hof van die distrik waarin die goedere in beslag geneem is, kan deur die hof na goeddunke ter verhoor verwys word na die hof waarin die vonnis gevel is.

(3) 'n Aksie wat in 'n periodieke hof aanhangig gemaak is, kan deur die hof na goeddunke na die hof van die distrik verwys word, of (onderhewig aan die bepalings van paragraaf (b) van artikel *ses-en-twintig*) omgekeerd.

35. Die hof kan op aansoek van iemand wat daardeur getref word of in gevalle wat onder paragraaf (c) val, *suo motu* —

(a) 'n vonnis wat deur hom gevel is in die afwesigheid van die persoon teen wie daardie vonnis gevel is, vernietig of wysig;

(b) 'n vonnis deur hom gevel wat *ab origine* nietig was of wat deur bedrog of ten gevolge van 'n dwaling gemeenskaplik aan die partye, verkry is, vernietig of wysig;

(c) klaarblyklike foute in 'n vonnis ten aansien waarvan geen appèl hangende is nie, herstel;

(d) 'n vonnis wat nie aan appèl onderhewig is nie, vernietig of wysig.

36 (1) Die hof kan, in aksies waarin die gevorderde bedrag die jurisdiksie nie oorskry nie en die saldo is van 'n rekening, ondersoek instel na en indien nodig getuienis afneem oor die hele rekening selfs al bevat so 'n rekening poste en transaksies wat die bedrag van die jurisdiksie oorskry.

(2) Waar die gevorderde bedrag of die ander gevraagde regshulp binne die jurisdiksie val, word sodanige jurisdiksie nie opgehef enkel en alleen deurdat die hof ten einde tot 'n beslissing te kan kom, 'n bevinding moet gee oor 'n aangeleentheid wat buite sy jurisdiksie val nie.

(3) By oorweging daarvan of 'n vordering binne die jurisdiksie val of nie, word vorderings tot betaling van rente op die geëiste hoofsom of vir koste of vir algemene of alternatiewe regshulp nie in ag geneem nie.

37. (1) 'n Eiser kan, ten einde 'n vordering binne die jurisdiksie te bring, in sy dagvaarding of te eniger tyd daarna uitdruklik van 'n gedeelte van sy vordering afstand doen.

(2) 'n Vordering waarvan aldus gedeeltelik afstand gedoen is, gaan ten aansien van daardie gedeelte tot niet: Met dien verstande dat as die vordering slegs ten dele toegewys word, die afstanddoening geag moet word eers ten aansien van die nie-toegewese gedeelte van die vordering te geld.

38. 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.

39. 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.

40. (1) Any number of persons, each of whom has a separate claim against the same defendant, may join as plaintiffs in one action if their right to relief depends upon the determination of some question of law or fact which if separate actions were instituted would arise in each action: Provided that if such joint action be instituted the defendant may apply to court for an order directing that separate trials be held and the court in its discretion may make such order as it deems just and expedient.

(2) In any joint action instituted as aforesaid judgment may be given for such one or more of the plaintiffs as may be found entitled to relief.

(3) If all the plaintiffs fail in any such action, the court may make such order as to costs as to it may seem just; in particular, it may order that the plaintiffs pay the costs of the defendant jointly and severally, the one paying the other to be absolved, and that if one plaintiff pays more than his *pro rata* share of the costs of the defendant, he shall be entitled to recover from the other plaintiffs their *pro rata* share of such excess.

(4) If some of the plaintiffs succeed and others fail, the court may make such order as to costs as it may deem just.

41. (1) Several defendants may be sued in the alternative or both in the alternative and jointly in one action, whenever it is alleged by the plaintiff that he has suffered damages and that it is uncertain which of the defendants is in law responsible for such damages: Provided that on the application of any of the defendants the court may in its discretion order that separate trials be held, or make such other order as it may deem just and expedient.

(2) If judgment is given in favour of any defendant or if any defendant is absolved from the instance, the court may make such order as to costs as to it may seem just; in particular, it may order —

(a) the plaintiff to pay such defendant's costs; or

(b) the unsuccessful defendants to pay the costs of the successful defendant jointly and severally, the one paying the other to be absolved, and that if one of the unsuccessful defendants pays more than his *pro rata* share of the costs of the successful defendant, he shall be entitled to recover from the other unsuccessful defendants their *pro rata* share of such excess, and the court may further order that if the successful defendant is unable to recover the whole or any part of his costs from the unsuccessful defendants, he shall be entitled to recover from the plaintiff such part of his costs as he cannot recover from the unsuccessful defendants.

(3) If judgment is given in favour of the plaintiff against more than one of the defendants the court may make such order as to costs as to it may seem just; in particular it may order those defendants against whom it gives judgment to pay the plaintiff's costs jointly and severally, the one paying the other to be absolved, and that if one of the unsuccessful defendants pays more than his *pro rata* share of the costs of the plaintiff he shall be entitled to recover from the other unsuccessful defendants their *pro rata* share of such excess.

42. (1) If two or more claims, each based upon a different cause of action, are combined in one summons,

38. 'n Eiser kan, ten einde 'n vordering binne die jurisdiksie van die hof te bring, in sy dagvaarding of te eniger tyd na die uitreiking daarvan, van sy vordering (hetsy dit 'n gelikwideerde of 'n ongelikwideerde is) 'n bedrag aftrek wat volgens eie erkenning deur hom aan die verweerder verskuldig is.

39. 'n Hoofvordering wat die jurisdiksie oorskry, mag nie gesplits word met die oogmerk om dit in meer as een aksie te verhaal as die partye sowel as die geskilpunt in al sodanige aksies dieselfde sou wees nie.

40. (1) Enige aantal persone, elk van wie 'n afsonderlike vordering teen dieselfde verweerder het, kan as eisers gesamentlik in geding tree as hulle reg op regshulp afhang van die beslissing van een of ander regs- of feitevraag wat, as daar afsonderlike aksies ingestel was, in elke aksie sou ontstaan: Met dien verstande dat as so 'n gesamentlike aksie ingestel word, die verweerder by die hof 'n bevel kan aanvra waarby afsonderlike verhore beveel word en die hof na goeddunke so 'n bevel kan verleen soos hy billik en raadsaam ag.

(2) In 'n gesamentlike aksie, soos voormeld ingestel, kan vonnis gevel word ten gunste van een of meer van die eisers wat na bevinding op regshulp geregtig is.

(3) As die vorderings van al die eisers in so 'n aksie afgewys word, kan die hof met betrekking tot die koste die bevel gee wat hy billik ag; in die besonder kan hy beveel dat die eisers die koste van die verweerder gesamentlik en afsonderlik moet betaal, betaling deur die een die ander te bevry, en dat as die een eiser meer as sy *pro rata* deel van die verweerder se koste betaal, hy die reg sal hê om op die ander eisers hul *pro rata* deel te verhaal van die bedrag wat hy te veel betaal het.

(4) As die vorderings van party van die eisers toegewys en dié van ander afgewys word, kan die hof die bevel ten aansien van die koste gee wat hy billik ag.

41. (1) Verskeie verweerders kan in die alternatief of sowel in die alternatief as gesamentlik in een aksie aangespreek word wanneer ook al die eiser beweer dat hy skade gely het en dat dit onseker is wie van die verweerders regtens vir bedoelde skade verantwoordelik is: Met dien verstande dat die hof op aansoek van enige van die verweerders na goeddunke afsonderlike verhore kan beveel of 'n ander bevel kan gee wat hy billik en raadsaam ag.

(2) As vonnis ten gunste van 'n verweerder gevel word, of as daar aan 'n verweerder absolusie van die instansie verleen word, kan die hof ten aansien van die koste 'n bevel gee wat hy billik ag; in die besonder kan hy beveel —

(a) dat die eiser die koste van daardie verweerder moet betaal; of

(b) dat die onsuksesvolle verweerders die koste van die suksesvolle verweerder gesamentlik en afsonderlik moet betaal, betaling deur die een die ander te bevry, en dat as een van die onsuksesvolle verweerders meer as sy *pro rata* deel van die koste van die suksesvolle verweerder betaal, hy die reg sal hê om op die ander onsuksesvolle verweerders hul *pro rata* deel te verhaal van die bedrag wat hy te veel betaal het, en die hof kan voorts beveel dat as die suksesvolle verweerder nie sy koste geheel of ten dele op die onsuksesvolle verweerders kan verhaal nie, hy die reg sal hê om op die eiser daardie deel van sy koste te verhaal wat hy nie op die onsuksesvolle verweerders kon verhaal nie.

(3) As vonnis ten gunste van die eiser teen meer as een van die verweerders gevel word, kan die hof die bevel ten aansien van die koste gee wat hy billik ag; in die besonder kan hy beveel dat daardie verweerders teen wie hy vonnis vel die eiser se koste gesamentlik en afsonderlik moet betaal, betaling deur die een die ander te bevry, en dat as een van die onsuksesvolle verweerders meer as sy *pro rata* deel van die koste van die eiser betaal, hy die reg sal hê om op die ander onsuksesvolle verweerders hul *pro rata* deel te verhaal van die koste wat hy te veel betaal het.

42. (1) Wanneer twee of meer vorderings waarvan elkeen op 'n afsonderlike skuldoorsaak gegrond is, in een

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* be 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.

43. In sections *thirty-three, thirty four* and *thirty-six* to *forty-two* inclusive, "action", "claim" and "summons" include "claim in reconvention", and "plaintiff" and "defendant" include "plaintiff in reconvention" and "defendant in reconvention" respectively.

44. (1) Subject to the provisions of section *forty-five,* the court shall have jurisdiction to determine any action or proceeding otherwise beyond the jurisdiction, if the parties consent in writing thereto: Provided that no court other than a court having jurisdiction under section *twenty-seven* shall, except where such consent is given specifically with reference to particular proceedings already instituted or about to be instituted in such court, have jurisdiction in any such matter.

(2) Any provision in a contract existing at the commencement of this Ordinance or thereafter entered into, whereby a person undertakes that, when proceedings have been or are about to be instituted, he will give such consent to jurisdiction as is contemplated in the proviso to sub-section (1), shall be null and void.

45. (1) The court shall have no jurisdiction in matters in which the dissolution of a marriage or separation from bed and board or of goods of married persons is sought.

(2) A court shall have no jurisdiction in matters —

(a) in which the validity or interpretation of a will or other testamentary document is in question;

(b) in which the status of a person in respect of mental capacity is sought to be affected;

(c) in which is sought specific performance without an alternative of payment of damages except in —

(i) the rendering of an account in respect of which the claim does not exceed one thousand rand;

(ii) the delivery or transfer of property movable or immovable, not exceeding oue thousand rand in value; and

(iii) the delivery or transfer of property, movable or immovable exceeding one thousand rand in value where the consent of parties has been obtained in terms of section *forty-four;*

(d) in which is sought a decree of perpetual silence.

46. (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 *prima facie* a reasonable prospect on his counterclaim of obtaining a judgment in excess of its jurisdiction, stay the action for a reasonable period in order to enable him to institute an action in a competent court. The plaintiff in the magistrate's court may (notwithstanding his action therein) counterclaim in such competent court and in that event all questions as to the costs incurred in the magistrate's court shall be decided by that competent court.

(2) If the period for which such action has been stayed has expired and the defendant has failed to issue and serve a summons in a competent court in relation to the matters and the subject of such counterclaim the magistrate's court shall on application either —

(a) stay the action for a further reasonable period; or

dagvaarding verenig word, het die hof dieseifde jurisdiksie om elke sodanige vordering te beslis as wat hy sou gehad het as elke vordering die uitsluitende onderwerp van 'n afsonderlike aksie uitgemaak het.

(2) Wanneer 'n vordering vir die bekragtiging van 'n interdik of arres *pendente lite* verleen, in dieselfde dagvaarding verenig word met 'n vordering waarby regshulp van 'n ander aard gevra word, het die hof dieselfde jurisdiksie om elke sodanige vordering te beslis as wat hy sou gehad het as elke vordering die uitsluitende onderwerp van 'n afsonderlike aksie uitgemaak het, selfs al ontstaan al die vorderings uit dieselfde skuldoorsaak.

43. In artikels *drie-en-dertig, vier-en-dertig* en *sesen-dertig* tot en met *twee-en-veertig* omvat „aksie", „vordering" en „dagvaarding" ook „vordering in rekonvensie", en omvat „eiser" en „verweerder" onderskeidelik ook „eiser in rekonvensie" en „verweerder in rekonvensie".

44. (1) Behoudens die bepalings van artikel *vyfen-veertig* het die hof met die skriftelike toestemming van die partye jurisdiksie om enige aksie of proses wat anders buite sy jurisdiksie val, te beslis: Met dien verstande dat geen hof jurisdiksie in so 'n saak het nie behalwe 'n hof wat kragtens artikel *sewe-en-twintig* jurisdiksie het, tensy sodanige toestemming gegee is spesifiek met betrekking tot 'n bepaalde proses wat reeds in daardie hof ingestel is of op die punt staan om ingestel te word.

(2) 'n Bepaling van 'n kontrak wat by die inwerkingtreding van hierdie Ordonnansie bestaan of daarna aangegaan is waardeur iemand onderneem dat wanneer 'n proses ingestel is of op die punt staan om ingestel te word, hy die toestemming ten opsigte van jurisdiksie sal gee wat in die voorbehoudsbepaling wat in subartikel (1) bedoel word, is van nul en gener waarde.

45. (1) Die hof het geen jurisdiksie in regsvorderings tot ontbinding van 'n huwelik of tot skeiding van tafel en bed of van goedere van eggenote nie.

(2) 'n Hof het geen jurisdiksie nie in sake —

(a) waarin die geldigheid of uitleg van 'n testament of ander testamentêre dokument in geskil is;

(b) rakende die status van 'n persoon ten opsigte van geestelike bekwaamheid;

(c) waarin spesifieke nakoming sonder 'n alternatiewe eis om betaling van skadevergoeding gevorder word, behalwe in —

(i) die verstrekking van 'n rekening ten opsigte waarvan die vordering nie duisend rand te bowe gaan nie;

(ii) die lewering of oordrag van roerende of onroerende goedere ter waarde van hoogstens duisend rand; en

(iii) die lewering of oordrag van roerende of onroerende goedere ter waarde van meer as duisend rand waar die toestemming van die partye ooreenkomstig artikel *vier-en-veertig* verkry is;

(d) waarin 'n bevel tot ewigdurende stilswye aangevra word.

46. (1) Wanneer die verweerder in antwoord op 'n vordering binne die jurisdiksie, 'n teenvordering instel wat die jurisdiksie oorskry, word die vordering nie om dié rede afgewys nie; die hof kan egter by oortuiging dat die verweerder *prima facie* redelike vooruitsigte het dat 'n vonnis op sy teenvordering wat die jurisdiksie van die hof oorskry in sy guns gevel sal word, die aksie vir 'n redelike termyn opskort ten einde hom in staat te stel om 'n aksie in 'n bevoegde hof in te stel. Die eiser in die landdroshof kan (ondanks sy aksie daarin) 'n teenvordering in sodanige bevoegde hof instel, en in daardie geval word alle vrae met betrekking tot die koste in die landdroshof aangegaan, deur daardie bevoegde hof beslis.

(2) As die termyn waarvoor sodanige aksie opgeskort is, verloop het en die verweerder in gebreke gebly het om 'n dagvaarding met betrekking tot die aangeleenthede en die onderwerp van sodanige teenvordering in 'n bevoegde hof uit te reik en te bestel, moet die landdroshof op aansoek daartoe, òf —

(a) die aksie vir 'n verdere redelike termyn opskort; of

(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 be stayed, dismissed, withdrawn, or abandoned, or if the competent court has granted absolution from the instance thereon, the magistrate's court shall, upon application, dismiss the counterclaim and shall proceed to determine the claim.

47. The court may, as a result of the trial of an action, grant —

(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 court in giving judgment for either party;

(d) such judgment as to costs as may be just;

(e) an order, subject to such conditions as the court thinks fit, against the party in whose favour judgment has been given suspending wholly or in part the taking of further proceedings upon the judgment for a specified period pending arrangements by the other party for payment.

48. Costs awarded in interlocutory proceedings shall not be ceded without the consent of the court awarding such costs.

49. (1) Any action in which the amount of the claim exceeds two hundred rand, exclusive of interest and costs, may, upon application to the court by the defendant, or if there is more than one defendant, by any defendant, be removed to the Supreme Court, subject to the following provisions:

(a) notice of intention to make such application shall be given to the plaintiff, and to other defendants (if any) before the date on which the action is set down for hearing;

(b) the notice shall state that the applicant objects to the action being tried by the court or any magistrate's court;

(c) the applicant shall give such security as the court may determine and approve, for payment of the amount claimed and such further amount to be determined by the court not exceeding two hundred rand, for costs already incurred in the action and which may be incurred in the Supreme Court.

Upon compliance by the applicant with those provisions, all proceedings in the action in the court shall be stayed, and the action and all proceedings therein, shall, if the plaintiff so requires, be as to the defendant or defendants, forthwith removed from the court into the Supreme Court. Upon the removal, the summons in the court shall, as to the defendant or defendants, stand as the summons in the Supreme Court, the return date thereof being the date of the order of removal in an action other than one founded on a liquid document, and, in an action founded on a liquid document, being such convenient day on which the Supreme Court sits for the hearing of provisional sentence cases, as the court may order: Provided that the plaintiff in the action may, instead of requiring the action to be so removed, issue a fresh summons against the defendant or defendants in any competent court and the costs already incurred by the parties to the action shall be costs in the cause.

(2) If the plaintiff is successful in an action so removed to the Supreme Court, he may be awarded costs as between attorney and client.

CHAPTER VII.

WITNESSES AND EVIDENCE

50. (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

(b) die teenvordering afwys (ongeag of die verweerder sodanige teenvordering tot 'n bedrag binne die jurisdiksie van die hof verminder of nie).

(3) As die verweerder in gebreke gebly het om 'n aksie binne sodanige verdere termyn in te stel of as die aksie ingestel deur die verweerder opgeskort, afgewys, teruggetrek of prysgegee word, of as die bevoegde hof absolusie van die instansie daarop verleen het, moet die landdroshof op aansoek daartoe die teenvordering afwys en tot die beslissing van die vordering oorgaan.

47. Die hof kan wanneer hy op 'n aksie uitspraak gee —

(a) vonnis ten gunste van die eiser vel ten opsigte van sy vordering vir sover hy dit bewys het;

(b) vonnis ten gunste van die verweerder vel ten opsigte van sy verweer vir sover hy dit bewys het;

(c) absolusie van die instansie verleen wanneer dit aan die hof blyk dat die getuienis hom nie daartoe regverdig om vonnis ten gunste van die een of die ander party te vel nie;

(d) so 'n vonnis met betrekking tot die koste vel soos billik is;

(e) onderworpe aan die voorwaardes wat die hof goedvind, 'n bevel verleen teen die party ten gunste van wie vonnis gevel is, waarby alle verdere verrigtinge ten aansien van die vonnis vir 'n bepaalde termyn geheel of gedeeltelik opgeskort word onderwyl die ander party reëlings vir betaling tref.

48. Geen koste wat in 'n interlokutore proses toegewys is, mag sonder die toestemming van die hof wat daardie koste toegewys het, gesedeer word nie.

49. (1) 'n Aksie waarin die bedrag van die vordering (rente en koste nie bygereken nie) tweehonderd rand oorskry, kan op aansoek by die hof deur die verweerder of, as daar meer as een verweerder is, deur enige verweerder oorgeplaas word na die Hooggeregshof onderworpe aan die volgende bepalings:-

(a) kennis van die voorneme om so 'n aansoek te doen, moet aan die eiser en aan ander verweerders (as daar is) gegee word voor die datum waarop die aksie vir verhoor op die rol geplaas is;

(b) die kennisgewing moet meld dat die applikant daarteen beswaar het dat die aksie deur die hof of deur enige landdroshof verhoor word;

(c) die applikant moet die sekerheid stel wat die hof bepaal en goedkeur vir die betaling van die gevorderde bedrag en die verdere bedrag wat die hof moet bepaal van hoogstens tweehonderd rand ten aansien van koste wat reeds in die aksie aangegaan is en wat moontlik in die Hooggeregshof aangegaan word.

