

OFFICIAL GAZETTE

EXTRAORDINARY
OF SOUTH WEST AFRICA.

BUITENGEWONE OFFISIELLE KOERANT

UITGAWE OP GESAG.

VAN SUIDWES-AFRIKA.



PUBLISHED BY AUTHORITY.

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Wednesday, 21st August, 1963

WINDHOEK

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CONTENTS

GOVERNMENT NOTICE:—

No. 148 Ordinance, 1963: Promulgation of

INHOUD

Page/Bladsy

GOEWERMЕНТSKENNISGEWING:—

Ordonnansie 1963: Uitvaardiging van 1300

Government Notice.

Goewermentskennisgewing.

The following Government Notice is published for general information.

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

Administrator's Office,
Windhoek.

Die volgende Goewermentskennisgewing word vir algemene inligting gepubliseer.

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

Kantoor van die Administrateur,
Windhoek.

No. 148.]

[21st August, 1963.

No. 148.]

[21 Augustus 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:—

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:—

No.
34. Criminal Procedure Ordinance, 1963

Titel
Strafprosesordonnansie 1963 1300

No. 34 of 1963.]

No. 34 van 1963.]

ORDINANCE

ORDONNANSIE

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

Ter samevatting van die wette op prosedure en bewyslewering in strafseake en verbandhoudende aangeleenthede.

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

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

ARRANGEMENT OF SECTIONS.

INDELING VAN ARTIKELS

	Section	
Definitions	1	Woordbepaling
Application of several provisions of Ordinance to inferior and superior courts	2	Toepassing van onderskeie bepalings van ordonnansie op laer en hoër howe
Chapter I. Criminal jurisdiction of courts	3—4	Hoofstuk I. Regsbevoegdheid van howe in strafseake
Chapter II. Prosecution at public instance	5—10	Hoofstuk II. Vervolging van staatsweë
Chapter III. Private prosecutions	11—20	Hoofstuk III. Private vervolgings

Artikel
1
2
3—4
5—10
11—20

Chapter IV.	Arrests	21—41	Hoofstuk IV.	Inhegtenisneming	21—41
Chapter V.	Search warrants, entry upon premises, seizure and detention of property connected with offences, and custody of women unlawfully detained for immoral purposes	42—53	Hoofstuk V.	Visenteringslasbriewe, betreding van persele, inbeslagneming en aanhouding van goedere wat met misdrywe in verband staan, en bewaring van vroue wat vir onsedelike doeleindes wederregtelik aangehou word	42—53
Chapter VI.	Preparatory examinations	54—88	Hoofstuk VI.	Voorlopige ondersoek	54—88
Chapter VII.	Bail	89—112	Hoofstuk VII.	Borgtog	89—112
Chapter VIII.	Constitution of Superior Courts	113—122	Hoofstuk VIII.	Instelling van hoër howe	113—122
Chapter IX.	Procedure before commencement of trial	123—126	Hoofstuk IX.	Prosedure voor aanvang van verhoor	123—126
Chapter X.	Procedure at trial	127—165	Hoofstuk X.	Prosedure by verhoor	127—165
Chapter XI.	Possible verdicts on particular charges	166—180	Hoofstuk XI.	Moontlike uitsprake op bepaalde aanklagte	166—180
Chapter XII.	Witnesses	181—213	Hoofstuk XII.	Getuies	181—213
Chapter XIII.	Evidence	214—271	Hoofstuk XIII.	Getuienis	214—271
Chapter XIV.	Discharge of accused persons	272—276	Hoofstuk XIV.	Ontslag van beskuldigdes	272—276
Chapter XV.	Previous convictions	277—284	Hoofstuk XV.	Vorige skuldigbevindings	277—284
Chapter XVI.	Indictments, Summons and Charges	285—309	Hoofstuk XVI.	Aktes van beskuldiging, dagvaardings en aanklagte	285—309
Chapter XVII.	Punishments	310—343	Hoofstuk XVII.	Strawwe	310—343
Chapter XVIII.	Costs, Compensation and Restitution	344—348	Hoofstuk XVIII.	Koste, vergoeding en teruggawe van goedere	344—348
Chapter XIX.	Appeals in cases of criminal proceedings before superior courts	349—357	Hoofstuk XIX.	Appelle in die gevalle van strafake voor hoër howe	349—357
Chapter XX.	Pardon and commutation	358—361	Hoofstuk XX.	Begenadiging en strafversagting	358—361
Chapter XXI.	General and Supplementary	362—378	Hoofstuk XXI.	Algemene en aanvullende bepalings	362—378