Wanneer die applikant aan al die voormelde bepalings voldoen het, word alle verrigtinge in die aksie in die hof gestaak, en die aksie en alle verrigtinge daarin word, as die eiser dit verlang, wat die verweerder of verweerders betref, onverwyld uit die hof oorgeplaas na die Hooggeregshof. By die oorplasing hou die dagvaarding in die hof, wat die verweerder of verweerders betref, stand as die dagvaarding in die Hooggeregshof, en die verskyningsdag daarvan is die datum van die bevel tot oorplasing in alle aksies behalwe dié wat op 'n likwiede dokument gegrond is, en in 'n aksie wat op 'n likwiede dokument gegrond is, is dit die geskikte dag wat die hof beveel waarop die Hooggeregshof sitting hou vir die verhoor van sake vir provisionele vonnis: Met dien verstande dat die eiser in die aksie in plaas van om oorplasing van die aksie soos voormeld te verlang, 'n nuwe dagvaarding teen die verweerder of verweerders in 'n bevoegde hof kan uitreik en die koste wat reeds deur die partye in die aksie aangegaan is, koste van die geding is.

(2) As die eiser slaag in 'n aksie wat aldus na die Hooggeregshof oorgeplaas is, kan daar aan hom koste tussen prokureur en kliënt toegewys word.

HOOFSTUK VII

GETUIES EN BEWYSLEWERING.

50. (1) 'n Party by 'n siviele aksie of ander proses waar die verskyning van getuies vereis word, kan die verskyning van 'n getuie (hetsy hy in die distrik woon of

or for the time being within the district or not) in the manner in the rules provided.

(2) (a) If any person, 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, unless duly excused, fails to remain in attendance throughout the trial, the court may, upon being satisfied upon oath or by the return of the messenger of the court 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 not exceeding fifty rand, and in default of payment, imprisonment for a period not exceeding three months, whether or not such person is otherwise subject to the jurisdiction of the court.

(b) If any 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, whether or not such person is otherwise subject to the jurisdiction of the court.

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

(d) 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.

(3) Notwithstanding anything in this section contained, when a subpoena is issued to procure the attendance of a judicial officer to give evidence or to procure any book, paper or document in a criminal case, civil action or other proceeding, if it appears —

(i) that he is unable to give any evidence or to produce any book, paper or document which would be relevant to any issue in such case, action or proceedings; or

(ii) that such book, paper or document could properly be produced by some other person; or

(iii) that the compelling of his attendance would be an abuse of the process of the court,

the court may, after reasonable notice to the party suing out the subpoena, make an order cancelling such subpoena.

51. (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 is.

52. (1) The court may in any case which is pending before it, where it may be expedient and consistent with the ends of justice to do so, appoint a person to be a com-

tydelik daarin verkeer of nie) op die wyse voorgeskryf, in die reëls verkry.

(2) (a) Wanneer iemand wat behoorlik gedagvaar is om getuienis af te lê of om boeke, geskrifte of dokumente in sy besit of onder sy beheer voor te lê wat die party wat sy aanwesigheid verlang as bewysstukke wil toon, sonder wettige verontskuldiging versuim om sy opwagting te maak of om getuienis af te lê of om daardie boeke, geskrifte of dokumente ooreenkomstig die getuiedagvaarding voor te lê, of, sonder om behoorlik verskoon te wees, versuim om gedurende die hele verhoor aanwesig te bly, kan die hof, as hy op grond van 'n verklaring onder eed of van die relaas van die geregsbode oortuig is dat so iemand behoorlik gedagvaar is en dat sy redelike koste aan hom betaal of aangebied is, so iemand veroordeel tot 'n boete van hoogstens vyftig rand en by wanbetaling tot gevangenisstraf vir 'n tydperk van hoogstens drie maande, ongeag of so iemand origens aan die jurisdiksie van die hof onderworpe is of nie.

(b) Wanneer iemand wat aldus as getuie gedagvaar is, versuim om sy opwagting te maak of sonder om behoorlik verskoon te wees, versuim om gedurende die hele verhoor aanwesig te bly, kan die hof ook, as hy soos voormeld oortuig is en mits daar geen wettige verontskuldiging vir die versuim blyk te wees nie, 'n lasbrief vir sy inhegtenisneming uitreik ten einde hom voor die hof te laat bring om getuienis af te lê en om andersins volgens wet behandel te word, ongeag of so iemand origens aan die jurisdiksie van die hof onderworpe is of nie.

(c) Die hof kan, as gegronde redes aangevoer word, algehele of gedeeltelike kwytskelding verleen van 'n boete of gevangenisstraf wat hy kragtens hierdie subartikel opgelê het.

(d) Die hof kan beveel dat die koste van 'n uitstel of verdaging wat deur die versuim van 'n getuie veroorsaak is, geheel of ten dele uit 'n boete wat aan die getuie opgelê is, betaal moet word.

(3) Ondanks die bepalings van hierdie artikel, wanneer 'n getuiedagvaarding uitgereik is om die verskyning van 'n regterlike beampte te verkry om getuienis af te lê of om 'n boek, geskrif of dokument voor te lê in 'n strafsaak, siviele geding of ander verrigting, kan die hof, as dit blyk —

(i) dat hy nie in staat is om getuienis af te lê of om enige boek, geskrif of dokument wat in bedoelde saak, geding of verrigting ter sake sou wees, voor te lê nie; of

(ii) dat die bedoelde boek, geskrif of dokument regsgeldig deur iemand anders voorgelê kan word; of

(iii) dat dit 'n misbruik van die prosedure van die hof sou wees as hy verplig sou word om te verskyn,

na redelike kennisgewing aan die party wat die getuiedagvaarding uitgereik het, 'n bevel uitvaardig waarby die bedoelde dagvaarding ingetrek word.

51. (1) Wanneer 'n getuie woon of verkeer in 'n ander distrik as dié waarin die verhoor plaasvind, kan die hof as die regsbelang syns insiens daardeur gedien sal word, op aansoek van een van die partye die vraagpunte goedkeur wat daardie party verlang om aan die getuie te laat stel en moet die hof sodanige vraagpunte, tesame met enige verdere vraagpunte wat die hof opstel, deurstuur aan die hof van die distrik waarin die betrokke getuie woon of verkeer.

(2) Die laasvermelde hof dagvaar daarop die getuie om voor hom te verskyn en neem by sy verskyning sy getuienis af op dieselfde wyse en in dieselfde vorm asof hy 'n getuie was in 'n saak wat voor daardie hof aanhangig is. Die hof verhoor hom op die bedoelde vraagpunte en stel aan hom die verdere vrae wat hy nodig ag om volledige en ware antwoorde op die vraagpunte te verkry. Die hof notuleer die getuienis van die getuie en stuur die notule deur aan die hof waarin die saak aanhangig is. Sodanige notule word (behoudens alle wettige besware) as getuienis in daardie saak aangeneem.

(3) Elke getuie wat aldus gedagvaar is om te verskyn, is weens nie-verskyning of versuim om getuienis af te lê of om boeke, geskrifte of dokumente voor te lê, aan dieselfde strawwe onderhewig asof hy gedagvaar was om getuienis af te lê in die hof van die distrik waarin hy woon of verkeer.

52. (1) Die hof kan in enige daarin aanhangige saak wanneer dit dienstig is en die regsbelang daardeur ge-

missioner to take evidence of any witness, whether within the Territory or elsewhere, upon the request of one of the parties to such case and after due notice to the other party.

(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 may himself 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 recorded 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 as evidence in the case.

53. (1) The court may at any stage in any legal proceedings in its discretion *suo motu* or upon the request in writing of either party direct the parties or their representatives to appear before it in chambers for a conference to consider —

(a) the simplification of the issues;
(b) the necessity or desirability of amendments to the pleadings;
(c) the possibility of obtaining admissions of fact and of documents with a view to avoiding unnecessary proof;
(d) the limitation of the number of expert witnesses;
(e) such other matters as may aid in the disposal of the action in the most expeditious and least costly manner.

(2) The court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of the parties or their representatives.

(3) Such order shall be binding on the parties unless altered at the trial to prevent manifest injustice.

(4) If a party refuses or neglects to appear at the conference the court may, without derogation from its power to punish for contempt of court, make such order as it considers equitable in the circumstances and upon conclusion of the proceedings may order the party who has so absented himself to pay such costs as in the opinion of the court were incurred as a result of the said absence.

(5) The court may make such order as to the costs of any proceedings under this section as it deems fit.

CHAPTER VIII.

RECOVERY OF SMALL DEBTS

54. (1) An individual (natural person) who claims to have a right of action against any other person not based on cession, for a sum not exceeding twenty rand for or in respect of goods sold and delivered, money lent, work or labour done, or rent due or in respect of any unconditional acknowledgement of debt, a dishonoured cheque, or a promissory note, may personally produce to the clerk of the court a summons as in the rules provided, and the clerk shall enter the particulars of such summons in the civil record book and shall sign and issue such summons: Provided that no such summons shall be issued until there has been lodged with the said clerk a copy of a demand in writing previously sent by the plaintiff to the defendant, in terms of which the defendant was allowed at least seven days within which to comply with such demand.

(2) Where the clerk of the court is satisfied that the individual claiming the right is unable to attend in person he may, at his discretion, permit a close relative or other person whom he considers the natural representative of the plaintiff and who is authorized thereto in writing by the plaintiff and who appears as such without remuneration therefor, to act for such plaintiff.

dien sal word, iemand as kommissaris aanstel om op versoek van een van die partye by so 'n saak, en na behoorlike kennisgewing aan die ander party, die getuienis van enige getuie, hetsy in die Gebied of elders, af te neem.

(2) Die aldus aangestelde kommissaris stel aan so 'n getuie die vrae wat volgens onderlinge ooreenkoms van die partye aan hom deurgestuur is, of laat anders die partye toe om die getuie te ondervra, en kan self die getuie ondervra asof die ondervraging van die getuie in 'n hof plaasvind, en hy notuleer die getuienis of laat dit notuleer, en die aldus genotuleerde getuienis word daarna aan die getuie oorgelees en deur hom onderteken.

(3) Sodanige notule word (behoudens alle wettige besware) as getuienis in die saak aangeneem.

53. (1) Die hof kan in enige stadium van enige geregtelike verrigtinge na goeddunke *suo motu* of op skriftelike versoek van een van die partye daarby, die partye of hul verteenwoordigers gelas om voor die hof in kamers te verskyn vir 'n onderhoud ter oorweging van

(a) die vereenvoudiging van die geskilpunte;
(b) die noodsaaklikheid of wenslikheid van die wysiging van die pleitstukke;
(c) die moontlikheid van die verkryging van erkennings van feite en van skriftelike stukke met die oog op die vermyding van onnodige bewyse;
(d) die beperking van die aantal deskundige getuies;
(e) alle ander sake wat tot die afhandeling van die aksie op die spoedigste en goedkoopste wyse kan bydra.

(2) Die hof vaardig 'n bevel uit waarin stappe wat by die onderhoud gedoen is, die wysigings van die pleitstukke wat toegelaat is en die ooreenkomste waartoe die partye oor enige van die oorwoë sake geraak het, vermeld word en waarby die geskilpunte by die verhoor beperk word tot dié wat nie deur erkenning of ooreenkoms van die partye of hul verteenwoordigers besleg is nie.

(3) So 'n bevel bind die partye tensy dit by die verhoor gewysig word ten einde 'n klaarblyklike onreg te voorkom.

(4) As 'n party weier of versuim om by die onderhoud aanwesig te wees, kan die hof, sonder om afbreuk te doen aan sy reg van bestraffing weens minagting van die hof, die bevel uitvaardig wat hy in die omstandighede billik ag, en kan na afloop van die verrigtinge die party wat aldus afwesig was, beveel om die koste te betaal wat, na die hof meen, weens sodanige afwesigheid aangegaan is.

(5) Die hof kan ten aansien van die koste van enige verrigtinge ingevolge hierdie artikel die bevel gee wat hy goedvind.

HOOFSTUK VIII.

INVORDERING VAN KLEIN SKULDE.

54. (1) 'n Indiwidu (natuurlike persoon) wat aanspraak maak op 'n vorderingsreg (wat nie op 'n sessie berus nie) teen iemand anders vir 'n bedrag van hoogstens twintig rand vir of ten opsigte van verkoopte en gelewerde goedere, geleende geld, verrigte werk of arbeid of verskuldigde huurgeld of ten opsigte van enige onvoorwaardelike erkenning van skuld, 'n geweierde tjek of 'n promesse, kan persoonlik aan die klerk van die hof 'n dagvaarding voorlê soos in die reëls bepaal, en die klerk teken die besonderhede van so 'n dagvaarding in die register van siviele sake aan en onderteken die dagvaarding en reik dit uit: Met dien verstande dat geen sodanige dagvaarding uitgereik mag word nie, tensy daar by die bedoelde klerk 'n afskrif van 'n skriftelike aanmaning ingedien is wat vooraf deur die eiser aan die verweerder gestuur is, en waarvolgens daar minstens sewe dae aan die verweerder gegee is om aan die aanmaning te voldoen.

(2) As die klerk van die hof oortuig is dat die indiwidu wat op die vorderingsreg aanspraak maak, nie in staat is om sy opwagting in eie persoon te maak nie, kan hy na goeddunke toelaat dat 'n nouverwante familiebetrekking of ander persoon wat hy as die natuurlike verteenwoordiger van die eiser beskou en wat deur die eiser skriftelik daartoe gemagtig is en wat sonder vergoeding as sodanig verskyn, namens sodanige eiser optree.

55. When any defendant having been duly served with a summons under section *fifty-four* fails to enter appearance to defend within the time prescribed by the rules, or consents to judgment, the clerk of the court shall, on the application of plaintiff, enter judgment in his favour.

56. (1) If appearance is entered by the defendant within the period prescribed by the rules, the clerk of the court shall make an entry thereof in the civil record book and shall appoint a day for the hearing of the claim.

(2) The court may at its discretion permit a close relative or other person whom it considers the natural representative of either of the parties and who is authorized thereto in writing by such party, and who appears as such without remuneration therefor, to appear for such party.

57. No further pleadings shall be required of the parties but the defendant may at any time before the hearing lodge with the clerk of the court a written statement setting forth the nature of his defence and particulars of the grounds on which it is based, and a copy of such statement shall be furnished to the plaintiff by the defendant.

58. (1) An award of costs in any proceedings under this Chapter may include —

(a) court fees;
(b) an amount not exceeding twenty cents in respect of the issue of summons and of each other process considered by the court to have been essential;
(c) an amount not exceeding one rand per day in respect of each necessary witness;
(d) the travelling expenses of such witness; and
(e) fees and travelling expenses of the messenger of the court.

(2) No costs shall be allowed in respect of fees payable to legal practitioners for their services in proceedings under this Chapter: Provided that if the court is sastified that it was desirable that a party should be so represented, it may allow such costs on the ordinary scale.

59. No person shall be obliged to take action in terms of this Chapter but may proceed as otherwise provided in this Ordinance.

CHAPTER IX.

EXECUTION

60. In this Chapter —

"emoluments" includes —

(i) salary, wages or any other form of remuneration; and
(ii) any allowances,

whether expressed in money or not; and
"debts" includes any income from whatever source other than emoluments.

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

(2) A court (in this sub-section called a second court), other than the court which gave judgment in an action, shall have jurisdiction on good cause shown to stay any warrant of execution or arrest issued by another court against a party who is subject to the jurisdiction of the second court.

(3) Any court may, on good cause shown, stay or set aside any warrant of execution or arrest issued by itself, including an order under section *seventy-one.*

62. Execution against property may not be issued upon a judgment after three years from the day on which it was pronounced or on which the last payment in respect thereof was made, except upon an order of the court in which judgment was pronounced or of any court having jurisdiction, in respect of the judgment debtor, on the application and at the expense of the judgment creditor,

55. Wanneer 'n verweerder nadat 'n dagvaarding ingevolge artikel *vier-en-vyftig* behoorlik aan hom bestel is, versuim om binne die tydperk deur die reëls voorgeskryf verskyning tot verdediging aan te teken, of toestemming tot vonnis verleen, moet die klerk van die hof op aansoek van die eiser vonnis in sy guns aanteken.

56. (1) As die verweerder binne die tydperk by die reëls voorgeskryf verskyning tot verdediging aanteken, maak die klerk van die hof 'n aantekening daarvan in die register van siviele sake en bepaal hy 'n dag vir die verhoor van die vordering.

(2) Die hof kan na goeddunke toelaat dat 'n nouverwante familiebetrekking of ander persoon wat hy as die natuurlike verteenwoordiger van die een of die ander party beskou en wat deur die bedoelde party skriftelik daartoe gemagtig is en wat sonder vergoeding as sodanig verskyn, namens sodanige party optree.

57. Geen verdere pleitstukke word van die partye verlang nie maar die verweerder kan te eniger tyd voor die verhoor by die klerk van die hof 'n skriftelike verklaring indien waarin die aard van sy verweer en die gronde waarop dit berus, vermeld word, en die verweerder moet 'n afskrif van sodanige verklaring aan die eiser verstrek.

58. (1) 'n Toewysing van koste in 'n geding ingevolge hierdie hoofstuk kan die volgende insluit:-

(a) hofgelde;
(b) 'n bedrag van hoogstens twintig sent ten opsigte van die uitreiking van die dagvaarding en van elke ander prosesstuk wat, na die hof meen, noodsaaklik was;
(c) 'n bedrag van hoogstens een rand per dag ten opsigte van elke noodsaaklike getuie;
(d) die reiskoste van so 'n getuie; en
(e) die lone en reiskoste van die geregsbode.

(2) Geen koste word ten opsigte van gelde aan regspraktisyns betaalbaar vir hul dienste in verrigtinge ingevolge hierdie hoofstuk toegestaan nie: Met dien verstande dat die hof by oortuiging dat dit wenslik was dat 'n party aldus verteenwoordig moes wees, sodanige koste teen die gewone tarief kan toestaan.

59. Niemand is verplig om ooreenkomstig hierdie hoofstuk op te tree nie, maar kan optree soos elders in hierdie Ordonnansie bepaal.

HOOFSTUK IX.

TENUITVOERLEGGING.

60. In hierdie hoofstuk omvat —

"besoldiging" —

(i) salaris, arbeidsloon en enige ander vorm van besoldiging; en
(ii) alle toelaes,

hetsy in geld uitgedruk of nie; en „skuld" enige inkomste uit watter bron ook al behalwe besoldiging.

61. (1) 'n Hof wat bevoeg is om 'n aksie te verhoor, is bevoeg om enige prosesstuk vir die tenuitvoerlegging van die vonnis in daardie aksie gevel teen enige party daarin uit te reik.

(2) 'n Ander hof as dié wat in 'n aksie vonnis gevel het (in hierdie subartikel 'n tweede hof genoem) is bevoeg om op aanvoering van gegronde redes 'n lasbrief vir eksekusie of arres deur 'n ander hof uitgereik teen 'n party wat aan die jurisdiksie van die tweede hof onderworpe is, op te skort.

(3) 'n Hof kan op aanvoering van gegronde redes 'n lasbrief vir eksekusie of arres wat hy self uitgereik het, opskort of ter syde stel, met inbegrip van 'n bevel kragtens artikel *een-en-sewentig.*

62. Tenuitvoerlegging teen goedere kan nie uit hoofde van 'n vonnis geskied na verloop van drie jaar vanaf die datum waarop dit gevel is of waarop die laaste paaiement ten opsigte daarvan gemaak is nie, behalwe uit hoofde van 'n bevel van die hof waarin vonnis gevel is of van 'n hof wat jurisdiksie ten opsigte van die vonnisskuldenaar het, verleen op aansoek en op koste van die vonnisskuldeiser nadat die vonnisskuldenaar behoorlike kennis

after due notice to the judgment debtor to show cause why execution should not be issued.

63. 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 in the manner provided for judgment creditors.

64. (1) If a court has given judgment for the payment of money, and such judgment has remained unsatisfied for a period of ten days from the date on which it was given or from the expiration of the period of suspension ordered under paragraph (e) of section *forty-seven*, as the case may be, the judgment creditor may issue out of the court of the district within which the judgment debtor resides, carries on business or is employed a notice calling upon the judgment debtor to appear before that court in chambers for the purpose of an enquiry into his financial position.

(2) Such notice shall be signed by the clerk of the court specifying a date fixed by him for the holding of the enquiry: shall be addressed to the judgment debtor giving him at least seven days notice of such enquiry and shall require the judgment debtor to produce at the enquiry a statement —

(i) of his assets and liabilities;

(ii) of his monthly or weekly income and expenses, supported by documentary evidence and if he is in receipt of emoluments, a statement by his employer giving full particulars of such emoluments; and

(iii) any book of account or other document in his possession or custody or under his control specified in such notice.

(3) The notice shall be served on the debtor personally by the messenger of the court, but if personal service is impracticable, the messenger shall report such fact to the judgment creditor who may apply to the court in chambers for directions as to service in some other manner. The court may then authorize service in any other manner permitted by the rules relating to service of process.

(4) On receipt of such notice, but before the date fixed for the enquiry, the judgment debtor may produce to the judgment creditor the documents referred to in paragraphs (i), (ii) and (iii) of sub-section (2) and make a written offer to liquidate the debt in instalments or otherwise. A copy of such written offer shall forthwith be filed by the judgment debtor with the clerk of the court and the judgment creditor shall inform the said clerk whether he accepts or declines the offer. If any such offer is accepted, the clerk of the court shall notify the judgment debtor of that fact and that he need not appear at the enquiry, and the court may, on the return day, make an appropriate order in terms of sub-section (7). Upon such an order having been made, the clerk of the court shall notify the judgment debtor by registered post of the order and of the terms thereof.

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

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

(6) (a) On the appearance of the judgment debtor at the enquiry or when the judgment debtor is brought before

gegee is om redes aan te voer waarom tenuitvoerlegging nie moet geskied nie.

63. Iemand wat òf deur sessie òf regtens op die voordeel van 'n vonnisskuld geregtig geword het, kan na kennisgewing aan die vonnisskuldeiser en die vonnisskuldenaar, op die notule in die plek van die vonnisskuldeiser gestel word en kan 'n lasbrief vir eksekusie verkry op die wyse wat vir vonnisskuldeisers bepaal word.

64. (1) As 'n hof vonnis gevel het vir die betaling van geld en sodanige vonnis onvoldaan gebly het vir 'n tydperk van tien dae vanaf die datum waarop dit gevel is of vanaf die verstryking van die tydperk van opskorting beveel ingevolge paragraaf (e) van artikel *sewe-en-veertig*, na gelang, kan die vonnisskuldeiser uit die hof van die distrik waarin die vonnisskuldenaar woon, besigheid dryf of in diens is, 'n kennisgewing uitreik waarby die vonnisskuldenaar aangesê word om voor daardie hof in kamers te verskyn vir die doeleindes van 'n ondersoek na sy finansiële toestand.

(2) So 'n kennisgewing word deur die klerk van die hof onderteken en gee die dag aan wat hy bepaal het vir die hou van die ondersoek; dit word aan die vonnisskuldenaar gerig en gee hom minstens sewe dae kennis van die bedoelde ondersoek en bevat ook 'n bevel aan die vonnisskuldenaar om by die ondersoek 'n staat voor te lê —

(i) van sy bate en laste;

(ii) van sy maandelikse of weeklikse inkomste en uitgawes gestaaf deur dokumentêre bewyse en, as hy besoldiging ontvang, 'n verklaring deur sy werkgewer waarin volledige besonderhede oor sodanige besoldiging verstrek word; en

(iii) enige rekeningboek of ander dokument in sy besit of bewaring of onder sy beheer, wat in die bedoelde kennisgewing aangegee word.

(3) Die kennisgewing word deur die geregsbode aan die skuldenaar persoonlik bestel; as persoonlike bestelling egter ondoenlik is, moet die geregsbode die vonnisskuldeiser daarvan verwittig en laasgenoemde kan dan by die hof in kamers aansoek doen om opdrag oor bestelling op 'n ander wyse. Die hof kan dan bestelling op enige ander wyse magtig wat deur die reëls betreffende die bestelling van prosesstukke veroorloof word.

(4) Na ontvangs van so 'n kennisgewing maar voor die datum vir die ondersoek bepaal, kan die vonnisskuldenaar die dokumente bedoel in paragrawe (i), (ii) en (iii) van subartikel (2) aan die vonnisskuldeiser voorlê en 'n skriftelike aanbod doen om die skuld in paaiemente of andersins te vereffen. 'n Afskrif van sodanige skriftelike aanbod moet onverwyld deur die vonnisskuldenaar by die klerk van die hof ingedien word en die vonnisskuldeiser moet aan die bedoelde klerk meedeel of hy die aanbod aanvaar of afwys. Word so 'n aanbod aanvaar, dan gee die klerk van die hof die vonnisskuldenaar daarvan kennis, asook dat dit nie vir hom nodig is om by die ondersoek te verskyn nie, en die hof kan op die keerdag 'n geskikte bevel kragtens subartikel (7) uitreik. Nadat so 'n bevel uitgereik is, gee die klerk van die hof die vonnisskuldenaar per aangetekende pos kennis van die bevel en van die inhoud daarvan.

(5) (a) As die vonnisskuldenaar versuim om by die ondersoek te verskyn op die datum in die kennisgewing vermeld of op 'n later datum tot wanneer die ondersoek deur die hof uitgestel is, kan die hof op aansoek van die skuldeiser magtiging verleen vir die uitreiking van 'n lasbrief vir sy arres: Met dien verstande dat die tenuitvoerlegging van so 'n lasbrief te eniger tyd opgeskort kan word op versoek van die vonnisskuldeiser of deur die hof op goeie gronde: Met dien verstande voorts dat as die vonnisskuldenaar versuim om by die ondersoek te verskyn op enige datum waarna die bedoelde ondersoek deur die hof uitgestel is nadat so 'n lasbrief kragtens enige bepaling van hierdie subartikel opgeskort is, die vonnisskuldeiser die bedoelde lasbrief weer kan uitreik sonder 'n verdere hofbevel.

(b) Die lasbrief vir die arres van die vonnisskuldenaar word deur die vonnisskuldeiser opgestel en deur die vonnisskuldeiser of sy prokureur en die klerk van die hof onderteken en deur die geregsbode uitgevoer.

(6) (a) Wanneer die vonnisskuldenaar by die ondersoek verskyn of wanneer die vonnisskuldenaar op 'n

the court on a warrant issued in terms of sub-section (5) the court in chambers shall subject to the provisions of paragraph (b) at the request of the judgment creditor or *suo motu* call on the judgment debtor to give evidence on oath as to his financial position and to produce the documents referred to in paragraphs (i), (ii) and (iii) of sub-section (2) (which shall be admissible in evidence), and shall permit the examination or cross-examination of such judgment debtor on all matters affecting his failure to pay the judgment debt, and the court shall hear such further evidence as may be called either by the judgment debtor or the judgment creditor which is material to the determination of the judgment debtor's financial position.

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

(7) The court may, after having heard the evidence adduced —

(a) authorize the issue of a warrant of execution against the movable or immovable property of the judgment debtor or such portion of it as the court deems fit;

(b) make an order in terms of section *seventy-one;*

(c) authorize the issue of such warrant coupled with an order under section *seventy-two;*

(d) order the judgment debtor to pay the judgment debt by specified periodical instalments;

(e) make such order as to costs as may be just.

(8) At such enquiry the judgment debtor may apply to the court for a stay of the proceedings to enable him to make application in terms of section *seventy-three.* Upon such application the court may postpone the proceedings to a specified date. If upon such date no application in terms of section *seventy-three* has been made by the judgment debtor, the proceedings shall be continued in terms of sub-sections (6) and (7).

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

(b) Such notice shall be prepared by the judgment creditor, shall be signed by the judgment creditor or his attorney and the clerk of the court and shall be served in the manner set out in sub-section (3) at least seven days before the date of hearing specified therein.

(c) Where it appears from the return of such notice that service was effected elsewhere than within the district of the court from which such notice was issued, then unless the judgment debtor appears, the proceedings shall be stayed until the court is satisfied that the judgment debtor has been paid or tendered the sum which would have been payable to him if he had been subpoenaed as a witness.

(d) If the judgment debtor fails to appear on the said notice or to satisfy the court that he has been unable through circumstances beyond his control to comply with the order made in terms of paragraph (d) of sub-section (7), the court may, upon the application of the judgment creditor, make an order for the committal of the judgment debtor for a period not exceeding thirty days and may authorize the issue of a warrant for his arrest and

lasbrief uitgereik kragtens subartikel (5) voor die hof gebring word, moet die hof in kamers behoudens die bepalings van paragraaf (b) op versoek van die vonnisskuldeiser of uit eie beweging die vonnisskuldenaar oproep om getuienis onder eed oor sy finansiële toestand af te lê en om die dokumente wat in paragrawe (i), (ii) en (iii) van subartikel (2) bedoel word (wat as bewys toelaatbaar is) voor te lê. Die hof veroorloof die verhoor of kruisverhoor van die vonnisskuldenaar oor alle aangeleenthede betreffende sy versuim om die vonnisskuld te vereffen, en ontvang sodanige verdere getuienis, deur òf die vonnisskuldenaar òf die vonnisskuldeiser aangevoer, wat by die vasstelling van die vonnisskuldenaar se finansiële toestand van belang is.

(b) Die hof kan te eniger tyd in die teenwoordigheid van die vonnisskuldenaar die ondersoek uitstel na die latere datum wat die hof bepaal en in daardie geval, as die vonnisskuldenaar kragtens 'n lasbrief uitgereik ingevolge subartikel (5) voor die hof gebring is, kan die hof terselfdertyd die lasbrief opskort op voorwaarde dat die vonnisskuldenaar op die aldus bepaalde datum by die ondersoek verskyn, of as die ondersoek nie meer as vier dae uitgestel word nie, kan die hof op aansoek van die vonnisskuldeiser en by oortuiging dat die omstandighede sodanige optrede regverdig, by wyse van 'n bevel geëndosseer op die bedoelde lasbrief die vonnisskuldenaar in die bewaring van die geregsbode stel ten einde op die bedoelde datum voor die hof gebring te word.

(7) Die hof kan, nadat hy die aangevoerde getuienis ontvang het —

(a) magtiging verleen vir die uitreiking van 'n lasbrief tot eksekusie teen die roerende of onroerende goedere van die vonnisskuldenaar of sodanige deel daarvan soos die hof goedvind;

(b) 'n bevel ooreenkomstig artikel *een-en-sewentig* uitvaardig;

(c) magtiging verleen vir die uitreiking van so 'n lasbrief gepaard met 'n bevel kragtens artikel *twee-en-sewentig;*

(d) die vonnisskuldenaar beveel om die vonnisskuld in bepaalde periodieke paaiemente te vereffen;

(e) 'n bevel betreffende die koste uitvaardig wat billik blyk.

(8) By sodanige ondersoek kan die vonnisskuldenaar by die hof aansoek doen om die opskorting van die verrigtinge ten einde hom in staat te stel om 'n aansoek kragtens artikel *drie-en-sewentig te doen.* By so 'n aansoek kan die hof die verrigtinge tot 'n bepaalde datum uitstel. As op daardie datum geen aansoek deur die vonnisskuldenaar kragtens artikel *drie-en-sewentig* gedoen is nie, word die verrigtinge ingevolge subartikels (6) en (7) voortgesit.

(9) (a) As die vonnisskuldenaar versuim om te voldoen aan 'n bevel kragtens paragraaf (d) van subartikel (7) uitgevaardig, kan die vonnisskuldeiser, uit die hof wat die bevel uitgevaardig het of uit die hof van die distrik waarin die vonnisskuldenaar dan woon, besigheid dryf of in diens is, 'n kennisgewing uitreik waarby die vonnisskuldenaar aangesê word om op 'n datum in die kennisgewing vermeld voor die hof in kamers te verskyn om redes aan te voer waarom hy nie weens minagting van die hof ter gevangesetting verwys sal word nie.

(b) Sodanige kennisgewing word deur die vonnisskuldeiser opgestel en deur die vonnisskuldeiser of sy prokureur en die klerk van die hof onderteken en word minstens sewe dae voor die verhoordatum daarin vermeld bestel op die wyse in subartikel (3) bepaal.

(c) Waar dit uit die relaas op sodanige kennisgewing blyk dat die bestelling elders bewerkstellig is as binne die distrik van die hof waaruit die kennisgewing uitgereik is, word die verrigtinge ,tensy die vonnisskuldenaar verskyn, gestaak totdat die hof oortuig is dat daar aan die vonnisskuldenaar 'n bedrag betaal of aangebied is wat aan hom betaalbaar sou gewees het as hy as getuie gedagvaar was.

(d) As die vonnisskuldenaar versuim om op so 'n kennisgewing te verskyn, of die hof nie oortuig dat hy weens omstandighede buite sy beheer nie in staat was om aan die bevel uitgevaardig kragtens paragraaf (d) van subartikel (7) te voldoen nie, kan die hof op aansoek van die vonnisskuldeiser 'n bevel uitvaardig vir die gevangesetting van die vonnisskuldenaar vir 'n tydperk van hoogstens dertig dae en magtiging verleen vir die uit-

detention in any prison named in such warrant: Provided that the court may at any time suspend the execution of or altogether discharge any such order or warrant upon such conditions as may appear to the court to be fair and reasonable.

(e) Such warrant shall be prepared by the judgment creditor, shall be signed by the judgment creditor or his attorney and the clerk of the court and shall be executed by the messenger of the court.

(f) If the execution of any such warrant has been suspended and the judgment debtor has during the period of suspension, observed all the conditions specified in the order, the order for the committal of the judgment debtor shall not be enforced.

(g) If the execution of any such warrant has been suspended and the judgment debtor has failed to fulfil the conditions specified in the order, the court may, on the application of the judgment creditor after notice to the judgment debtor direct that the order of committal be carried into effect: Provided that the court may in its discretion, if it be proved to its satisfaction by the judgment debtor that he has been unable through circumstances beyond his control to perform any condition of such suspension, grant an order further suspending the execution of the warrant on such conditions as may appear to the court to be fair and reasonable.

(h) The provisions of paragraphs (a), (b) and (c) shall apply *mutatis mutandis* to the notice referred to in paragraph (g).

(10) An employer who, having been requested by an employee to furnish a written statement containing full particulars of such employee's emoluments, fails or neglects within a reasonable time to do so or who knowingly or negligently furnishes incorrect particulars, shall be guilty of an offence and liable to a fine not exceeding fifty rand.

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

(12) Any order under paragraph (d) of sub-section (7) may at any time and for good cause be suspended, varied or rescinded by the court.

65. (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 and in the manner ordered by the court, by execution against the movable property and, if there be not found sufficient movable property to sastisfy the judgment, or the court, on good cause shown, so directs then against the immovable property of the party against whom such judgment has been given.

(2) No immovable property which is subject to any claim preferent to that of the judgment creditor shall be sold in execution unless —

(a) the judgment creditor has caused such notice in writing of the intended sale in execution to be served personally upon the preferent creditor as may be prescribed by the rules; or

(b) the magistrate or an additional or assistant magistrate of the district in which the property is situate has upon the application of the judgment creditor and after enquiry into the circumstances of the case, directed what steps shall be taken to bring the intended sale to the notice of the preferent creditor, those steps have been carried out,

and unless

(c) the proceeds of the sale are sufficient to satisfy the claim of such preferent creditor, in full; or

(d) the preferent creditor confirms the sale in writing, in which event he shall be deemed to have agreed to accept such proceeds in full settlement of his claim.

reiking van 'n lasbrief vir sy arres en aanhouding in 'n tronk in die lasbrief vermeld: Met dien verstande dat die hof te eniger tyd op die voorwaardes wat hy redelik en billik ag, die tenuitvoerlegging van die bevel of lasbrief kan opskort of die bevel of lasbrief totaal kan ophef.

(e) Sodanige lasbrief word deur die vonnisskuldeiser opgestel, word deur die vonnisskuldeiser of sy prokureur en die klerk van die hof onderteken en word deur die geregsbode ten uitvoer gelê.

(f) As die tenuitvoerlegging van so 'n lasbrief opgeskort is en die vonnisskuldenaar gedurende die tydperk van opskorting al die voorwaardes in die bevel vermeld nagekom het, word die bevel vir die gevangesetting van die vonnisskuldenaar nie uitgevoer nie.

(g) As die tenuitvoerlegging van so 'n lasbrief opgeskort word en die vonnisskuldenaar nagelaat het om die voorwaardes in die bevel vermeld na te kom, kan die hof op aansoek van die vonnisskuldeiser na kennisgewing aan die vonnisskuldenaar, gelas dat die bevel vir gevangesetting uitgevoer word: Met dien verstande dat die hof as dit tot sy oortuiging deur die vonnisskuldenaar bewys word dat hy weens omstandighede buite sy beheer nie in staat was om enige voorwaarde van die opskorting na te kom nie, na goeddunke 'n bevel kan uitvaardig waardeur die tenuitvoerlegging van die lasbrief verder opgeskort word op die voorwaardes wat vir die hof redelik en billik blyk.

(h) Die bepalings van paragrawe (a), (b) en (c) is *mutatis mutandis* van toepassing op die kennisgewing bedoel in paragraaf (g).

(10) 'n Werkgewer wat nadat hy deur 'n werknemer versoek is om 'n skriftelike verklaring met volledige besonderhede oor sodanige werknemer se besoldiging te verstrek, versuim of nalaat om dit binne 'n redelike tydperk te doen of wat opsetlik of nalatig onjuiste besonderhede verstrek, is aan 'n misdryf skuldig en strafbaar met 'n boete van hoogstens vyftig rand.

(11) In enige verrigtinge ingevolge hierdie artikel vir die gevangesetting van 'n vonnisskuldenaar weens minagting van die hof of vir die opheffing of opskorting van 'n bevel of lasbrief of vir die tenuitvoerlegging van 'n bevel of lasbrief weens die nie-nakoming deur die vonnisskuldenaar van 'n voorwaarde in die opskortingsbevel vermeld, kan die hof 'n bevel betreffende koste uitvaardig wat billik blyk.

(12) 'n Bevel kragtens paragraaf (d) van subartikel (7) kan te eniger tyd en om gegronde redes deur die hof opgeskort, gewysig of ingetrek word.

65. (1) Wanneer 'n hof vir die betaling van geld vonnis vel, kan die bedrag in die geval van nie-betaling daarvan hetsy onverwyld hetsy op die tyd of tye en op die wyse deur die hof bepaal by eksekusie verhaal word teen die roerende goedere en as die roerende goedere nie toereikend is om aan die vonnis te voldoen nie of die hof, nadat gegronde redes aangevoer is, aldus gelas, teen onroerende goedere van die party teen wie die vonnis gevel is.

(2) Geen onroerende goedere wat onderworpe is aan 'n vordering wat voorrang het bo dié van die vonnisskuldeiser mag in eksekusie verkoop word nie, tensy —

(a) die vonnisskuldeiser die skriftelike kennisgewing, voorgeskrewe deur die reëls, van die voorgenome verkoop in eksekusie aan die preferente skuldeiser persoonlik laat bestel het; of

(b) die landdros of 'n addisionele landdros of assistent-landdros van die distrik waarin die goedere geleë is, op aansoek van die vonnisskuldeiser en nadat hy die omstandighede van die geval ondersoek het, beveel het watter stappe gedoen moet word ten einde die voorgenome verkoop onder die preferente skuldeiser se aandag te bring, en daardie stappe gedoen is,

en tensy

(c) die opbrengs van die verkoop genoeg is om bedoelde preferente skuldeiser se vordering ten volle te vereffen; of

(d) die preferente skuldeiser die verkoop skriftelik bekragtig, en in so 'n geval word daar aangeneem dat hy ingewillig het om sodanige opbrengs as volle vereffening van sy vordering te aanvaar.