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 unless the context otherwise indicates —

“Administrator” means Administrator as defined in section *one* of the Magistrates’ Courts Ordinance, 1963;

“aggravating circumstances” in relation to —

(a) any offence of housebreaking or attempted house-breaking with intent to commit an offence, means the possession of a dangerous weapon or the commission of or any threat to commit an assault, by the offender or an accomplice on the occasion when the offence is committed, whether before, during or after the commission thereof;

(b) robbery or an attempt to commit robbery means the infliction of grievous bodily harm or any threat to inflict such harm by the offender or an accomplice, on the occasion when the offence is committed whether before, during or after the commission thereof;

“attorney-general” means the attorney-general for the Territory;

“charge” includes any indictment or summons;

“counsel” includes an attorney in proceedings before a superior court in which such attorney has the right of audience;

“court” in relation to any matter means the judicial authority which under this Ordinance or any other law has jurisdiction in respect of that matter and includes a magistrate holding a preparatory examination under Chapter VI;

Die Wetgewende Vergadering van die Gebied Suidwes-Afrika, met die toestemming van die Staatspresident dermate sodanige toestemming nodig is, vooraf verkree en deur boodskap van die Administrateur aan die Wetgewende Vergadering meegedeel ooreenkomsdig 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” die Administrateur soos bepaal in artikel *een* van die Ordonnansie op Landdroshowe 1963;

„verswarende omstandighede” met betrekking tot —

(a) ‘n misdryf van huisbraak met die doel om ‘n misdryf te pleeg of ‘n poging daar toe, die besit van ‘n gevarelike wapen of die pleeg van aanranding of ‘n dreigement om aanranding te pleeg deur die oortreder of ‘n medeplichtige by die geleentheid wan neer die misdryf gepleeg word, hetsy voor, gedurende na die pleeg daarvan;

(b) roof of ‘n poging tot roof, die toedlening van ernstige besering of ‘n dreigement om iemand ernstig te beseer deur die oortreder of ‘n medeplichtige, by die geleentheid wan neer die misdryf gepleeg word hetsy voor, gedurende of na die pleeg daarvan;

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

„aanklag” ook ‘n akte van beskuldiging of dagvaarding;

„advokaat” ook ‘n prokureur in sake voor ‘n hoër howe waar so ‘n prokureur die reg het om gehoor te word;

„hof” met betrekking tot ‘n aangeleentheid die regterlike gesag wat kragtens hierdie ordonnansie of enige ander wet ten opsigte van daardie aangeleentheidregsbevoegdheid besit en ook ‘n landdros wat ingevolge hoofstuk VI ‘n voorlopige ondersoek hou;