(3) A sale in execution of such immovable property as is referred to in sub-section (2) shall take place within such period of the date of attachment and in such manner as may be provided by the rules.

66. 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, namely:

(a) the necessary beds, bedding and wearing apparel of the execution debtor and of his family;
(b) the necessary furniture (other than beds) and household utensils in so far as they do not exceed in value the sum of four hundred rand;
(c) stock, tools and agricultural implements of a farmer in so far as they do not exceed in value the sum of four hundred rand;
(d) the supply of food and drink in the house sufficient for the needs of such debtor and of his family during one month;
(e) tools and implements of trade, in so far as they do not exceed in value the sum of four hundred rand;
(f) professional books, documents or instruments necessarily used by such debtor in his profession, in so far as they do not exceed in value the sum of four hundred rand;
(g) such arms and ammunition as such debtor is required by law, regulation or disciplinary order to have in his possession as part of his equipment:

Provided that the court shall have a discretion in exceptional circumstances and on such conditions as it may determine to increase the sums referred to in paragraphs (b), (c), (d), (e) and (f) to the extent of not more than twice such sums.

67. (1) The messenger of the court 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 the execution debtor.

(2) The messenger of the court may also hold any cheques, bills of exchange, promissory notes, bonds or securities for money which 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 has 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 of the court 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 of the court may so endorse the document or execute the cession, as to any property sold by him in execution.

(5) The messenger of the court may also, as to immovable property sold by him in execution, do anything necessary to effect registration of transfer. Anything done by the messenger under this sub-section or sub-section (4) shall be as valid and effectual as if he were the execution debtor.

(6) 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.

68. (1) (a) 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

(3) 'n Verkoop in eksekusie van onroerende goedere bedoel in subartikel (2) moet plaasvind binne die tydperk na die datum van inbeslagneming en op die wyse wat die reëls voorskryf.

66. Die volgende goedere word teen beslaglegging beskerm en mag nie ingevolge 'n lasbrief vir eksekusie, uit enige hof uitgereik, in beslag geneem of verkoop word nie, naamlik —

(a) die nodige beddens, beddegoed en klere van die eksekusieskuldenaar en van sy huisgesin;
(b) die nodige meubels (behalwe beddens) en huisgereedskap ter waarde van hoogstens vierhonderd rand;
(c) lewende hawe, gereedskap en landbouwerktuie van 'n boer ter waarde van hoogstens vierhonderd rand;
(d) 'n hoeveelheid voedsel en drank in die huis wat voldoende is om in die behoeftes van sodanige skuldenaar en sy huisgesin gedurende een maand te voorsien;
(e) ambagsgereedskap en -werktuie ter waarde van hoogstens vierhonderd rand;
(f) professionele boeke, dokumente of instrumente noodsaaklikerwys deur sodanige skuldenaar in sy beroep gebruik, ter waarde van hoogstens vierhonderd rand;
(g) die wapens en ammunisie wat sodanige skuldenaar volgens wet, regulasie of dissiplinêre bevel as deel van sy uitrusting in sy besit moet hê:

Met dien verstande dat die hof na goeddunke en op die voorwaardes wat hy bepaal die bedrae vermeld in paragrawe (b), (c), (d), (e) en (f) in buitengewone omstandighede tot hoogstens twee maal daardie bedrae kan verhoog.

67. (1) Die geregsbode wat 'n lasbrief vir eksekusie teen roerende goedere ten uitvoer lê, kan kragtens so 'n lasbrief ook op geld of banknote beslag lê en kan tjeks, wissels, promesses, obligasies of sekuriteite vir geld wat aan die eksekusieskuldenaar behoort, in beslag neem en verkoop.

(2) Die geregsbode kan ook inbeslaggenome tjeks, wissels, promesses, obligasies of sekuriteite vir geld ten bate van die eksekusieskuldeiser as sekerheid hou vir die bedrag wat by eksekusie verhaal moet word, vir sover bedoelde bedrag nog onvoldaan is. Die eksekusieskuldeiser kan wanneer die tyd vir betaling aanbreek in die naam van die eksekusieskuldenaar of in die naam van iemand in wie se naam die eksekusieskuldenaar sou kon gedagvaar het, dagvaar tot verhaal van die bedrag wat daarby verseker of betaalbaar gestel is.

(3) Die geregsbode kan ook uit kragte van 'n lasbrief vir eksekusie teen roerende goedere die belang van die eksekusieskuldenaar in roerende goedere wat aan hom behoort en wat aan 'n derde persoon verpand of onder opskortende voorwaarde verkoop is, in beslag neem en in eksekusie verkoop, en kan ook die belang van die eksekusieskuldenaar in roerende of onroerende goedere wat aan die eksekusieskuldenaar verhuur is of onder 'n huurkoopkontrak of 'n opskortende voorwaarde aan hom verkoop is, verkoop.

(4) Wanneer dit vir die eksekusieskuldenaar nodig sou gewees het om as die verkoop nie 'n eksekutoriale verkoop was nie, 'n dokument te endosseer of 'n sessie te gee ten einde die eiendom aan 'n koper oor te dra, kan die geregsbode die dokument aldus endosseer of die sessie gee ten aansien van enige goedere wat hy in eksekusie verkoop het.

(5) Die geregsbode kan ook ten aansien van onroerende goedere wat hy in eksekusie verkoop al die nodige doen om die registrasie van die transport te bewerkstellig. 'n Handeling deur die geregsbode ingevolge hierdie subartikel of subartikel (4) verrig, is ewe geldig en bindend asof hy die eksekusieskuldenaar was.

(6) Wanneer daar teen 'n lid van 'n vennootskap of sindikaat vonnis gevel word in 'n aksie waarin hy afsonderlik eiser of verweerder was, kan sy belang in die vennootskap of sindikaat in beslag geneem en in eksekusie verkoop word.

68. (1) (a) Wanneer iemand anders as die vonnisskuldenaar op of ten aansien van goedere wat kragtens 'n lasbrief van enige hof in beslag geneem is of gaan word of op die opbrengs van sodanige goedere wat in ekse-

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.

(b) Upon the issue of such summons any action which may have been brought in any court whatsoever in respect of such property shall be stayed and shall abide the result of the proceedings taken upon such summons.

(2) Where two or more persons make adverse claims to any property in the custody or possession of a third party such claims shall be adjudicated upon after issue of a summons in the manner provided by the rules.

69. A sale in execution by the messenger of the court 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.

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

71. (1) (a) The court may, on *ex parte* application by a judgment creditor or under paragraph (b) of sub-section (7) of section *sixty-four*, order the attachment of any debt at present or in future owing or accruing to a judgment debtor by or from any other person (excluding the State), residing, carrying on business or employed within the district, to the amount necessary to satisfy the judgment and the costs of the proceedings for attachment, whether such judgment has been obtained in such court or in any other magistrate's court, and may make an order (hereinafter called a garnishee order) against such person (hereinafter called the garnishee) to pay to the judgment creditor or his attorney so much of the debt as may be sufficient to satisfy the judgment and costs, and may enforce such garnishee order as if it were a judgment of the court.

(b) The court may further, on application by the judgment creditor and after notice to the judgment debtor or under paragraph (b) of sub-section (7) of section *sixty-four,* order the attachment of any emoluments at present or in future owing or accruing to the judgment debtor by or from any person (including the State), residing, carrying on business or employed within the district, to the amount necessary to satisfy the judgment and the costs of the proceedings for attachment, whether such judgment has been obtained in such court or in any other magistrate's court, and may make an order (hereinafter also called a garnishee order) against such person (hereinafter also called the garnishee) to pay to the judgment creditor or his attorney so much of the emoluments as may be sufficient to pay the judgment and costs, and may enforce such garnishee order as if it were a judgment of the court.

(2) No such garnishee order in respect of any emoluments shall be granted upon the consent alone of the judgment debtor, but the court shall satisfy itself by examination of the judgment debtor or upon other sworn information that sufficient means will after satisfaction of such order, be left to the judgment debtor to maintain himself and those dependent on him.

(3) Such a garnishee order may require the garnishee to pay periodically to the judgment creditor or his attorney definite amounts out of the emoluments of the judgment debtor.

(4) The judgment debtor shall be notified of the day of the hearing of an application for such a garnishee order in respect of emoluments and may be called upon *mutatis mutandis* in the manner provided for in sub-sections (2) to (10) inclusive of section *sixty-four* to appear for enquiry into his circumstances and general financial position.

(5) If, after any such garnishee order in respect of any debt or emoluments 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 the garnishee order, be left to the judgment debtor, the court shall set aside the garnishee

kusie verkoop is, aanspraak maak, word sodanige aanspraak beslis na die uitreiking van 'n dagvaarding op die wyse wat die reëls voorskryf.

(b) Wanneer so 'n dagvaarding uitgereik is, word alle aksies wat in watter hof ook al betreffende sodanige goedere ingestel is, gestaak en staan hulle oor in afwagting van die uitslag van die verrigtinge waartoe die bedoelde dagvaarding gelei het.

(2) Waar twee of meer persone strydige aansprake maak op goedere wat in die bewaring of besit van 'n derde is, word sodanige aansprake beslis na die uitreiking van 'n dagvaarding op die wyse wat die reëls voorskryf.

69. 'n Verkoop in eksekusie deur die geregsbode kan in die geval van roerende goedere na aflewering daarvan of in die geval van onroerende goedere na registrasie van transport nie ten aansien van 'n koper te goeder trou en sonder kennis van 'n gebrek, bestry word nie.

70. As daar na 'n verkoop in eksekusie 'n oorskot van die opbrengs in die hande van die geregsbode oorbly, kan daar op sodanige oorskot beslag gelê word weens ander onvoldane vonnisskulde.

71. (1) (a) Die hof kan na *ex parte*-aansoek deur 'n vonnisskuldeiser of ingevolge paragraaf (b) van subartikel (7) van artikel *vier-en-sestig* die inbeslagneming beveel van enige skuld wat dan of in die toekoms aan 'n vonnisskuldenaar verskuldig is of hom toekom, deur of van enige ander persoon (behalwe die Staat) wat in die distrik woon, besigheid dryf of in diens is, tot die bedrag wat voldoende is om die vonnis en die koste van die verrigtinge tot inbeslagneming te dek, hetsy die vonnis in daardie hof of in enige ander landdroshof verkry is, en kan 'n bevel (hierna 'n skuldbeslagbevel genoem) teen so iemand (hierna die beslagskuldenaar genoem) uitreik om aan die vonnisskuldeiser of sy prokureur soveel van die skuld te betaal soos voldoende is om die vonnis en koste te dek, en kan so 'n skuldbeslagbevel op dieselfde wyse ten uitvoer laat lê asof dit 'n vonnis van die hof was.

(b) Die hof kan voorts op aansoek deur 'n vonnisskuldeiser en na kennisgewing aan die vonnisskuldenaar of kragtens paragraaf (b) van subartikel (7) van artikel *vier-en-sestig* die inbeslagneming beveel van enige besoldiging wat dan of in die toekoms aan 'n vonnisskuldenaar verskuldig is of hom toekom deur of van iemand (met inbegrip van die Staat) wat in die distrik woon, besigheid dryf of in diens is, tot 'n bedrag wat voldoende is om die vonnis en die koste van die verrigtinge tot inbeslagneming te dek, hetsy die vonnis in daardie hof of in enige ander landdroshof verkry is en kan 'n bevel (hierna ook 'n skuldbeslagbevel genoem) teen so iemand (hierna ook die beslagskuldenaar genoem) uitreik om aan die vonnisskuldeiser of sy prokureur soveel van die besoldiging te betaal soos voldoende is om die vonnis en koste te dek, en kan so 'n skuldbeslagbevel op dieselfde wyse ten uitvoer laat lê asof dit 'n vonnis van die hof was.

(2) Geen sodanige skuldbeslagbevel ten opsigte van besoldiging word bloot op grond van die toestemming van die vonnisskuldenaar uitgereik nie, maar die hof moet deur ondervraging van die vonnisskuldenaar of aan die hand van ander inligting onder eed verstrek hom daarvan vergewis dat die vonnisskuldenaar genoegsame middele sal hê om hom en sy afhanklikes te onderhou nadat daar aan die bevel voldoen is.

(3) So 'n skuldbeslagbevel kan die beslagskuldenaar verplig om van tyd tot tyd aan die vonnisskuldeiser of sy prokureur bepaalde bedrae uit die besoldiging van die vonnisskuldenaar te betaal.

(4) Die vonnisskuldenaar moet in kennis gestel word van die verhoordag van 'n aansoek om so 'n skuldbeslagbevel ten opsigte van besoldiging en kan *mutatis mutandis* op die wyse in subartikels (2) tot en met (10) van artikel *vier-en-sestig* bepaal, aangesê word om te verskyn sodat ondersoek na sy omstandighede en algemene finansiële toestand ingestel kan word.

(5) As na die uitreiking van so 'n skuldbeslagbevel ten opsigte van skuld of besoldiging ten genoeë van die hof bewys word dat die vonnisskuldenaar nadat aan die skuldbeslagbevel voldoen is, nie genoegsame middele sal hê om homself en sy afhanklikes te onderhou nie, vernietig die hof die skuldbeslagbevel of wysig hy dit op so

order or vary it in such manner that it will affect only the balance of the debt or emoluments over and above such sufficient means.

(6) Any order under this section may at any time and for good cause be suspended, varied or rescinded by the court.

(7) The court may, if it appears that there are unsatisfied claims owing to other creditors, postpone the application to enable the judgment debtor to make application for an administration order under section *seventy-three*.

(8) Where a judgment debtor affected by a garnishee order leaves the employment of a garnishee before the judgment debt is fully satisfied, the judgment creditor may cause a certified copy of the garnishee order to be served upon any new employer of the judgment debtor, together with a copy of an affidavit sworn to by him specifying the payments received since the issue of the garnishee order. Such garnishee order shall thereupon be binding upon the employer so served, who shall then be substituted for the original garnishee, subject however to the right of the judgment debtor, the garnishee or any other interested party to challenge the existence or validity of such order and the correctness or accuracy of the balance claimed.

72. (1) The court may, upon the application of any judgment debtor or under paragraph (c) or (d) of subsection (7) of section *sixty-four* and if it appears that the debtor is unable to satisfy the judgment in full at once, but is able to pay reasonable periodical instalments towards satisfaction thereof, suspend execution against that debtor either wholly or in part on such conditions as to security or otherwise as the court may determine.

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

(3) An order under paragraph (e) of section *forty-seven* or under this section may at any time and for good cause be varied or rescinded by the court.

73. (1) Where a judgment has been obtained for the payment of money and the judgment debtor is unable to pay the amount forthwith, or where a debtor is unable to liquidate his liabilities and has not sufficient assets capable of attachment to satisfy such liabilities or a judgment which has been obtained against him, the court may, upon the application of the judgment debtor or the debtor or under sub-section (8) of section *sixty-four* make an order on such terms with regard to security, preservation or disposal of assets, realization of movables subject to hypothec, or otherwise as it thinks fit, providing for the administration of his estate, and for the payment of his debts by instalments or otherwise. The court shall have jurisdiction to make such an order notwithstanding that any or all of the creditors are outside the jurisdiction of the court or that the debts of the debtor exceed the sum of one thousand rand, provided the debts of the debtor do not exceed the sum of two thousand rand.

(2) With the application the debtor shall submit a full statement of his debts with the names and addresses of his creditors together with a statement of his assets with details of his income, the names of those dependent upon him, and his weekly or monthly commitments. Such statements shall be verified by his affidavit.

(3) The debtor shall, by prepaid registered post, give to all his creditors at least fourteen days' notice of such application.

(4) On the day appointed for the hearing the debtor shall appear in person and may be examined by the court and by any creditor or his legal representative, as to —

(a) his assets and liabilities;

(b) his present and future income;

'n wyse dat dit slegs op die restant van sodanige skuld of besoldiging, bo en behalwe sodanige genoegsame middele, sal inwerk.

(6) 'n Bevel ingevolge hierdie artikel kan te eniger tyd deur die hof opgeskort of gewysig of vernietig word as gegronde redes daarvoor aangevoer word.

(7) As dit blyk dat daar onvoldane vorderings aan ander skuldeisers verskuldig is, kan die hof die aansoek uitstel ten einde die vonnisskuldenaar in die geleentheid te stel om 'n administrasiebevel kragtens artikel *drie-en-sewentig* aan te vra.

(8) Wanneer 'n vonnisskuldenaar op wie 'n skuldbeslagbevel betrekking het, die diens van 'n beslagskuldenaar verlaat voordat die vonnisskuld ten volle vereffen is, kan die vonnisskuldeiser 'n gesertifiseerde afskrif van die skuldbeslagbevel aan enige nuwe werkgewer van die vonnisskuldenaar laat bestel tesame met 'n afskrif van 'n beëdigde verklaring deur hom afgelê waarin die betalings deur hom sedert die uitreiking van die skuldbeslagbevel ontvang, vermeld word. Sodanige skuldbeslagbevel bind daarop die werkgewer aan wie dit aldus bestel is, en laasgenoemde word daarop in die plek van die oorspronklike beslagskuldenaar gestel, maar onderworpe aan die reg van die vonnisskuldenaar, die beslagskuldenaar of 'n ander belanghebbende party om die bestaan of geldigheid van die bevel en die juistheid van die gevorderde restant te betwis.

72. (1) Die hof kan op aansoek van 'n vonnisskuldenaar of kragtens paragraaf (c) of (d) van subartikel (7) van artikel *vier-en-sestig* en as dit blyk dat die skuldenaar nie in staat is om onmiddellik ten volle aan die vonnisskuld te voldoen nie, maar wel in staat is om dit in redelike periodieke paaiemente af te betaal, eksekusie teen daardie skuldenaar geheel of ten dele opskort op die voorwaardes ten aansien van sekerheidstelling of andersins wat die hof bepaal.

(2) Geen bepaling in hierdie artikel word so uitgelê as sou dit die hof magtig om die tenuitvoerlegging van 'n vonnis op te skort op enige goedere wat onderhewig is aan 'n hipoteek vir die vonnisskuld wat afgesien van beslaglegging in eksekusie bestaan nie.

(3) 'n Bevel ingevolge paragraaf (e) van artikel *sewe-en-veertig* of ingevolge hierdie artikel kan te eniger tyd deur die hof gewysig of vernietig word as gegronde redes daarvoor aangevoer word.

73. (1) Waar 'n vonnis vir die betaling van geld verkry is en die vonnisskuldenaar nie in staat is om die bedrag onmiddellik te betaal nie, of waar 'n skuldenaar nie in staat is om sy finansiële verpligtings na te kom nie en nie genoegsame vir beslag vatbare bate het om aan die bedoelde verpligtings of 'n vonnis wat teen hom verkry is, te voldoen nie, kan die hof op aansoek van die vonniskuldenaar of van die skuldenaar of kragtens subartikel (8) van artikel *vier-en-sestig* onderworpe aan die voorwaardes wat hie hof goedvind ten opsigte van sekerheidstelling, of die bewaring van, beskikking oor, bates, tegeldemaking van verhipotekeerde roerende goedere of andersins, 'n bevel verleen wat voorsiening maak vir die administrasie van sy boedel en vir die vereffening van sy skulde in paaiemente of andersins. Die hof is bevoeg om so 'n bevel te verleen al is enige van of al die skuldeisers buite die jurisdiksie van die hof of al gaan die skulde van die skuldenaar die bedrag van duisend rand te bowe, mits die skulde van die skuldenaar nie die bedrag van tweeduisend rand te bowe gaan nie.

(2) Die skuldenaar moet by sy aansoek 'n volledige staat van sy skulde, met die name en adresse van sy skuldeisers tesame met 'n staat van sy bate waarin hy sy inkomste, die name van persone wat van hom afhanklik is en sy weeklikse of maandelikse verpligtings in besonderhede aangee. Sodanige state moet deur hom by wyse van 'n beëdigde verklaring bevestig word.

(3) Die skuldenaar moet per vooruitbetaalde aangetekende pos minstens veertien dae kennis van sodanige aansoek aan al sy skuldeisers gee.

(4) Op die dag wat vir die verhoor bepaal is, moet die skuldenaar in eie persoon verskyn en hy kan deur die hof en deur enige skuldeiser of sy regsverteenwoordiger ondervra word met betrekking tot —

(a) sy bate en laste;

(b) sy huidige en toekomstige inkomste;

(c) his standard of living and the possibility of practising economies; and

(d) any other matters which the court may deem relevant.

(5) (a) The court shall appoint an administrator when an order has been granted under sub-section (1).

(b) An administrator may on good cause shown be relieved or deprived by the court of his appointment.

(c) An administrator, other than an officer of the court or a practitioner, shall give security to the satisfaction of the court for the due and punctual payment by him to the parties entitled thereto of all moneys which shall come into his hands by virtue of his appointment as administrator.

(6) When the order provides for periodical payments out of future income it shall be accompanied by an attachment under section *seventy-one,* of any debt, or emoluments owing or accruing to the debtor, so far as that section is applicable.

(7) After such order of attachment has been served upon the garnishee it shall be his duty to pay to the administrator in terms of the order the amounts directed by the court. Such payments shall constitute a first charge upon the income of the debtor.

(8) (a) An order under this section shall specify the amount of the weekly or monthly payments to be made thereunder and the total sum to be covered by such payments.

(b) If a debtor fails to comply with an order to pay his debts by specified periodical instalments, the provisions of sub-sections (9) and (11) of section *sixty-four* shall *mutatis mutandis* apply.

(9) The administrator shall as soon as practicable compile a complete list of the names of the creditors and the amounts due to them individually and may from time to time after notice to such creditors add to such list the name of any creditor omitted from the original list and the amount due to such creditor, if the liability had been incurred at the date of the granting of the administration order. Such lists shall be open to inspection by creditors at all reasonable times.

(10) (a) The administrator shall collect the periodical payments and distribute the same at least once a quarter *pro rata* amongst the creditors unless all creditors otherwise agree: Provided that claims which would enjoy preference under the law relating to insolvency, shall be paid out preferentially and in the order laid down in that law.

(b) Should the debtor at any time be fourteen days in arrear in payment of any one instalment the administrator shall forthwith notify the creditors of that fact.

(11) The administrator shall, before making a distribution, be entitled to deduct from the moneys received, his out-of-pocket expenses and a remuneration representing five per centum of the amount received.

(12) Unless the court otherwise directs no costs in connection with an application under this section shall be recoverable except from the administrator as a first charge against the moneys he controls.

(13) As long as an order under this section is in force, no creditor who has received notice in terms of subsection (3) may, save on a mortgage bond or with the leave of the court, institute or proceed with any action against the debtor for money due.

(14) A filing of a claim against the debtor with the administrator shall interrupt prescription.

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

(16) A debtor subject to an administration order who during its currency contracts any debt without disclosing

(c) sy lewenstandaard en die moontlikheid om besuiniging te beoefen; en

(d) alle ander aangeleenthede wat die hof ter sake ag.

(5) (a) Wanneer 'n bevel kragtens subartikel (1) verleen is, stel die hof 'n administrateur aan.

(b) Nadat gegronde redes aangevoer is, kan die hof 'n administrateur van sy aanstelling onthef of hom dit ontneem.

(c) 'n Administrateur wat nie 'n beampte van die hof of 'n praktisyn is nie, moet ten genoeë van die hof sekuriteit verstrek vir die behoorlike en stipte betaling deur hom aan die partye wat daarop geregtig is van alle gelde wat uit hoofde van sy aanstelling as administrateur in sy besit kom.

(6) Wanneer die bevel vir periodieke betalings uit toekomstige inkomste voorsiening maak, moet dit vergesel gaan van 'n inbeslagneming ingevolge artikel *een-en-sewentig,* vir sover daardie artikel van toepassing is, van enige skuld of besoldiging wat aan die skuldenaar verskuldig is of hom toekom.

(7) Nadat sodanige beslagbevel aan die beslagskuldenaar bestel is, is laasgenoemde verplig om die bedrae deur die hof beveel volgens voorskrif van die bevel aan die administrateur te betaal. Sodanige betalings maak 'n preferente eis teen die inkomste van die skuldenaar uit.

(8) (a) 'n Bevel ingevolge hierdie artikel bepaal die bedrag van die weeklikse of maandelikse betalings wat ingevolge daarvan gemaak moet word en die totaalbedrag wat deur sodanige betalings gedek moet word.

(b) As 'n skuldenaar versuim om te voldoen aan 'n bevel om sy skulde in bepaalde periodieke paaiemente te vereffen, is die bepalings van subartikels (9) en (11) van artikel *vier-en-sestig mutatis mutandis* van toepassing.

(9) Die administrateur stel so spoedig doenlik 'n volledige lys op van die name van die skuldeisers en die bedrae wat afsonderlik aan hulle verskuldig is, en kan van tyd tot tyd, na kennisgewing aan bedoelde skuldeisers, die naam van enige skuldeiser wat uit die oorspronklike lys weggelaat is en die bedrag aan daardie skuldeiser verskuldig by sodanige lys voeg as die skuld op die datum waarop die administrasiebevel toegestaan is, reeds aangegaan was. Sodanige lyste moet te alle redelike tye vir skuldeisers ter insae beskikbaar wees.

(10) (a) Die administrateur vorder die periodieke betalings in en verdeel die bedoelde betalings minstens een keer in die kwartaal *pro rata* onder die skuldeisers tensy al die skuldeisers andersins ooreenkom: Met dien verstande dat vorderings wat kragtens die Wetsbepalings op insolvensie 'n preferensie sou geniet, preferensieel en in die volgorde in die bedoelde wetsbepalings voorgeskryf, uitbetaal moet word.

(b) As die skuldenaar te eniger tyd veertien dae agterstallig is met die betaling van enige paaiement stel die administrateur die skuldeisers onverwyld daarvan in kennis.

(11) Die administrateur het die reg om voordat hy 'n verdeling maak sy werklike uitgawes asook 'n besoldiging bereken teen vyf persent van die ontvange bedrag van die ingevorderde gelde af te trek.

(12) Tensy die hof anders beveel, mag geen koste in verband met 'n aansoek ingevolge hierdie artikel op iemand anders as die administrateur verhaal word nie, en dan wel as 'n preferente eis teen die gelde wat hy beheer.

(13) Solank 'n bevel ingevolge hierdie artikel van krag is, mag geen skuldeiser wat ooreenkomstig subartikel (3) kennis gekry het, behalwe op 'n verband of met verlof van die hof, teen die skuldenaar 'n aksie om geld verskuldig, instel of voortsit nie.

(14) Die indiening van 'n vordering teen die skuldenaar by die administrateur onderbreek verjaring.

(15) Te eniger tyd nadat 'n bevel kragtens subartikel (1) verleen is, kan die hof op aansoek van die skuldenaar of enige belanghebbende party, die verrigtinge heropen en die skuldenaar aansê om te verskyn vir sodanige verdere ondervraging soos die hof nodig ag en die hof kan daarna om gegronde redes die bevel opskort, wysig of vernietig.

(16) 'n Skuldenaar wat aan 'n administrasiebevel onderhewig is en wat terwyl sodanige bevel van krag is,

that fact shall be guilty of an offence and shall be liable on conviction to a fine not exceeding fifty rand.

(17) Any person who lends money or who sells goods or renders services on credit to a debtor, knowing that the latter is subject to an administration order, shall be debarred from recovering the money so lent or the price of such goods or the remuneration for such services by process of law unless he satisfies the court on application under sub-section (15) or in proceedings instituted after termination of the operation of the order under this section, that such money, goods or services were urgently required for the preservation of the health or property of the debtor or his dependants, and that payment could not reasonably have been demanded from the debtor out of the income remaining available to him in terms of the administration order.

(18) The granting of an order under this section shall be no bar to the sequestration of the debtor's estate.

74. (1) If the garnishee disputes that the debt or emoluments sought to be attached are owing or accruing or alleges that they are subject to a set-off or belong to or are 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 that third person to be barred, provided that the claim or value of the matter in dispute is otherwise within the jurisdiction of the court.

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

75. Payment made by or execution levied upon the garnishee under the provisions of this Ordinance shall be valid discharge of the debt or amount of emoluments due from him to the judgment debtor to the extent of the amount paid or levied.

76. Save where under section *seventy-one* an order may be granted against the State, nothing in this Ordinance contained shall be construed as authorizing the attachment of any debt or emoluments or any moneys or property specially declared by any law not to be liable to attachment.

77. 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.

78. Any person shall be guilty of an offence and liable to a fine not exceeding fifty rand if after a return of *nulla bona* has been made in respect of a judgment against him and before satisfaction of the said judgment, he obtains credit to an amount exceeding fifty rand in the aggregate without previously informing all persons from whom he so obtains credit that there is an unsatisfied judgment against him and that a return of *nulla bona* has been made in respect thereof.

CHAPTER X.

COSTS

79. (1) The stamps, fees, costs and charges in connection with any civil proceedings in magistrates' courts shall, as between party and party, be payable in accordance with the scales prescribed by the rules.

(2) As between attorney and client, the clerk of the court may in his discretion (subject to the review hereinafter mentioned) allow costs and charges for services reasonably performed by the attorney at the request of

'n skuld aangaan sonder om te openbaar dat hy aldus onderhewig is, is aan 'n misdryf skuldig en is by skuldigbevinding strafbaar met 'n boete van hoogstens vyftig rand.

(17) Iemand wat geld leen of wat goedere op krediet verkoop of dienste bewys aan 'n skuldenaar wetende dat laasgenoemde aan 'n administrasiebevel onderhewig is, word belet om die aldus geleende geld of die prys van daardie goedere of die beloning vir daardie dienste in 'n regsgeding te verhaal tensy op aansoek ingevolge subartikel (15) of by proses ingestel na afloop van die werking van die bevel verleen ingevolge hierdie artikel, hy die hof oortuig dat die bedoelde geld, goedere of dienste dringend nodig was vir die behoud van die gesondheid of die bewaring van die goedere van die skuldenaar of sy afhanklikes en dat betaling nie rederlikerwyse uit die beskikbare inkomste wat ingevolge die administrasiebevel aan hom oorgebly het, van die skuldenaar vereis kon word nie.

(18) Die verlening van 'n bevel kragtens hierdie artikel sluit nie die sekwestrasie van die skuldenaar se boedel uit nie.

74. (1) As die beslagskuldenaar betwis dat die skuld of besoldiging wat onder beslaglegging staan, opeisbaar of toekomend is, of beweer dat dit aan skuldvergelyking onderhewig is of aan 'n derde party behoort of dat 'n derde party 'n reg daarop het, kan die hof die regte en verpligtinge van al die partye vasstel en kan hy verklaar dat die reg van daardie derde party uitgesluit is, mits die reg of waarde van die saak in geskil origens binne die jurisdiksie van die hof val.

(2) As bewys word dat die bedoelde derde party nòg in die Gebied of die Republiek woon nòg daarin besigheid dryf of in diens is en dat hy 'n reg *prima facie* op die skuld het, het die hof geen jurisdiksie kragtens hierdie artikel nie.

75. Betaling gedoen deur, of verhaal by eksekusie op, 'n beslagskuldenaar ingevolge die bepalings van hierdie Ordonnansie is tot die bedrag van wat betaal of verhaal is, 'n regsgeldige betaling van die skuld of van die besoldiging wat deur hom aan die vonnisskuldenaar verskuldig is.

76. Behalwe waar daar kragtens artikel *een-en-sewentig* 'n bevel teen die Staat verleen kan word, word geen bepaling van hierdie Ordonnansie so uitgelê dat dit magtiging verleen vir die inbeslagneming van enige skuld of besoldiging of enige geld of goedere wat volgens uitdruklike voorskrif van enige wetsbepalings nie vir beslaglegging vatbaar is nie.

77. Waar 'n appèl aangeteken is of 'n aansoek gedoen is om 'n vonnis ter syde te stel, te verbeter of te wysig, kan die hof beveel dat die vonnis ten uitvoer gelê word of dat tenuitvoerlegging daarvan opgeskort word in afwagting van die beslissing insake die appèl of aansoek. Die bevel word verleen op die voorwaardes (as voorwaardes gestel word) wat die hof bepaal oor sekerheidstelling vir die behoorlike nakoming van 'n vonnis wat oor die appèl of aansoek gevel word.

78. Elkeen is aan 'n misdryf skuldig en strafbaar met 'n boete van hoogstens vyftig rand as hy, nadat 'n relaas *nulla bona* ten opsigte van 'n vonnis teen hom gemaak is, en voordat daar aan bedoelde vonnis voldoen is, krediet verkry vir 'n bedrag of bedrae wat altesaam vyftig rand te bowe gaan sonder dat hy vooraf iedereen van wie hy aldus krediet verkry, daarvan verwittig het dat daar 'n onvoldane vonnis teen hom is en dat 'n relaas *nulla bona* ten opsigte daarvan gemaak is.

HOOFSTUK X.

KOSTE.

79. (1) Die seëls, gelde, koste en onkoste in verband met siviele sake in landdroshowe word tussen party en party bereken volgens die tariewe wat die reëls voorskryf.

(2) Onderworpe aan die hersiening hierna vermeld, kan die klerk van die hof na goeddunke koste en onkoste toestaan tussen prokureur en kliënt vir dienste wat die prokureur redelikerwys op versoek van die kliënt verrig

the client for which no remuneration is recoverable as between party and party and for which no provision is made in the rules.

(3) Payment of costs awarded by the court (otherwise than by a judgment in default of the defendant's appearance to defend or on the defendant's consent to judgment before the time for such appearance has expired) may not be enforced until they have been taxed by the clerk of the court.

(4) Any person who is liable to pay or who is sued for costs of any civil proceedings in a court otherwise than under an award by the court or under a special agreement, may require that those costs shall be taxed by the clerk of the court as between attorney and client; and thereupon any action for the recovery of those costs shall be stayed pending the taxation. The costs of and incidental to such a taxation shall be borne, if not more than one-sixth of such costs is disallowed on taxation, by the person requiring the taxation, and, if more than one-sixth is so disallowed, by the person claiming the costs.

80. Taxation by the clerk of the court shall be subject to review free of charge by a judicial officer of the district; and the decision of such judicial officer may at any time within one month thereafter be brought in review before a judge of the court of appeal in the manner prescribed by the rules.

CHAPTER XI.

APPEAL AND REVIEW

81. 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.

82. Subject to the provisions of section *eighty-one* a party to any civil suit or proceeding in a court may appeal to the Supreme Court, against —

(a) any judgment of the nature described in section *forty-seven;*

(b) any rule or order made in such suit or proceeding and having the effect of a final judgment, including any order under Chapter IX and any order as to costs;

(c) any decision overruling 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.

83. Every party so appealing shall do so within the period and in the manner prescribed by the rules; but the court of appeal may in any case extend such period.

84. 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.

85. (1) A party may by notice in writing abandon the whole or any part of a judgment in his favour.

(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.

86. The court of appeal may —

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

het en waarvoor geen besoldiging tussen party en party verhaal kan word nie en waarvoor die reëls geen voorsiening maak nie.

(3) Betaling van koste deur die hof toegewys (anders as by verstekvonnis weens die verweerder se nieverskyning om te verdedig of op grond van die verweerder se toestemming tot vonnis voor die verstryking van die termyn vir sodanige verskyning) kan nie afgedwing word voordat die koste deur die klerk van die hof getakseer is nie.

(4) Elkeen wat aanspreeklik is of gedagvaar word vir die koste van 'n siviele saak in 'n hof anders as uit kragte van 'n toewysing deur die hof of ingevolge 'n besondere ooreenkoms kan vereis dat daardie koste deur die klerk van die hof tussen prokureur en kliënt getakseer moet word; daarop word enige aksie vir die verhaal van daardie koste in afwagting van die taksasie opgeskort. Die koste van, en in verband met, so 'n taksasie word, as nie meer as een-sesde van daardie koste afgetakseer word nie, gedra deur die persoon wat die taksasie verlang en, as meer as een-sesde aldus afgetakseer word, deur die persoon wat die koste vorder.

80. Taksasie deur die klerk van die hof is aan kostelose hersiening deur 'n regterlike beampte van die distrik onderhewig en die beslissing van so 'n regterlike beampte kan te eniger tyd binne 'n maand daarna voor 'n regter van die hof van appèl in hersiening gebring word soos die reëls voorskryf.

HOOFSTUK XI.

APPÈL EN HERSIENING.

81. As die partye voordat die verhoor begin by die hof 'n skriftelike verklaring indien dat die uitspraak van die hof finaal sal wees, kan daar nie teen die uitspraak van die hof geappelleer word nie.

82. Behoudens die bepalings van artikel *een-en-tagtig* kan 'n party in enige siviele geding of verrigting in 'n hof by die Hooggeregshof appelleer teen —

(a) 'n vonnis van die aard bedoel in artikel *sewe-en-veertig;*

(b) 'n beskikking of bevel gemaak of gegee in so 'n geding of verrigting wat die uitwerking van 'n finale vonnis het met inbegrip van enige bevel kragtens Hoofstuk IX en 'n bevel ten aansien van koste;

(c) 'n beslissing waarby 'n eksepsie verwerp word waar die betrokke partye tot sodanige appèl toestem voordat 'n aksie verder gevoer word of wanneer daarteen geappelleer word in verband met die hoofsaak of wanneer dit 'n bevel ten aansien van koste insluit.

83. Elke party wat aldus appelleer, moet dit doen binne die termyn en op die wyse voorgeskryf deur die reëls; die hof van appèl kan egter in enige geval sodanige termyn verleng.

84. 'n Party verloor nie sy reg van appèl deur aan die vonnis ten opsigte waarvan hy appelleer, of 'n gedeelte daarvan, te voldoen of aan te bied om daaraan te voldoen, of deur een of ander voordeel uit so 'n vonnis of bevel aan te neem nie.

85. (1) 'n Party kan by skriftelike kennisgewing geheel of ten dele afstand doen van 'n vonnis in sy guns.

(2) Waar die party wat aldus afstand doen die eiser of applikant was, word vonnis ten opsigte van die afgestane gedeelte ten gunste van die verweerder of respondent met koste aangeteken.

(3) Waar die party wat aldus afstand doen die verweerder of respondent was, word vonnis ten opsigte van die afgestane gedeelte ten gunste van die eiser of applikant ooreenkomstig die vordering in die dagvaarding of aansoek aangeteken.

(4) 'n Aldus aangetekende vonnis het in alle opsigte dieselfde uitwerking asof dit 'n vonnis was wat oorspronklik deur die hof in die aksie of saak gevel is.

86. Die hof van appèl kan —

(a) die vonnis waarteen geappelleer word, bekragtig, wysig of vernietig, na gelang die billikheid vereis;

(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 court of appeal such further proof as shall to it seem necessary or desirable; or

(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.

87. The judgment of the court of appeal shall be recorded in the court appealed from and may be enforced as if it had been given in such last-mentioned court.

PART III — CRIMINAL MATTERS

CHAPTER XII.

CRIMINAL JURISDICTION

88. (1) The court, other than the court of a regional division, shall have jurisdiction over all offences except treason, murder and rape.

(2) The court of a regional division shall have jurisdiction over all offences except treason and murder: Provided that such court shall not have jurisdiction in the case of rape where the accused has demanded before plea that he be tried before the Supreme Court.