- "criminal proceedings" includes a preparatory examination held under Chapter VI;
- "day" (or "day time") when used in contradistinction to "night" (or "night time") means the space of time between sunrise and sunset;
- "Gazette" means the Government Gazette of the Republic;
- "inferior court" means a magistrate's court, a court of a native commissioner, and includes any court (other than a superior court) upon which criminal jurisdiction is conferred by law, but does not include a court of a native chief or native headman;
- "justice" means a commissioned officer of police;
- "magistrate" includes an additional or an assistant magistrate;
- "member of the Prisons Service" means a member of the Prisons Service as defined in section *one* of the Prisons Act, 1959;
- "money" includes all coined money whether current in the Territory or not, and all bank-notes, bank-drafts, cheques, orders, warrants, or any other authority whatever for the payment of money;
- "night" (or "night time") when used in contradistinction to "day" (or "day time") means the space of time between sunset and sunrise;
- "offence" means an act or omission punishable by law;
- "peace officer" includes any magistrate or justice; a sheriff or a deputy sheriff; any policeman; any member of the Prisons Service; a passport control officer; any officer appointed or assigned under any law for the management of any location, native village or native hostel and his assistants; any duly appointed inspector of any native location or mission reserve established under any law; any duly appointed inspector for the supervision and control of the residence of natives upon private property; any manager or superintendent of an emergency camp established by a local authority under any law relating to the prevention of illegal squatting and his assistants; any pass officer and any person authorized in terms of any law relating to the control of natives in urban areas to demand the production of documents under such law; any inspector of native labourers appointed under any law relating to native labour; a chief or headman, or acting chief or headman appointed in terms of any law;
- "person" and "owner" when used in relation to property includes the State;
- "policeman" includes any commissioned officer, non-commissioned officer, constable or trooper of a police force established under any law or of any body of persons carrying out under any law the powers, duties and functions of a police force in the Territory, and "police" has a corresponding meaning;
- "premises" includes any land, building or structure or any vehicle, conveyance, ship or boat;
- "prescribed" means prescribed under this Ordinance;
- "private prosecutor" means any public body or person who in terms of section *eleven* or *twelve* has the right to prosecute in respect of any offence;
- "public prosecutor" includes any person delegated generally or specially by the attorney-general under this Ordinance;
- "reform school" means a reform school as described in section *one* of the Children's Ordinance, 1961 (Ordinance 31 of 1961) and section *one* of the Children's Act, 1960 (Act 33 of 1960) of the Republic;
- "Republic" means the Republic of South Africa;
- "rules of court" means the rules made under section *three hundred and seventy-six* or referred to in section *twenty-three* of the Magistrates' Courts Ordinance, 1963 or made under section *twenty-four* of that Ordinance or made under or kept in force by section *forty-three* of the Supreme Court Act, 1959 (Act 59 of 1959), as the case may be;
- "strafsaak" ook 'n voorlopige ondersoek wat ingevolge hoofstuk VI gehou word;
- "dag" wanneer in teenstelling met "nag" gesig, die tydsverloop tussen sonop en sononder;
- "Staatskoerant" die Staatskoerant van die Republiek;
- "laer hof" 'n landdroshof, 'n naturellekommissarishof en ook enige hof (wat nie 'n hoër hof is nie) waarvanregsbevoegdheid in strafseake regtens verleen word, maar nie 'n hof van 'n naturelleopperhoof of 'n naturellehoofman nie;
- "vrederegt" 'n kommissieoffisier van die polisie;
- "landdros" ook 'n addisionele of assistent-landdros;
- "lid van die Gevangenisdiens" 'n lid van die Gevangenisdiens soos bepaal in artikel *een* van die Wet op Gevangenisse 1959;
- "geld" ook alle gemunte geld, hetsy in die Gebied gangbaar of nie, en alle banknote, bankwissels, tjeeks, orders, betaalbriewe of enige ander magtiging hoegegaamd vir die uitbetaling van geld;
- "nag", wanneer in teenstelling met "dag" gesig, die tydsverloop tussen sononder en sonop;
- "misdryf" 'n handeling of versuim wat regtens strafbaar is;
- "vredesbeampte" ook 'n landdros of vrederegt; 'n balju of onderbalju; 'n polisiebeampte; 'n lid van die Gevangenisdiens; 'n paspoortbeheerbeampte; 'n beampte ingevolge 'n wetsbepaling aangestel of aangevys vir die bestuur van 'n lokasie, naturelledorp of naturelletehuis en sy assistente; 'n behoorlik aangestelde inspekteur van 'n naturellelokasie of sendingreserwe ingevolge 'n wetsbepaling ingestel; 'n behoorlik aangestelde inspekteur om oor die verblyf van naturelle op private eiendom toesig te hou en beheer uit te oefen; 'n bestuurder of superintendent van 'n noordhulpkamp opgerig deur 'n plaaslike bestuur ingevolge 'n wetsbepaling op die voorcoming van onwettige plakkery en sy assistente; 'n pasbeampte en enigemand wat ingevolge 'n wetsbepaling op die beheer van naturelle in stedelike gebiede gemagtig is om die voorlegging van dokumente wat by sodanige wetsbepaling voorgeskrif word, op te eis; 'n inspekteur van naturelle arbeiders aangestel kragtens 'n wetsbepaling op naturellearbeid; 'n kragtens wet aangestelde naturelleopperhoof of hoofman of waarnemende naturelleopperhoof of hoofman;
- "persoon" en "eienaar" wanneer met betrekking tot eiendom gesig, ook die Staat;
- "polisiebeampte" ook 'n kommissieoffisier, onderoffisier, konstabel of berede manskap van 'n by wet ingestelde polisiemag of van 'n liggaam van persone wat ingevolge enige wetsbepaling die bevoegdhede, pligte en werkzaamhede van 'n polisiemag in die Gebied uitvoer, en het "polisie" 'n ooreenstemmende betekenis;
- "perseel" ook grond, 'n gebou of bouwerk of 'n voertuig, vervoermiddel, skip of boot;
- "voorgeskrif" ingevolge hierdie ordonnansie voorgeskrif;
- "private aanklaer" 'n openbare liggaam of persoon wat ingevolge artikel *elf* of *twaalf* die reg het om ten opsigte van 'n misdryf te vervolg;
- "staatsaanklaer" ook iemand wat in die algemeen of spesiaal deur die Prokureur-generaal kragtens hierdie ordonnansie aangestel is;
- "verbeteringskool" 'n verbeteringskool soos bepaal in artikel *een* van die Kinderordonnansie 1961 (Ordonnansie 31 van 1961) en artikel *een* van die Kinder-wet 1960 (Wet 33 van 1960) van die Republiek;
- "Republiek" die Republiek van Suid-Afrika;
- "hofreëls" die reëls kragtens artikel *drie-honderd ses-en-sewentig* uitgevaardig of bedoel in artikel *drie-en-twintig* van die Ordonnansie op Landdroshof 1963 of uitgevaardig kragtens artikel *vier-en-twintig* van daardie ordonnansie of uitgevaardig of in werking gehou kragtens artikel *drie-en-veertig* van die Wet op die Hooggereghof 1959 (Wet 59 van 1959) na gelang;