89. (1) Subject to the provisions of section *eighty-eight*, any person charged with any offence committed within any district or regional division may be tried by the court of that district or of that regional division, as the case may be.

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

(a) committed within the distance of two miles beyond the boundary of the district, or of the regional division; or

(b) committed in or upon any vessel or vehicle on a voyage or journey any part whereof was performed within the distance of two miles beyond the boundary of the district or of the regional division; or

(c) begun or completed within the district or within the regional division,

such person may be tried by the court of the district or of the regional division, as the case may be, as if he had been charged with an offence committed within the district or within the regional division respectively.

(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 an offence may be tried by the court of any district, or any regional division, as the case may be, wherein any act or omission or event which is an element of the offence took place.

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

(6) A person charged with kidnapping, child-stealing or abduction may also be tried by the court of any district or of any regional division, as the case may be, 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 magistrate's court has jurisdiction in respect of an offence committed beyond the local limits of the district, or of the regional division, as the case may be, such court shall not be deprived of such jurisdiction by any of the provisions of this section.

(8) Notwithstanding anything contained in this section the Attorney-General may, with the consent of the

(b) as die stukke geen voldoende getuienis of inligting vir die beslissing van die appèl verstrek nie, die saak terugverwys na die hof teen die beslissing waarvan geappelleer word, met instruksies betreffende die afneem van verdere getuienis of die verstrekking van nadere inligting;

(c) beveel dat die partye of een van hulle op 'n geskikte tyd in die hof van appèl sodanige verdere bewyse moet aanvoer soos die hof nodig of wenslik ag; of

(d) enige ander stappe doen wat tot die regverdige, spoedige en so goedkoop moontlike afhandeling van die saak kan lei; en

(e) so 'n bevel met betrekking tot die koste gee soos billik is.

87. Die vonnis van die hof van appèl word in die hof teen die beslissing waarvan geappelleer is, aangeteken, en kan uitgevoer word asof dit 'n vonnis van laasgenoemde hof was.

DEEL III — STRAFSAKE.

HOOFSTUK XII.

STRAFREGTELIKE JURISDIKSIE.

88. (1) Die hof, buiten die hof van 'n streekafdeling, het jurisdiksie ten opsigte van alle misdrywe behalwe hoogverraad, moord en verkragting.

(2) Die hof van 'n streekafdeling het jurisdiksie ten opsigte van alle misdrywe behalwe hoogverraad en moord: Met dien verstande dat so 'n hof in die geval van verkragting nie jurisdiksie het nie waar die beskuldigde voordat hy pleit, eis dat hy voor die Hooggeregshof verhoor word.

89. (1) Behoudens die bepalings van artikel *agt-en-tagtig* kan elkeen wat beskuldig word van 'n misdryf binne 'n distrik of 'n streekafdeling gepleeg, deur die hof van daardie distrik of daardie streekafdeling, na gelang, verhoor word.

(2) Wanneer iemand beskuldig word van 'n misdryf —

(a) gepleeg binne die afstand van twee myl oor die grens van die distrik of van die streekafdeling; of

(b) gepleeg in of op 'n vaar- of voertuig gedurende 'n reis waarvan enige gedeelte binne die afstand van twee myl van die grens van die distrik of van die streekafdeling afgelê is; of

(c) wat binne die distrik of binne die streekafdeling begin of voltooi is,

kan so iemand deur die hof van die distrik of van die streekafdeling, na gelang, verhoor word asof hy van 'n misdryf wat onderskeidelik binne die distrik of binne die streekafdeling gepleeg is, beskuldig was.

(3) Waar dit onseker is in watter van verskeie regsgebiede 'n misdryf gepleeg is, kan so 'n misdryf in enigeen van daardie regsgebiede verhoor word.

(4) Iemand wat van 'n misdryf beskuldig word, kan verhoor word deur die hof van enige distrik of enige streekafdeling, na gelang, waarin 'n handeling of versuim of gebeurtenis wat 'n bestanddeel van die misdryf uitmaak, plaasgevind het.

(5) Iemand wat beskuldig word van die diefstal van, of van die verkryging van goedere deur middel van 'n misdryf of van heling deur hom, kan ook verhoor word deur die hof van enige distrik of enige streekafdeling, na gelang, waarin hy enige gedeelte van die goedere in sy besit het of gehad het.

(6) Iemand wat beskuldig word van ontvoering, kinderdiefstal of skaking kan ook verhoor word deur die hof van enige distrik of enige streekafdeling, na gelang, waardeur of waarin hy die ontvoerde, gestole of geskaakte persoon vervoer, verberg of aangehou het.

(7) Wanneer 'n landdroshof uit hoofde van 'n besondere wetsbepaling jurisdiksie het ten opsigte van 'n misdryf wat buite die plaaslike grense van die distrik of van die streekafdeling, na gelang, gepleeg is, word sodanige jurisdiksie nie deur die bepalings van hierdie artikel aan die hof ontneem nie.

(8) Ondanks die bepalings van hierdie artikel kan die Prokureur-generaal met die toestemming van die persoon wat daarvan beskuldig word dat hy 'n misdryf

person charged with having committed any offence, cause such person to be tried for such offence in any court.

(9) Notwithstanding anything contained in this section, the provisions of sub-section (6) of section *fifty-nine* of the Criminal Procedure Ordinance, 1963 shall *mutatis mutandis* apply in respect of the trial of any person by any court.

90. The jurisdiction of the periodical court in criminal matters shall be subject, *mutatis mutandis*, to the provisions contained in section *twenty-six* and in sub-section (3) of section *thirty-four*.

91. Save as otherwise in this Ordinance or in any other law specially provided, the court, whenever it may punish a person for an offence —

(a) by imprisonment, may impose a sentence of imprisonment for a period not exceeding six months, where the court is not the court of a regional division, or not exceeding three years, where the court is the court of a regional division;

(b) by fine, may impose a fine not exceeding two hundred rand, where the court is not the court of a regional division, or not exceeding six hundred rand, where the court is the court of a regional division;

(c) by whipping, may impose a sentence of whipping with a cane only.

92. (1) 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 a superior court, or when the public prosecutor so requests, the presiding judicial officer shall stop the trial, and the proceedings shall thereupon be those of a preparatory examination.

(2) If upon conviction of an accused person after summary trial it is brought to the notice of the presiding judicial officer before sentence is passed, that the accused has previous convictions which in the opinion of that officer, would justify a sentence in excess of his jurisdiction he may set aside his finding and shall in such event also set aside his finding in respect of any other accused person who has been convicted after being tried jointly with such first-mentioned accused person, and the proceedings shall thereupon be deemed to have been a preparatory examination.

(3) If a trial before the court of a regional division is converted into a preparatory examination in terms of the preceding provisions of this section there shall in such event be no remittal of the proceedings.

93. When in the course of any trial before a court which is not the court of a regional division it appears that the trial may more properly be conducted before the court of a regional division, or when the public prosecutor so requests, the presiding judicial officer shall stop the trial and proceedings shall then be recommenced *de novo* before the court of the regional division concerned.

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

(2) If in a case remitted by the Attorney-General the presiding judicial officer summons to his assistance any assessor or assessors to sit with him, then the trial shall, notwithstanding anything to the contrary contained in sub-section (2) of section *one hundred and sixty-four* of the Criminal Procedure Ordinance, 1963, be commenced *de novo* before such judicial officer and assessor or assessors.

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

gepleeg het, so 'n persoon weens sodanige misdryf in enige hof laat verhoor.

(9) Ondanks die bepalings van hierdie artikel is die bepalings van subartikel (6) van artikel *nege-en-vyftig* van die Strafprosesordonnansie 1963 *mutatis mutandis* van toepassing ten opsigte van die verhoor van enigiemand deur enige hof.

90. Die jurisdiksie van die periodieke hof in strafsake is *mutatis mutandis* onderworpe aan die bepalings van artikel *ses-en-twintig* en van subartikel (3) van artikel *vier-en-dertig*.

91. Buiten waar hierdie Ordonnansie of enige ander wet uitdruklik anders bepaal, kan die hof, wanneer hy iemand weens 'n misdryf kan straf —

(a) met gevangenisstraf, 'n vonnis van gevangenisstraf vir 'n tydperk van hoogstens ses maande oplê waar die hof nie die hof van 'n streekafdeling is nie, of van hoogstens drie jaar, waar die hof die hof van 'n streekafdeling is;

(b) met 'n boete, 'n boete van hoogstens tweehonderd rand oplê waar die hof nie die hof van 'n streekafdeling is nie, of van hoogstens seshonderd rand waar die hof die hof van 'n streekafdeling is;

(c) met lyfstraf, 'n vonnis van lyfstraf slegs met 'n rottang oplê.

92. (1) As dit in die loop van 'n verhoor blyk dat die misdryf wat verhoor word weens sy aard of omvang slegs onderworpe is aan die jurisdiksie van 'n hoër hof of pasliker tot die kennisname van so 'n hof behoort, of as die staatsaanklaer dit versoek, moet die voorsittende regterlike beampte die verhoor staak en die verdere verrigtinge is daarop dié van 'n voorlopige ondersoek.

(2) As die voorsittende regterlike beampte by die skuldigbevinding van 'n beskuldigde na summiere verhoor maar voor vonnisoplegging, in kennis gestel word dat die beskuldigde vorige veroordelings het wat, na die bedoelde beampte meen, 'n vonnis sou regverdig wat sy jurisdiksie te bowe gaan, kan hy sy bevinding ter syde stel en moet hy in so 'n geval ook sy bevinding ter syde stel ten opsigte van enige ander beskuldigde wat nadat hy tesame met sodanige eersgenoemde beskuldigde verhoor was, skuldig bevind is, en daarop word die verrigtinge geag 'n voorlopige ondersoek te gewees het.

(3) As 'n verhoor voor die hof van 'n streekafdeling ooreenkomstig die voorafgaande bepalings van hierdie artikel in 'n voorlopige ondersoek omgeskep word, word die verrigtinge in daardie geval nie terugverwys nie.

93. As dit in die loop van 'n verhoor voor 'n hof wat nie die hof van 'n streekafdeling is nie, blyk dat die verhoor pasliker voor die hof van 'n streekafdeling kan plaasvind, of as die staatsaanklaer dit versoek, moet die voorsittende regterlike beampte die verhoor staak en die verrigtinge begin dan weer van nuuts af aan voor die hof van die betrokke streekafdeling.

94. (1) In die geval van 'n summiere verhoor of van die verhoor van 'n saak wat die Prokureur-generaal terugverwys het, kan die voorsittende regterlike beampte, voordat enige getuienis voorgelê is, met die goedkeuring van die Administrateur, een of twee persone wat syns insiens in die regspleging ervare is of in die een of ander onderwerp bedrewe is wat moontlik by die verhoor oorweeg moet word, aansê om hom by te staan en om met hom as assessor of assessore by die verhoor sitting te neem.

(2) As die voorsittende regterlike beampte enige assessor of assessore aansê om hom by te staan in 'n saak wat die Prokureur-generaal terugverwys het, moet die verhoor, nieteenstaande andersluidende bepalings in subartikel (2) van artikel *eenhonderd vier-en-sestig* van die Strafprosesordonnansie 1963 vervat, van nuuts af aan voor daardie regterlike beampte en assessor of assessore begin.

(3) Die bedoelde regterlike beampte moet, voor die verhoor, van die persoon of persone wat hy aldus aangesê het om hom by te staan, 'n eed afneem dat hy of hulle 'n ware uitspraak sal gee ooreenkomstig die getuienis op die geskilpunte wat verhoor word, en daarna is hy of hulle 'n lid of lede van die hof behoudens die volgende bepalings:-

(a) any matter of law arising for decision at such trial, and any question arising thereat as to whether a matter for decision is a matter of fact or a matter of law, shall be decided by the presiding judicial officer and no assessor shall have a voice in any such decision;

(b) the presiding judicial officer may adjourn the argument upon any such matter or question as is mentioned in paragraph (a) and may sit alone for the hearing of such argument and the decision of such matter or question;

(c) whenever the said judicial officer shall give a decision in terms of paragraph (a) he shall give his reasons for that decision;

(d) upon all matters of fact the decision or finding of the majority of the members of the court shall be the decision or finding of the court, except when only one assessor sits with the presiding judicial officer in which case the decision or finding of such judicial officer shall be the decision or finding of the court if there is a difference of opinion;

(e) it shall be incumbent on the court to give reasons for its decision or finding on any matter made under paragraph (d);

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

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

(5) (a) If at any time during a trial mentioned in sub-section (1) an assessor referred to in that sub-section dies or becomes in the opinion of the presiding judicial officer incapable of continuing to act as assessor, such judicial officer may, if he thinks fit, direct that the trial shall proceed without such assessor.

(b) Where the presiding judicial officer has given a direction in terms of paragraph (a) the trial shall proceed as if the said assessor had not been called by the said judicial officer to his assistance.

(c) If the presiding judicial officer does not direct as provided in paragraph (a), the accused unless already released on bail, shall remain in custody and may be tried again, but he may be released on bail subject to the provisions of Chapter VII of the Criminal Procedure Ordinance, 1963.

CHAPTER XIII.

REMITTAL

95. When a case in which a preparatory examination has been held, has been remitted for trial or sentence, the court to which it has been remitted shall deal therewith as prescribed in the Criminal Procedure Ordinance, 1963, and may, in respect of each offence or count to which the remittal refers, impose a sentence which in accordance with the terms of the remittal is within its jurisdiction.

96. 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 (other than the court of a regional division) in respect of punishments as expressed in section *ninety-one,* shall be increased in the manner following:—

(a) the maximum amount of fine shall be four hundred rand; the maximum period of imprisonment shall be one year;

(b) the court may, in imposing a punishment of both fine and imprisonment, sentence the accused to a further period of imprisonment if the fine be not paid: Provided that the said maximum period of imprisonment be not exceeded.

(a) 'n regspunt wat vir beslissing by so 'n verhoor ontstaan en enige vraag wat daar ontstaan of die vraag vir beslissing 'n feitepunt of 'n regspunt is, word deur die voorsittende regterlike beampte beslis en 'n assessor het geen seggenskap by so 'n beslissing nie;

(b) die voorsittende regterlike beampte kan die argument oor so 'n punt of vraag soos in paragraaf (a) vermeld word, verdaag en kan alleen sit vir die verhoor van so 'n argument en die beslissing oor so 'n punt of vraag;

(c) wanneer die bedoelde regterlike beampte 'n beslissing ingevolge paragraaf (a) vel, moet hy sy redes vir so 'n beslissing aanvoer;

(d) op alle feitepunte is die beslissing of bevinding van die meerderheid van die lede van die hof die beslissing of bevinding van die hof, behalwe wanneer net een assessor met die voorsittende regterlike beampte sit en in so 'n geval is die beslissing of bevinding van so 'n regterlike beampte die beslissing of bevinding van die hof, as daar 'n verskil van mening bestaan;

(e) die hof is verplig om redes aan te voer vir sy beslissing of bevinding in enige saak ingevolge paragraaf (d);

(f) in die geval van 'n skuldigbevinding word die vraag oor die straf wat opgelê moet word by die toepassing van paragraaf (a) as 'n regsvraag beskou.

(4) As so 'n assessor nie 'n persoon in die voltydse diens van die Staat is nie, is hy geregtig op vergoeding van alle redelike uitgawes wat hy noodsaaklik aangegaan het in verband met sy bywoning van die verhoor en op sodanige besoldiging vir sy dienste as assessor soos die reëls voorskryf: Met dien verstande dat totdat sodanige besoldiging aldus voorgeskryf is, elke sodanige assessor geregtig is op die gelde wat die reëls voorskryf ten opsigte van assessore wat in siviele sake optree.

(5) (a) As te eniger tyd gedurende 'n verhoor bedoel in subartikel (1) 'n assessor bedoel in daardie subartikel sterf of, na die voorsittende regterlike beampte meen, onbekwaam word om as assessor aan te bly, kan sodanige regterlike beampte, as hy dit goed vind, gelas dat die verhoor sonder so 'n assessor voort moet gaan.

(b) Waar die voorsittende regterlike beampte 'n lasgewing ingevolge paragraaf (a) gegee het, gaan die verhoor voort asof die bedoelde assessor nie deur die bedoelde regterlike beampte aangesê was om hom by te staan nie.

(c) As die voorsittende regterlike beampte nie gelas soos paragraaf (a) bepaal nie, moet die beskuldigde, tensy hy reeds op borgtog vrygelaat is, in hegtenis bly en kan hy weer verhoor word, maar hy kan onderhewig aan die bepalings van Hoofstuk VII van die Strafprosesordonnansie 1963, op borgtog vrygelaat word.

HOOFSTUK XIII

TERUGVERWYSING

95. Wanneer 'n saak waarin 'n voorlopige ondersoek gehou is, vir verhoor of vonnisoplegging terugverwys word, moet die hof waarna die saak verwys word, daarmee handel volgens voorskrif van die Strafprosesordonnansie 1963 en kan hy ten opsigte van elke misdryf of aanklag waarop die terugverwysing betrekking het, 'n vonnis oplê wat ooreenkomstig die voorskrifte van die terugverwysing binne sy jurisdiksie is.

96. Wanneer 'n saak aldus terugverwys is en die terugverwysing na verklaring geskied het onder die verhoogde jurisdiksie by hierdie artikel verleen, word die jurisdiksie van die hof (buiten die hof van 'n streekafdeling) ten aansien van strawwe soos in artikel *een-en-negentig* voorgeskryf, soos volg verhoog:—

(a) die maksimum boete is vierhonderd rand; die maksimum tydperk van gevangenisstraf is een jaar;

(b) die hof kan by die oplegging van 'n straf van sowel 'n boete as gevangenisstraf die beskuldigde tot 'n verdere tydperk van gevangenisstraf vonnis as die boete nie betaal word nie: Met dien verstande dat die bedoelde maksimum tydperk van gevangenisstraf nie oorskry mag word nie.

CHAPTER XIV.

REVIEW

97. (1) All sentences in criminal cases (other than sentences imposed by courts of regional divisions)in which the punishment awarded is imprisonment (including detention in a reform school) for a period exceeding three months or a fine exceeding one hundred rand or whipping (save in a case in which a male person of an age not exceeding twenty-one years has been sentenced under the Criminal Procedure Ordinance, 1963) shall be subject in ordinary course to review by the court of appeal or one of the judges thereof; without prejudice to the right of appeal against such sentence whether before or after confirmation of the sentence by the judge or court reviewing the same.

(2) For the purposes of this section each sentence on a separate count shall be regarded as a separate sentence and the fact that the aggregate of sentences imposed on an accused person in respect of more than one count in the same charge sheet exceeds three months or one hundred rand, shall not render those sentences liable to automatic review.

98. Whenever a court imposes upon any person convicted of an offence any such punishment as is mentioned in sub-section (1) of section *ninety-seven,* the clerk of the court shall transmit to the registrar of the court of appeal, 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 judicial 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 such registrar shall, with all convenient speed, lay the same before one of the judges of the court of appeal, in chambers, for his consideration.

99. (1) If, upon considering the proceedings referred to in section *ninety-eight* and any further information or evidence which may, by the direction of the judge, be supplied or taken by the magistrate's court, it appears to the judge 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 by the registrar to the court from which it was transmitted.

(2) (a) If, upon considering the proceedings aforesaid, it appears to the judge that they are not in accordance with justice or that doubt exists whether or not they are in accordance with justice, he shall lay them before the court of appeal for its consideration.

(b) The court of appeal shall, before considering the said proceedings, obtain from the judicial officer who presided at the trail a statement setting forth his reasons for convicting the accused and for the sentence imposed.

(c) The said court may at any sitting thereof hear any evidence and for that purpose it may summon any person to appear and give evidence or produce any document or other article.