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

"superior court" means the Supreme Court and includes a special court constituted under the provisions of Chapter VIII;

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

"the Mental Disorders Act, 1916" means the Mental Disorders Act, 1916 (Act 38 of 1916) of the Republic as applied to the Territory by the South West Africa Mental Disorders Act, 1926 (Act 22 of 1926) of the Republic;

"the Prisons Act, 1959" means the Prisons Act, 1959 (Act 8 of 1959) of the Republic as applied to the Territory by Union Proclamation 271 of 1959;

"this Ordinance" includes any regulations or rules of court or forms made or prescribed thereunder.

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

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

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

CHAPTER I.

CRIMINAL JURISDICTION OF COURTS.

3. The jurisdiction of any superior court in respect of the trial of any person charged with any offence shall be as prescribed in the law relating to the constitution and jurisdiction of that court.

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

CHAPTER II.

PROSECUTION AT THE PUBLIC INSTANCE.

ATTORNEY-GENERAL.

5. (1) The Administrator shall, subject to the laws relating to the public service, appoint an attorney-general for the Territory who is vested with the sole right and entrusted with the duty of prosecuting in the name of the State, in any court in respect of any offence which is alleged to have been committed within the jurisdiction of the Supreme Court.

(2) Any person who at the commencement of this Ordinance holds office as attorney-general for the Territory shall be deemed to have been appointed as such under sub-section (1).

(3) Any reference in any law to the Crown Prosecutor shall be deemed to be a reference to the attorney-general.

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

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

"Staatspresident" die Staatspresident van die Republiek; "hoër hof" die Hooggereghof en ook 'n spesiale hof kragtens die bepalings van hoofstuk VIII saamgestel;

"Hooggereghof" die Suidwes-Afrika-afdeling van die Hooggereghof van Suid-Afrika;

"Wet op Geestesgebreken 1916" die Wet op Geestesgebreken 1916 (Wet 38 van 1916) van die Republiek soos op die Gebied toegepas by die Wet op Geestesgebreke in Suidwes-Afrika 1926 (Wet 22 van 1926) van die Republiek;

"Wet op Gevangenis 1959" die Wet op Gevangenis 1959 (Wet 8 van 1959) van die Republiek soos op die Gebied toegepas by Unie-Proklamasie 271 van 1959;

"hierdie ordonnansie" ook enige regulasies of hofreëls of vorms wat uit hoofde daarvan uitgevaardig of voorgeskryf is;

"geldwaardige sekuriteit" ook enige dokument wat die eiendom van iemand is en wat tot bewys strek van die eiendsomsreg op goed of van die reg om goed te verhaal of te ontvang.

2. (1) Die bepalings van elke hoofstuk van hierdie ordonnansie, behalwe hoofstukke VI, VIII en XIX, is van toepassing op alle sake in 'n laer hof, tensy so 'n bepaling klaarblyklik slegs op 'n saak in 'n hoër hof van toepassing is.

(2) Die bepalings van elke hoofstuk van hierdie ordonnansie, behalwe hoofstuk VI, is van toepassing op alle straf sake in 'n hoër hof, tensy so 'n bepaling klaarblyklik slegs op 'n saak in 'n laer hof van toepassing is.