(d) The court of appeal, whether or not it has heard any evidence, may —

(i) confirm, alter or quash the conviction and in the event of the conviction being quashed where the accused was convicted on one of two or more alternative, counts convict the accused on the other alternative count or on one or other of the alternative counts; or

(ii) confirm, reduce, alter or set aside the sentence or any order of the magistrate's court; or

(iii) set aside or correct the proceedings of the magistrate's court; or

(iv) 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

(v) remit the case to the magistrate's court with instructions to deal with any matter in such manner as the court of appeal may think fit; and

HOOFSTUK XIV

HERSIENING

97. (1) Alle vonnisse in strafsake (buiten vonnisse opgelê deur howe van streekafdelings) waarin die opgelegde straf gevangenisstraf is (insluitende aanhouding in 'n verbeteringskool) vir 'n tydperk van langer as drie maande of 'n boete groter as eenhonderd rand of lyfstraf is (uitgesonderd die geval waar 'n manspersoon van hoogstens een-en-twintig jaar kragtens die Strafprosesordonnansie 1963 gevonnis is) is in die gewone loop van sake onderhewig aan hersiening deur die hof van appèl of een van die regters daarvan sonder afbreuk aan die reg van appèl teen sodanige vonnis hetsy voor of na bekragtiging van die vonnis deur die regter of hof wat die vonnis in hersiening neem.

(2) By die toepassing van hierdie artikel word elke vonnis ten opsigte van 'n afsonderlike aanklag as 'n afsonderlike vonnis beskou en die feit dat die gesamentlike vonnisse wat aan die beskuldigde opgelê word ten opsigte van meer as een aanklag in dieselfde klagstaat drie maande of eenhonderd rand oorskry, maak daardie vonnisse nie vir outomatiese hersiening vatbaar nie.

98. Wanneer 'n hof aan iemand wat aan 'n misdryf skuldig bevind is, 'n straf bedoel in subartikel (1) van artikel *sewe-en-negentig* oplê, moet die klerk van die hof uiterlik 'n week na die uitwysing van die saak, die stukke van die verrigtinge in die saak, tesame met sodanige opmerkings soos die voorsittende regterlike beampte verlang om daaraan by te voeg en met alle skriftelike verklarings of argumente wat die beskuldigde binne drie dae na die vonnis aan die klerk van die hof verstrek, aan die griffier van die hof van appèl deurstuur en die griffier moet so spoedig doenlik die bedoelde stukke aan een van die regters van die hof van appèl in kamers ter oorweging voorlê.

99. (1) As dit aan die regter op grond van die stukke van die verrigtinge bedoel in artikel *agt-en-negentig* asook van enige verdere inligting of getuienis wat in opdrag van die regter deur die landdroshof verstrek of afgeneem is blyk dat daar behoorlik reg geskied het, teken hy sy sertifikaat te dien effekte op die stukke van die saak aan en die griffier stuur daarop die bedoelde stukke terug aan die hof vanwaar hulle afkomstig is.

(2) (a) As dit op grond van die bedoelde stukke van die verrigtinge aan die regter blyk dat daar nie behoorlik reg geskied het nie of dat daar twyfel bestaan of daar behoorlik reg geskied het of nie, lê hy die stukke aan die hof van appèl ter oorweging voor.

(b) Voordat die hof van appèl die bedoelde stukke van die verrigtinge oorweeg, verkry daardie hof van die regterlike beampte wat by die verhoor voorgesit het, 'n uiteensetting van sy redes vir die skuldigbevinding van die beskuldigde en vir die opgelegde vonnis.

(c) Die bedoelde hof kan by enige sitting daarvan getuienis aanhoor en die hof kan met die oog daarop enigiemand dagvaar om te verskyn en getuienis af te lê of om 'n dokument of ander artikel voor te lê.

(d) Die hof van appèl kan, hetsy die hof getuienis aangehoor het of nie —

(i) die skuldigbevinding bekragtig, wysig of vernietig en as die skuldigbevinding vernietig word waar die beskuldigde op een van twee of meer alternatiewe aanklagte skuldig bevind is, die beskuldigde op die ander alternatiewe aanklag of op een of ander van die alternatiewe aanklagte skuldig bevind; of

(ii) die vonnis of 'n bevel van die landdroshof bekragtig, versag, wysig of ter syde stel; of

(iii) die verrigtinge in die landdroshof nietig verklaar of verbeter; of

(iv) in die algemeen die uitspraak gee of die vonnis oplê of die bevel uitvaardig wat die landdroshof moes gegee, opgelê of uitgevaardig het met betrekking tot 'n aangeleentheid wat by die verhoor van die betrokke saak deur die hof bereg moes word; of

(v) die saak na die landdroshof terugverwys met die opdrag dat daar met enige aangeleentheid gehandel moet word op die wyse wat die hof van appèl goedvind; en

(vi) make any such order in regard to the suspension of the execution of any sentence against the person convicted or the admission of such person to bail, or, generally, in regard to 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.

(e) In the event of any conviction being quashed or proceedings being set aside on any grounds mentioned in sub-section (7) of section *one hundred and four*, the provisions of that sub-section in respect of the institution of fresh proceedings shall *mutatis mutandis* apply.

(3) If the court of appeal desires to have a question of law or fact arising in any case argued it may direct such question to be argued by the Attorney-General and such other advocate as the said court may appoint.

(4) If in any criminal case in which the court has imposed a sentence which is not subject to review in the ordinary course in terms of section *ninety-seven* or in which the court of a regional division has imposed any sentence, it is brought to the notice of the court of appeal or of any judge thereof that the proceedings in which the sentence was imposed were not in accordance with justice, such court of appeal or judge shall have the same powers in respect of such proceedings as if the record thereof had been laid before it or him in terms of section *ninety-eight*.

(5) Notwithstanding anything to the contrary in any law contained, no person who has been convicted by a magistrate's court of an offence and is undergoing imprisonment for that or any other offence shall be entitled to prosecute in person any proceedings for the review of the proceedings relating to such conviction unless a judge of the court of appeal has certified that there are reasonable grounds for review.

100. (1) Every court imposing a sentence which, under section *ninety-seven*, is subject to review shall thereupon inform the person convicted that the record will be transmitted within seven days; and such person or his lawful representative may inspect, and take a copy of such record before transmission or whilst in the possession of the court of appeal and may set down the case for argument before the court of appeal in like manner as if the record had been returned or transmitted to the court of appeal in obedience to any order made by it for the purpose of bringing in review the proceedings of an inferior court.

(2) Whenever such a case is so set down, whether the offence has been prosecuted at the public instance or at the instance of a private party, a written notice shall be served by or on behalf of the person convicted, upon the Attorney-General at his office not less than seven days before the day appointed for the argument, setting forth the name and number of the case, the court before which it was tried, the date for which the case has been set down for argument and the grounds or reasons upon which the judgment is sought to be reversed or altered.

(3) Whether such judgment be confirmed or reversed or altered, no costs shall in respect of the proceedings in review be payable by the prosecutor to the person convicted or by the person convicted to the prosecutor.

CHAPTER XV.

EXECUTION OF SENTENCES

101. (1) Any person sentenced to imprisonment other than periodical imprisonment shall be committed to the prison of the district by a warrant under the hand of a judicial officer specifying the punishment to which the accused has been sentenced.

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

102. (1) The execution of any sentence of fine or of imprisonment, shall not be suspended by the transmission

(vi) so 'n bevel uitvaardig met betrekking tot die opskorting van die tenuitvoerlegging van 'n vonnis teen die veroordeelde persoon of sy vrylating onder borgtog of in die algemeen met betrekking tot 'n aangeleentheid of saak wat in verband staan met hom of die verrigtinge ten aansien van hom soos die bedoelde hof in belang van die regspleging gerade ag.

(e) As 'n skuldigbevinding vernietig word of die verrigtinge ter syde gestel word op 'n grond vermeld in subartikel (7) van artikel *eenhonderd-en-vier* is die bepalings van daardie subartikel ten opsigte van die instelling van nuwe verrigtinge *mutatis mutandis* van toepassing.

(3) As die hof van appèl dit wenslik ag dat 'n regsvraag of 'n feitevraag wat in enige saak ontstaan, bepleit word, kan hy beveel dat die bedoelde vraag bepleit word deur die Prokureur-generaal en sodanige ander advokaat soos die bedoelde hof aanwys.

(4) As in 'n strafsaak waarin die hof 'n vonnis opgelê het wat in die gewone gang van sake nie ingevolge artikel *sewe-en-negentig* aan hersiening onderhewig is nie, of waarin die hof van 'n streekafdeling 'n vonnis opgelê het, dit onder die aandag van die hof van appèl of van 'n regter daarvan gebring word dat die verrigtinge waarby die vonnis opgelê is nie volgens reg geskied het nie, het die bedoelde hof van appèl of regter ten opsigte van sodanige verrigtinge dieselfde bevoegdhede asof die stukke daarvan ingevolge artikel *agt-en-negentig* aan hom voorgelê was.

(5) Ondanks andersluidende wetsbepalings, is niemand wat deur 'n landdroshof van 'n misdryf skuldig bevind is en weens daardie of 'n ander misdryf gevangenisstraf ondergaan, geregtig om enige verrigtinge vir die hersiening van die verrigtinge wat op sodanige skuldigbevinding betrekking het, in eie persoon voort te sit nie, tensy 'n regter van die hof van appèl gesertifiseer het dat daar redelike gronde vir hersiening bestaan.

100. (1) Elke hof wat 'n vonnis oplê wat ingevolge artikel *sewe-en-negentig* aan hersiening onderhewig is, moet daarop die veroordeelde meedeel dat die stukke van die saak binne sewe dae deurgestuur sal word; en so iemand of sy wettige verteenwoordiger kan insae in sodanige stukke kry en 'n afskrif daarvan maak voordat hulle deurgestuur word of terwyl hulle by die hof van appèl berus, en kan die saak vir beredenering voor die hof van appèl op die rol plaas op dieselfde wyse asof die stukke aan die hof van appèl teruggestuur of deurgestuur was ingevolge 'n bevel deur hom gegee ten einde die verrigtinge van 'n laer hof in hersiening te bring.

(2) Wanneer so 'n saak aldus op die rol geplaas is, hetsy die misdryf van owerheidsweë of op versoek van 'n private party vervolg is, moet 'n skriftelike kennisgewing deur of ten behoewe van die veroordeelde aan die Prokureur-generaal op sy kantoor bestel word minstens sewe dae voor die dag bepaal vir die beredenering, met vermelding van die naam en nommer van die saak, die hof waarvoor dit gedien het, die datum waarvoor die saak vir beredenering op die rol geplaas is en die gronde of redes waarop of waarom onverwerping of wysiging van die vonnis aangevra word.

(3) Geen koste is ten aansien van die verrigtinge by hersiening deur die aanklaer aan die veroordeelde of deur die veroordeelde aan die aanklaer betaalbaar nie, ongeag of sodanige vonnis bekragtig of omvergewerp of gewysig word.

HOOFSTUK XV

TENUITVOERLEGGING VAN VONNISSE.

101. (1) Elkeen wat tot gevangenisstraf buiten periodieke gevangenisstraf gevonnis is, word in die gevangenis van die distrik geplaas uit kragte van 'n lasbrief onder die handtekening van 'n regterlike beampte waarin die straf wat aan die beskuldigde opgelê is, vermeld word.

(2) So 'n lasbrief kan onderteken word òf deur die regterlike beampte wat die vonnis opgelê het of deur 'n ander regterlike beampte vir dieselfde distrik.

102. (1) Die tenuitvoerlegging van 'n vonnis waarby iemand tot 'n boete of tot gevangenisstraf veroordeel

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: Provided that the magistrate of the district where the person sentenced is in custody may, notwithstanding anything to the contrary in any law contained, *mero motu* release him on bail as aforesaid if it appears that the judge before whom the record aforesaid has been placed has not endorsed his certificate.

(2) The Court may refuse to release any person on bail for the purposes of sub-section (1), in respect of a sentence of a fine or in default of payment imprisonment, if it is satisfied that such person is able to pay the fine.

103. (1) Whipping shall in no case (except where a male person of an age not exceeding twenty-one years has been sentenced under the Criminal Procedure Ordinance, 1963) be inflicted until either the proceedings in the case have been returned with such a certificate as is in section *ninety-nine* of this Ordinance mentioned or the court of appeal has confirmed the sentence of the magistrate's court.

(2) If a person sentenced to receive whipping is not also sentenced to imprisonment for such a period as shall allow time for the judge's certificate to be received before inflicting the said whipping, 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 confirmed as aforesaid.

CHAPTER XVI.

CRIMINAL APPEALS

104. (1) Any person convicted of any offence by the judgment of any magistrate's court (including a person discharged after conviction under any provision of the Criminal Procedure Ordinance, 1963) may appeal against such conviction and against any sentence or order of the court following thereupon to the Supreme Court.

(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 Attorney-General 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 court of appeal may in any case extend such period.

(4) The court of appeal shall thereupon have the powers set out in sub-section (2) of section *ninety-nine* 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: Provided that, notwithstanding that such a 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 court of appeal that a failure of justice has in fact resulted therefrom.

(5) When an appeal under this section is noted, the provisions of sections *one hundred and two* and *one hundred and three* shall apply *mutatis mutandis* to the sentence appealed against.

(6) Notwithstanding anything in this section contained whenever any person has been convicted by a

is, word nie opgeskort deur die deurstuur van stukke vir hersiening nie of die verpligting om die stukke aldus deur te stuur nie, tensy die veroordeelde persoon voldoende borgtog stel dat hy, na gelang, die opgelegde boete sal betaal of hom sal oorgee om die gevangenisstraf te ondergaan as die verrigtinge in die saak soos voormeld goedgekeur word en ingeval 'n skriftelike kennisgewing om te betaal of om hom oor te gee (na gelang) onderteken deur die klerk van die hof bestel word aan of vir so iemand op 'n plek wat in die akte van borgtog of verbintenis vermeld word: Met dien verstande dat die landdros van die distrik waar die veroordeelde persoon aangehou word kan, ondanks andersluidende wetsbepalings, *mero motu* op borgtog soos voormeld kan vrylaat indien dit blyk dat die regter aan wie die voormelde stukke voorgelê is, nie sy sertifikaat daarop ingevolge subartikel (1) van artikel *nege-en-negentig* aangeteken het nie.

(2) Die hof kan weier om iemand vir die doeleindes van subartikel (1) op borgtog vry te laat ten opsigte van 'n vonnis van 'n boete of, by wanbetaling, gevangenisstraf, as die hof oortuig is dat so iemand in staat is om die boete te betaal.

103. (1) Uitgesonderd die geval waar 'n manspersoon van hoogstens een-en-twintig jaar kragtens die Strafprosesordonnansie 1963 gevonnis is, mag lyfstraf in geen geval toegedien word nie tensy òf die stukke in die saak teruggestuur is met so 'n sertifikaat soos in artikel *negen-en-negentig* van hierdie Ordonnansie vermeld word òf die hof van appèl die vonnis van die landdroshof bekragtig het.

(2) As iemand wat tot lyfstraf gevonnis is, nie ook gevonnis is tot gevangenisstraf van sodanige duur dat dit moontlik is om die regterlike sertifikaat betyds voor die toediening van die lyfstraf te verkry nie, word so iemand, tensy hy voldoende borgtog stel om te verskyn nadat 'n skriftelike kennisgewing om dit te doen, deur die klerk van die hof onderteken, aan hom bestel is op 'n plek vermeld in die akte van borgtog of verbintenis, in hegtenis aangehou totdat òf die stukke in die saak soos voormeld teruggestuur is òf die vonnis soos voormeld bekragtig is.

HOOFSTUK XVI

APPELLE IN STRAFSAKE.

104. (1) Elkeen wat by uitspraak van 'n landdroshof aan 'n misdryf skuldig bevind is (insluitende iemand wat ingevolge 'n bepaling van die Strafprosesordonnansie 1963 na skuldigbevinding ontslaan is) kan by die Hooggeregshof appelleer teen so 'n skuldigbevinding en teen 'n daaropvolgende vonnis of bevel van die hof.

(2) Wanneer 'n strafregtelike dagvaarding of aanklag op enige punt in die loop van die verigtinge afgewys word op eksepsie of op grond daarvan dat dit regtens ongegrond is of geen misdryf openbaar nie, kan die Prokureur-generaal desgelyks teen sodanige afwysing appelleer.

(3) So 'n appèl moet binne die termyn en op die wyse deur die reëls voorgeskryf, aangeteken en voortgesit word; die hof van appèl kan egter in enige geval daardie termyn verleng.

(4) Die hof van appèl het daarop die bevoegdhede vermeld in subartikel (2) van artikel *nege-en-negentig* en tensy die appèl uitsluitlik op 'n regsvraag steun, het die hof van appèl benewens die voormelde bevoegdhede ook die bevoegdheid om die vonnis wat aan 'n appellant opgelê is, te verskerp of om 'n ander soort vonnis in plaas van, of benewens, daardie vonnis op te lê: Met dien verstande dat nieteenstaande dat sodanige hof meen dat enige geopperde vraagpunt ten gunste van die appellant beslis kan word, geen skuldigbevinding of vonnis omvergewerp of gewysig kan word op grond van 'n onreëlmatigheid of gebrek in die stukke van die saak of die verrigtinge nie, tensy dit aan die hof van appèl blyk dat 'n regskending werklik as gevolg daarvan plaasgevind het.

(5) Wanneer 'n appèl ingevolge hierdie artikel aangeteken word, is die bepalings van artikels *eenhonderd-en-twee* en *eenhonderd-en-drie mutatis mutandis* van toepassing op die vonnis waarteen geappelleer word.

(6) Ondanks die bepalings van hierdie artikel is iemand wat deur 'n landdroshof aan 'n misdryf skuldig

magistrate's court of an offence and is undergoing imprisonment for that or any other offence, he shall not be entitled to prosecute in person an appeal which he has noted against the conviction or sentence or any order of court upon conviction, unless a judge of the court of appeal has certified that there are reasonable grounds for appeal.

(7) Whenever a conviction and sentence of a magistrate's court are set aside on appeal or on review on the ground that evidence was admitted which should not have been admitted, or that evidence was rejected which should have been admitted or on the ground of any other irregularity or defect in the procedure, proceedings in respect of the same offence to which the conviction and sentence referred, may again be instituted either on the original summons or charge or upon any other indictment, summons or charge, as if the accused had not previously been arraigned, tried and convicted: Provided that such proceedings shall be instituted before some judicial officer other than the judicial officer who recorded the conviction and imposed the sentence set aside on appeal or review.

105. (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 judicial officer concerned 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 and four*.

(3) Sub-section (3) of section *one hundred and four* 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, re-open 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.

106. (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 of South Africa 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 Supreme Court in terms of sub-section (1) of section *one hundred and four*, re-instate 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 Supreme Court in terms of sub-section (2) of section *one hundred and five*, give such decision or take such action as the Supreme Court ought, in the opinion of the Appellate Devision, to have given or taken (including any action under sub-section (5) of

bevind is en weens sodanige of 'n ander misdryf gevangenisstraf ondergaan, nie geregtig om 'n appèl wat hy teen die skuldigbevinding of vonnis of 'n hofbevel by skuldigbevinding aangeteken het, in eie persoon voort te sit nie, tensy 'n regter van die hof van appèl gesertifiseer het dat daar redelike gronde vir appèl bestaan.

(7) Wanneer 'n skuldigbevinding en vonnis van 'n landdroshof by appèl of by hersiening ter syde gestel word op grond daarvan dat getuienis toegelaat is wat nie toegelaat moes geword het nie, of dat getuienis verwerp is wat toegelaat moes geword het of op grond van enige ander onreëlmatigheid of gebrek in die prosedure kan strafregtelike stappe ten opsigte van dieselfde misdryf waarop die skuldigbevinding en vonnis betrekking gehad het, opnuut gedoen word òf op die oorspronklike dagvaarding of aanklag òf op enige ander akte van beskuldiging, dagvaarding of aanklag, asof die beskuldigde nie reeds tevore in 'n staat van beskuldiging gestel, verhoor en skuldig bevind was nie: Met dien verstande dat sodanige stappe gedoen moet word voor 'n ander regterlike beampte as die regterlike beampte deur wie die skuldigbevinding aangeteken en die vonnis opgelê is wat by appèl of hersiening ter syde gestel is.