HOOFSTUK I.

REGSBEVOEGHEID VAN HOWE IN STRAFSAKE

3. Die regsbevoegdheid van 'n hoër hof ten opsigte van die verhoor van iemand wat weens 'n misdryf aangekla word, is soos voorgeskryf in die wetsbepalings op die instelling en regsbevoegdheid van daardie hof.

4. Dieregsbevoegdheid van 'n laer hof ten opsigte van die verhoor van iemand wat weens 'n misdryf aangekla word (hetby wat betrek die aard van die misdryf, die gebied waarin dit na bewering gepleeg is en die hoogste straf wat daarvoor opgelê kan word, die hersiening van appelle teen skuldig bevindings en vonnis van die hof en die wyse van tenuitvoerlegging van die prosesstukke, bevele en vonnis van die hof) is soos voorgeskryf in die wetsbepaling op die instelling, bevoegdhede enregsbevoegdheid van daardie hof.

HOOFSTUK II.

VERVOLGING VAN STAATSWEË

PROKUREUR-GENERAAL

5. (1) Behoudens die wetsbepalings op die staatsdiensstel die Administrateur 'n Prokureur-generaal vir die Gebied aan wat die alleenreg het, en aan wie die plig toevertrou is, om in die naam van die Staat in enige hof te vervolg ten opsigte van 'n misdryf wat na bewering binn dieregsgebied van die Hooggereghof gepleeg is.

(2) Iemand wat by die inwerkingtreding van hierdie ordonnansie die amp van Prokureur-generaal van die Gebied beklee, word beskou as ingevolge subartikel (1) as sodanig aangestel.

(3) 'n Verwysing in 'n wet na die Kroonvervolging word beskou as 'n verwysing na die Prokureur-generaal.

6. Die Prokureur-generaal kan self, of deur iemand wat hy aanstel, verskyn by enige voorlopige ondersoek wat daardie hof van ondersoek voorsit, skriftelik ondery handtekening 'n geskikte en bevoegde persoon aan om daardie vervolging waar te neem of om by daardie voorlopige ondersoek te verskyn, na gelang.

7. As die persoon wat aangestel is om 'n vervolging voor 'n hof waar te neem of om by 'n voorlopige ondersoek te verskyn, om enige rede hoegenaamd nie kan optree nie, of as niemand aldus aangestel is nie, wys die beamp wat by daardie hof van ondersoek voorsit, skriftelik ondery handtekening 'n geskikte en bevoegde persoon aan om daardie vervolging waar te neem of om by daardie voorlopige ondersoek te verskyn, na gelang.

8. (1) The attorney-general, or with his consent, any person delegated under section *six* or designated under section *seven*, may, at any time before conviction, stop any prosecution commenced at the public instance within the area of jurisdiction of the attorney-general.

(2) An accused who has pleaded to a charge in respect whereof the prosecution has so been stopped, shall be entitled to a verdict of acquittal in respect of that charge.

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

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

LOCAL PUBLIC PROSECUTOR.

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

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

CHAPTER III.

PRIVATE PROSECUTIONS.

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

- (a) any private person who proves some substantial and peculiar interest in the issue of the trial arising out of some injury which he individually suffered in consequence of the commission of the said offence; or
- (b) a husband, if the said offence was committed against his wife; or
- (c) the legal guardian or curator of a minor or lunatic, if the said offence was committed against his ward; or
- (d) the wife or child or, if there is no wife or child, any of the next of kin of any deceased person, if the death of such person is alleged to have been caused by the said offence,

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

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

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

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

8. (1) Die Prokureur-generaal, of met sy toestemming die persoon aangestel ingevolge artikel *ses* of aangewys ingevolge artikel *sewe*, kan te eniger tyd voor skuldigbevinding 'n vervolging wat van staatswee binne die reggebied van die Prokureur-generaal ingestel is, staak.

(2) 'n Beskuldigde wat reeds gepleit het op 'n aanklag ten opsigte waarvan die vervolging aldus gestaak is, het ten opsigte van daardie aanklag die reg op vryspraak.

9. (1) Die Prokureur-generaal kan die vrystelling gelas van iemand wat vir verdere ondersoek, vonnis of ter strafisiting na 'n gevangenis verwys is.

(2) 'n Skriftelike bevel waarin vermeld word dat die Prokureur-generaal nie oortuig is dat daar gronde bestaan om die daarin genoemde persoon te vervolg nie en wat deur hom onderteken is, is voldoende magtiging vir die vrystelling van daardie persoon.

PLAASLIKE STAATSAANKLAER

10. (1) 'n Staatsaanklaer verbonde aan 'n laer hof neem, as verteenwoordiger van die Prokureur-generaal en onderhewig aan sy opdragte, vervolgings in daardie laer hof waarin die naam van die Staat ten opsigte van alle misdrywe wat daardie laer hof regtens bevoeg is om te beraag.

(2) 'n Strafsaak wat deur 'n plaaslike staatsaanklaer by 'n laer hof ingestel is, kan deur enige ander staatsaanklaer voortgesit word.

HOOFSTUK III.

PRIVATE VERVOLGINGS

11. In 'n geval waar die Prokureur-generaal weier om weens 'n beweerde misdryf te vervolg, kan —

- (a) 'n private persoon wat 'n wesenlike en besondere belang in die uitslag van die beregting bewys wat voortspruit uit skade wat hy persoonlik gely het weens die pleeg van die bedoelde misdryf; of
- (b) 'n eggenoot, as die bedoelde misdryf teen sy vrou gepleeg is; of
- (c) die wetlike voog of kurator van 'n minderjarige of 'n kranksinnige, as die bedoelde misdryf teen sy pupil gepleeg is; of
- (d) die eggenote of kind of, as daar geen eggenote of kind is nie, enigeen van die naasbestaandes van 'n oorledene, as die oorledene se dood na bewering deur die bedoelde misdryf veroorsaak is,

behoudens die bepalings van artikels *veertien* en *vyftien*, die persoon wat dit na bewering gepleeg het, vervolg in 'n hof wat bevoeg is om die bedoelde misdryf te beraag.

12. 'n Openbare liggaam of iemand aan wie die reg om ten opsigte van 'n misdryf te vervolg uitdruklik by wet verleen word, kan die persoon wat dit na bewering gepleeg het, vervolg in 'n hof wat bevoeg is om die bedoelde misdryf te beraag.

13. Wanneer 'n private aanklaer iemand vir wie se vrystelling uit 'n gevangenis die Prokureur-generaal 'n lasbrief uitgereik het, weens 'n misdryf wil vervolg, kan so 'n private aanklaer om 'n lasbrief vir verdere aanhouding, of, as hy onder borgtog vrygelaat is, vir die aanhouding van daardie persoon aansoek doen by 'n hoër hof, of, as so 'n hof nie dan sitting hou nie, by 'n regter daarvan, en daardie hof of regter moet die bevel uitreik wat hy onder die omstandighede goedvind.

14. Geen private aanklaer bedoel in artikel *elf* is op geregtelike prosesstukke vir die dagvaarding van iemand om 'n aanklag te verantwoord, geregtig nie tensy daardie private aanklaer aan die beampete wat regtens bevoeg is om daardie prosesstukke uit te reik, 'n sertifikaat onderteken deur die Prokureur-generaal voorlê ten effekte dat hy die verklarings of beëdigde verklarings waarop die aanklag gegronde is, ter insae gehad het en weier om van staatswee te vervolg; en in elke geval waar die Prokureur-generaal weier om te vervolg, moet hy op versoek van die persoon wat voornemens is om te vervolg, die bedoelde sertifikaat toestaan.

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

- (a) has, if the prosecution is in a superior court, deposited the sum of one hundred rand or entered into a recognizance in the sum of one hundred rand with two sufficient sureties in the sum of fifty rand each, to be approved by the court in which the proceedings are to be instituted, as security that he will prosecute the charge against the accused to a conclusion without delay; and
- (b) has in any prosecution given security, in such amount and in such manner as the court may direct, that he will pay the accused such costs incurred by him in respect of his defence to the charge, as the court before which the case is tried may order him to pay.

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

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

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

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

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

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

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

CHAPTER IV.

ARRESTS

WITHOUT WARRANT.