105. (1) Wanneer 'n landdroshof in 'n strafsaak op 'n regsvraag 'n beslissing ten gunste van die beskuldigde gegee het, kan die Prokureur-generaal, of as 'n ander persoon of liggaam as die Prokureur-generaal of sy verteenwoordiger die aanklaer in die saak was, dan daardie ander aanklaer van die betrokke regterlike beampte eis dat hy 'n casus-posisie ter oorweging van die hof van appèl opstel met vermelding van die regsvraag en sy beslissing daaroor, en, as getuienis aangevoer is, met vermelding van sy bevinding van die feite vir sover hulle vir die regsvraag van belang is.

(2) Nadat so 'n casus-posisie opgestel is, kan die Prokureur-generaal of die ander aanklaer, na gelang, teen daardie beslissing appelleer by die hof van appèl vermeld in subartikel (1) van artikel *een-honderd-en-vier*.

(3) Subartikel (3) van artikel *eenhonderd-en-vier* is van toepassing op 'n appèl ingevolge subartikel (2) van hierdie artikel.

(4) As 'n appèl ingevolge subartikel (2) gehandhaaf word, moet (behoudens die bepalings van subartikel (5)) die landdroshof wat die beslissing gegee het waarteen geappelleer word, nadat hy aan beide partye voldoende kennis gegee het, die saak waarin die beslissing gegee is, heropen en op dieselfde wyse daarmee handel as wat hy daarmee sou moes gehandel het as hy 'n beslissing gegee het in ooreenstemming met die regsvertolking van die hof van appèl.

(5) Wanneer die hof van appèl so 'n appèl handhaaf, hetsy geheel of ten dele, kan hy self aan die respondent so 'n vonnis oplê of so 'n bevel uitvaardig soos die landdroshof moes opgelê of uitgevaardig het of kan hy die saak na die landdroshof terugverwys en daardie hof gelas om sodanige verdere stappe te doen soos die hof van appèl goedvind.

106. (1) Wanneer die hof van appèl in 'n strafappèl (ongeag of dit deur die beskuldigde of deur die Prokureur-generaal of ander aanklaer aangebring is) op 'n regsvraag 'n beslissing ten gunste van die beskuldigde gegee het, kan die Prokureur-generaal of ander aanklaer teen wie daardie beslissing gegee is, by die Afdeling van Appél van die Hooggeregshof van Suid-Afrika appelleer en laasgenoemde afdeling moet, as hy die geskilpunt ten gunste van die appellant beslis, die beslissing waarteen geappelleer word, ter syde stel of wysig en

(a) as die saak ingevolge subartikel (1) van artikel *eenhonderd-en-vier* voor die Hooggeregshof gebring is, die veroordeling, vonnis of bevel van die landdroshof waarteen geappelleer is, herstel en wel in die oorspronklike vorm of in so 'n gewysigde vorm soos die Afdeling van Appèl wenslik ag; of

(b) as die saak ingevolge subartikel (2) van artikel *eenhonderd-en-vyf* voor die Hooggeregshof gebring is, so 'n beslissing gee of so handel soos, na die Afdeling van Appèl meen, die Hooggeregshof moes gegee of moes gehandel het (met inbegrip van 'n handeling ingevolge subartikel (5) van artikel *een-*

section *one hundred and five*) 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 and five* 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.

PART IV.

CHAPTER XVII.

OFFENCES

107. Any person wilfully disobeying or neglecting to comply with any order of a court or with a notice lawfully endorsed on a summons for rent prohibiting the removal of any furniture or effects shall be guilty of contempt of court and shall, upon conviction, be liable to a fine not exceeding one hundred rand or, in default of payment, to imprisonment for a period not exceeding three months or to such imprisonment without the option of a fine: Provided that for the purposes of this section the term "order" shall not include an order referred to in sub-section (7) of section *sixty-four*.

108. Any person who —

(1) obstructs a messenger or deputy-messenger of the court in the execution of his duty;

(2) being aware that goods are under arrest, interdict, or attachment by the court makes away with or disposes of those goods in a 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 such manner;

(3) being a judgment debtor and being required by a messenger or deputy-messenger of the court to point out property to satisfy a warrant issued in execution of judgment against such person, either —

(e) falsely declares to that messenger or deputy-messenger that he possesses no property or not sufficient property to satisfy the warrant; or

(b) although owning such property neglects or refuses to point out the same; or

(4) being a judgment debtor refuses or neglects to comply with any requirement of a messenger or deputy-messenger of the court in regard to the delivery of documents in his possession or under his control relating to the title of the immovable property under execution,

shall be liable upon conviction to a fine not exceeding one hundred rand or, in default of payment, to imprisonment for a period not exceeding three months or to such imprisonment without the option of a fine.

109. (1) If any person, whether in custody or not, wilfully insults a judicial officer during his sitting or a clerk or messenger of the court 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 in sub-section (3) of section *five* provided) be liable to be sentenced summarily or upon summons to a fine not exceeding one hundred rand or in default of payment to imprisonment for a period not exceeding three months or to such imprisonment without the option of a fine. In this sub-section the word "court" includes a preparatory examination held under the law relating to criminal procedure.

honderd-en-vyf) en daarop is die bepalings van subartikel (4) van daardie artikel *mutatis mutandis* van toepassing.

(2) As 'n appèl deur die Prokureur-generaal of ander aanklaer ingevolge hierdie artikel of artikel *eenhonderd-en-vyf* aangebring, afgewys word, kan die hof wat die appèl afwys, gelas dat die appellant aan die respondent die koste moet betaal wat die respondent moontlik in sy verset teen die appèl aangegaan het, getakseer volgens die tarief van daardie hof in siviele sake: Met dien verstande dat as die Prokureur-generaal die appellant was, die koste wat hy aldus gelas word om te betaal, deur die Staat betaal moet word.

DEEL IV

HOOFSTUK XVII

MISDRYWE.

107. Elkeen wat hom skuldig maak aan opsetlike verontagsaming van, of versuim om te voldoen aan, 'n bevel van 'n hof of 'n kennisgewing wat wettig op 'n dagvaarding vir huurgeld geëndosseer is waarby die verwydering van meubels of besittings verbied word, is aan minagting van die hof skuldig en is by skuldigbevinding strafbaar met 'n boete van hoogstens eenhonderd rand of, by wanbetaling, met gevangenisstraf vir 'n tydperk van hoogstens drie maande of met sodanige gevangenisstraf sonder die keuse van 'n boete: Met dien verstande dat by die toepassing van hierdie artikel die woord „bevel" nie 'n bevel insluit wat in subartikel (7) van artikel *vier-en-sestig* bedoel word nie.

108. Elkeen wat —

(1) 'n geregsbode of adjunk-geregsbode by die uitvoering van sy pligte belemmer;

(2) wetende dat goedere deur die hof onder arres, interdik of beslaglegging geplaas is, daardie goedere wegmaak of op 'n volgens wet ongeoorloofde wyse daaroor beskik of opsetlik toelaat dat daardie goedere, as hulle in sy besit of onder sy beheer is, aldus weggemaak word, of dat aldus daaroor beskik word;

(3) 'n vonnisskuldenaar is en wat deur 'n geregsbode of adjunk-geregsbode aangesê word om goedere aan te wys ter voldoening aan 'n lasbrief uitgereik vir die tenuitvoerlegging van 'n vonnis teen so iemand, òf —

(a) valselik teenoor daardie geregsbode of adjunk-geregsbode verklaar dat hy geen goedere of geen voldoende goedere besit om aan die lasbrief te voldoen nie; òf

(b) hoewel hy sodanige goedere besit, versuim of weier om die goedere aan te wys; of

(4) 'n vonnisskuldenaar is en weier of versuim om te voldoen aan 'n vereiste van 'n geregsbode of adjunk-geregsbode met betrekking tot die aflewering van dokumente in sy besit of onder sy beheer, betreffende die titel van die onroerende goedere onder eksekusie,

is by skuldigbevinding strafbaar met 'n boete van hoogstens eenhonderd rand of, by wanbetaling, met gevangenisstraf vir 'n tydperk van hoogstens drie maande of met sodanige gevangenisstraf sonder die keuse van 'n boete.

109. (1) Elkeen, hetsy in hegtenis of nie, wat 'n regterlike beampte gedurende sy hofsitting of 'n klerk of geregsbode of ander beampte wat by die sitting aanwesig is, opsetlik beledig of die verrigtinge van die hof opsetlik onderbreek of hom andersins aan wangedrag skuldig maak in die plek waar die hofsitting gehou word, is (bo en behalwe dat hy ingevolge die bepalings van subartikel (3) van artikel *vyf* verwyder en aangehou kan word) summier of na dagvaarding strafbaar met 'n boete van hoogstens eenhonderd rand of by wanbetaling met gevangenisstraf vir 'n tydperk van hoogstens drie maande, of met sodanige gevangenisstraf sonder die keuse van 'n boete. In hierdie subartikel omvat die woord „hof" of „hofsitting" ook 'n voorlopige ondersoek gehou ingevolge die wetsbepalings op strafregtelike prosedure.

(2) In any case in which the court commits or fines any person under the provisions of this section, the judicial officer shall without delay transmit to the registrar of the court of appeal for the consideration and review of a 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.

110. 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 fifty rand, if he has changed his place of residence or employment and fails to give within fourteen days from the date of every such change to the clerk of the court which gave such judgment or made such order, and to the plaintiff or the plaintiff's attorney a notice in writing setting forth fully and correctly the new place of residence or employment, and the names of the parties.

PART V.

CHAPTER XVIII.

GENERAL AND SUPPLEMENTARY

111. No magistrate's court shall be competent to pronounce upon the validity of an act of Parliament of the Republic or of an ordinance of the Legislative Assembly of the Territory or of a statutory proclamation of the State President or of the Administrator, and every such court shall assume that every such act or ordinance or proclamation is valid, but every such court shall be competent to pronounce upon the validity of any statutory regulation, order or bye-law.

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

113. The oath or affirmation to be taken or made 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.

114. (1) Whenever a decision is given by a magistrate's court in a criminal case on a matter of law with which the Attorney-General is dissatisfied, he may seek the ruling thereon of the Supreme Court and such court shall appoint the matter to be argued before any judge thereof.

(2) Whenever the right of prosecution is possessed by any person or public body under any law in respect of particular offences, the powers conferred on the Attorney-General by sub-section (1) may be exercised by such body or person and the provisions of that sub-section shall thereupon apply.

115. (1) Nothing in this Ordinance contained shall be construed as affecting the operation of the Criminal Procedure Ordinance, 1963.

(2) Nothing in this Ordinance contained shall be construed as depriving the Supreme Court of any power to review and correct the proceedings of any magistrate's court.

(2) In elke geval waarin die hof iemand kragtens hierdie artikel na die gevangenis verwys of beboet, stuur die regterlike beampte onverwyld aan die griffier van die appèlhof ter oorweging en hersiening deur 'n regter in kamers, 'n verklaring wat die regterlike beampte as waar en juis sertifiseer waarin die gronde en redes vir sy optrede vermeld word en verstrek hy ook 'n afskrif van die verklaring aan die gevangegesette party.

110. Elkeen teen wie 'n hof in 'n siviele saak 'n vonnis gevel het of 'n bevel uitgevaardig het, wat nie ten volle aan daardie vonnis of bevel en alle koste waarvoor hy in verband daarmee aanspreeklik is, voldoen het nie, is aan 'n misdryf skuldig en is by skuldigbevinding strafbaar met 'n boete van hoogstens vyftig rand as hy sy woonplek of werkplek verander het en versuim om binne veertien dae vanaf die datum van elke sodanige verandering aan die klerk van die hof wat bedoelde vonnis gevel het of bedoelde bevel uitgevaardig het, en aan die eiser of die eiser se prokureur, by skriftelike kennisgewing die nuwe woonplek of werkplek en die name van die partye volledig en juis mee te deel.

DEEL V

HOOFSTUK XVIII

ALGEMENE EN AANVULLENDE BEPALINGS.

111. Geen landdroshof is bevoeg om 'n oordeel uit te spreek oor die regsgeldigheid van 'n wet van die Parlement van die Republiek of van 'n ordonnansie van die Wetgewende Vergadering van die Gebied of van 'n statutêre proklamasie van die Staatspresident of die Administrateur nie en elke sodanige hof moet aanneem dat elke sodanige wet of ordonnansie of proklamasie regsgeldig is; elke sodanige hof is egter bevoeg om 'n oordeel uit te spreek oor die regsgeldigheid van enige statutêre regulasie, bevel of verordening.

112. (1) Die hof kan in alle siviele sake te eniger tyd voordat vonnis gevel is, 'n dagvaarding of ander dokument wat deel van die stukke uitmaak, wysig: Met dien verstande dat geen wysiging aangebring mag word waarby 'n ander party as die party wat die wysiging aanvra (ondanks verdaging) in sy aksie of verweer benadeel sou kan word nie.

(2) In siviele sake kan 'n wysiging aangebring word op sodanige voorwaardes, ten aansien van koste en andersins, soos die hof redelik ag.

(3) Geen verkeerde benaming van 'n persoon of plek maak die verrigtinge van die hof nietig nie as die persoon of plek so beskryf is dat hy of dit algemeen bekend is.

113. Die eed of bevestiging wat in regsverrigtinge, hetsy van 'n siviele of strafregtelike aard, in 'n hof of by 'n voorlopige ondersoek deur 'n getuie afgelê moet word, moet afgeneem word deur die beampte wat by daardie verrigtinge voorsit of deur die klerk van die hof (of iemand wat in sy plek optree) in die teenwoordigheid van die bedoelde beampte of, as die getuie deur 'n tolk sy getuienis sal aflê, deur die bedoelde beampte deur bemiddeling van die tolk of deur die tolk in die teenwoordigheid van die bedoelde beampte.

114. (1) Wanneer ook al 'n beslissing deur 'n landdroshof in 'n strafregtelike saak gegee is oor 'n regsvraag waarmee die Prokureur-generaal nie genoeë neem nie, kan die Prokureur-generaal die beslissing van die Hooggeregshof daaroor aanvra en sodanige hof moet die saak voor 'n regter daarvan vir beredenering bring.

(2) Wanneer 'n persoon of openbare liggaam ingevolge 'n wet die reg op vervolging het ten aansien van bepaalde misdrywe kan die bevoegdhede aan die Prokureur-generaal verleen by subartikel (1) deur sodanige persoon of liggaam uitgeoefen word en die bepalings van daardie subartikel is daarop van toepassing.

115. (1) Die bepalings van hierdie Ordonnansie raak nie die werking van die Strafprosesordonnansie 1963 nie.

(2) Die bepalings van hierdie Ordonnansie doen geen afbreuk aan die bevoegdheid van die Hooggeregshof om die verrigtinge van 'n landdroshof in hersiening te neem en te verbeter nie.

116. (1) Nothing in this Ordinance shall affect proceedings pending at the commencement of this Ordinance and such proceedings shall be continued and concluded in every respect as if this Ordinance has not been passed.

(2) Proceedings shall, for the purposes of this section, be deemed to be pending if, at the commencement of this Ordinance, summons had been issued or the accused had pleaded but judgment had not been given; and to be concluded when judgment is given.

(3) At the expiration of one year from the commencement of this Ordinance, sub-section (1) of this section shall cease to have effect; and any cases pending at the commencement of this Ordinance and not concluded within one year thereafter shall become subject to the provisions of this Ordinance.

117. The laws specified in the Schedule to this Ordinance are hereby repealed to the extent set out in the third column of that Schedule.

118. This Ordinance may be cited for all purposes as the Magistrate's Courts Ordinance, 1963, and shall come into operation on a date to be fixed by the Administrator by proclamation in the *Official Gazette*.

SCHEDULE

LAWS REPEALED

No. and year	*Title*	*Extent of Repeal*
Proclamation 1 of 1920	Rules of Court Proclamation, 1920.	So much as remains unrepealed.
Proclamation 31 of 1935	Magistrate's Courts Proclamation, 1935.	The whole, except the Second Schedule.
Proclamation 24 of 1937	Rules of Court Proclamation, 1937.	The whole.
Proclamation 18 of 1949	Administration of Justice Amendment Proclamation, 1949.	So much as remains unrepealed.
Proclamation 19 of 1949	Criminal Procedure and Evidence Amendment Proclamation, 1949.	Section *eleven*.
Ordinance 11 of 1954	General Laws Amendment Ordinance, 1954.	Sections *twelve* to *twenty*, inclusive.
Ordinance 4 of 1955	South West Africa Native Affairs Administration Ordinance, 1955.	Item (7) of the First Schedule.
Ordinance 6 of 1955	Administration of Justice Proclamation Amendment Ordinance, 1955.	Section *three*.
Ordinance 12 of 1956	General Law Amendment Ordinance, 1956.	Section *three*.
Ordinance 22 of 1958	General Law Amendment Ordinance, 1958.	Sub-section (2) of section *two* and section *twenty-four*.

116. (1) Die bepalings van hierdie Ordonnansie raak nie sake wat by die inwerkingtreding van hierdie Ordonnansie aanhanig is nie en sodanige sake word in elke opsig voortgesit en beslis asof hierdie Ordonnansie nie aangeneem was nie.

(2) By die toepassing van hierdie artikel word sake beskou as aanhangig te wees as, by die inwerkingtreding van hierdie Ordonnansie, 'n dagvaarding uitgereik is of die beskuldigde gepleit het maar uitspraak nog nie gegee is nie, en word sake beskou as beslis te wees wanneer uitspraak gegee is.

(3) Na verloop van een jaar na die inwerkingtreding van hierdie Ordonnansie tree subartikel (1) van hierdie artikel buite werking; en alle sake wat by die inwerkingtreding van hierdie Ordonnansie aanhangig is en nie binne een jaar daarna beslis is nie, word onderworpe aan die bepalings van hierdie Ordonnansie.

117. Die wette genoem in die bylae by hierdie Ordonnansie word hierby herroep in die mate uiteengesit in die derde kolom van daardie bylae.

118. Hierdie Ordonnansie heet die Ordonnansie op Landdroshowe 1963 en tree in werking op 'n datum wat die Administrateur by proklamasie in die *Offisiële Koerant* bepaal.

BYLAE

HERROEPE WETTE.

No. en jaar	*Titel*	*Mate van herroeping*
Proklamasie 1 van 1920	Regels van het Hof Proclamatie, 1920.	Die deel wat nog nie herroep is nie.
Proklamasie 31 van 1935	Landdroshowe Proklamasie 1935.	Die hele buiten die tweede bylae.
Proklamasie 24 van 1937	Hofreëls-Proklamasie 1937.	Die hele.
Proklamasie 18 van 1949	Wysigingsproklamasie op Regspleging 1949.	Die deel wat nog nie herroep is nie.
Proklamasie 19 van 1949	Wysigingsproklamasie op Strafprosedure en Bewyslewering 1949.	Artikel *elf*.
Ordonnansie 11 van 1954	Algemene Regswysigingsordonnansie 1954.	Artikel *twaalf* tot en met *twintig*.
Ordonnansie 4 van 1955	Ordonnansie op die Administrasie van Naturellesake in Suidwes-Afrika 1955.	Item (7) van die eerste bylae.
Ordonnansie 6 van 1955.	Wysigingsordonnansie op die „Rechtsbedeeling Proclamatie" 1955.	Artikel *drie*.
Ordonnansie 12 van 1956	Algemene Regswysigingsordonnansie 1956.	Artikel *drie*.
Ordonnansie 22 van 1958	Algemene Regswysigingsordonnansie 1958.	Subartikel (2) van artikel *twee* en artikel *vier-en twintig*.