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

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

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

15. Geen private aanklaer bedoel in artikel elf mag enige stappe ingevolge die reg in hierdie hoofstuk aan hom verleen, doen nie voordat hy —

- (a) as die vervolging voor 'n hoër hof plaasvind, 'n bedrag van eenhonderd rand gestort het of 'n borgakte ten bedrae van eenhonderd rand met twee toereikende borge ten bedrae van vyftig rand elk (wat goedkeur moet word deur die hof waarin die saak aanhangig gemaak staan te word) aangegaan het as sekerheid dat hy sonder versuim die vervolging ten opsigte van die aanklag teen die beskuldigde tot 'n einde sal voer; en
- (b) in enige vervolging sekerheid gestel het vir 'n bedrag en op die wyse wat die hof moontlik gelas, dat hy aan die beskuldigde die koste sal betaal wat die beskuldigde ten opsigte van sy verdediging teen die aanklag aangegaan het, en wat die hof wat die saak bereg, hom moontlik beveel om te betaal,

16. (1) As die private aanklaer nie verskyn op die dag wat vir die verhoor van 'n beskuldigde bepaal is nie, word die aanklag of klage teen daardie beskuldigde van die hand gewys tensy die hof rede het om aan te neem dat die private aanklaer deur omstandighede buite sy beheer verhinder is om teenwoordig te wees, en in so 'n geval kan die hof die verhoor van die saak tot 'n toekomstige datum uitstel.

(2) Waar 'n aanklag of klage soos voormeld van die hand gewys word, kan die beskuldigde nie weer ten opsigte van dieselfde aanklag deur 'n private aanklaer vervolg word nie, maar dit verhinder die Prokureur-generaal of 'n staatsaanklaer in opdrag van die Prokureur-generaal nie om die beskuldigde daarna van staatsweë te vervol.

17. 'n Private vervolging word, behoudens die beplings van hierdie ordonnansie, gevoer op dieselfde wysof dit 'n vervolging was wat van staatsweë gevoer was behalwe dat, behoudens enige bevel wat die hof moontlik uitreik wanneer die vervolging finaal afgesluit is, alle koste en uitgawes verbonde aan die vervolging betaal word deur die persoon wat vervolg.

18. In elke geval van 'n vervolging deur 'n private aanklaer kan die Prokureur-generaal of die plaaslike staatsaanklaer by enige hof waar die vervolging aanhangig is, by wyse van 'n mosie aansoek doen om die staking van alle verdere verrigtinge in die saak sodat vervolging weens die betrokke misdryf van staatsweë ingestel of voortgesit kan word; en so 'n hof moet in ell sodanige geval 'n bevel ooreenkomsdig die mosie uitreik.

19. By elke vervolging deur 'n private aanklaer moet die griffier of die klerk van die hof vir die bestelling van 'n strafregtelike dagvaarding of getuiedagvaarding of die tenuitvoerlegging van 'n lasbrief vir arres of ander strafregtelike prosesstukke die voorgeskrewe geldie eis ontvang.

20. (1) Wanneer iemand wat deur 'n private aanklaer vervolg word, vrygespreek word, kan die hof waarin die vervolging ingestel is, die private aanklaer gelas om aan die vervolged persoon al die koste of 'n deel daarvan (in begrip van die koste voor sowel as na verwysing) deur hom in verband met die vervolging aangegaan, te betaal.

(2) Wanneer die hof meen dat 'n private vervolging ongegrond is en uit kwelsug ingestel is, moet hy aan die vervolged persoon op sy versoek koste na goedden toeken.

HOOFSTUK IV.

INHEGTENISNEMING SONDER LASBRIEF

21. (1) 'n Regter van 'n hoër hof of 'n landdros vrederegter in wie se teenwoordigheid 'n misdryf gepleeg word, kan self die oortreder in hegtenis neem of ander persone mondeling magtig om dit te doen.

(2) Die aldus gemagtigde persone moet die oortreding agtervolg as hy vlug en kan hom buite die teenwoordigheid van so 'n regter, landdros of vrederegter in hegtenis neem.

22. (1) 'n Vredesbeampte kan sonder lasbrief iemand in hegtenis neem —

- (a) any person who commits any offence in his presence;
- (b) any person whom he has reasonable grounds to suspect of having committed an offence mentioned in the First Schedule;
- (c) any person whom he finds attempting to commit an offence or clearly manifesting an intention so to do;
- (d) any person having in his possession any implement of house-breaking, and not being able to account satisfactorily for such possession;
- (e) any person in whose possession anything is found which it is reasonably suspected is stolen property or property dishonestly obtained, and who is reasonably suspected of having committed an offence with respect to such thing;
- (f) any person who obstructs him in the execution of his duty, or who has escaped or attempts to escape from lawful custody;
- (g) any person reasonably suspected of being a deserter from the South African Defence Force;
- (h) any person who has been concerned in, or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been concerned in any act committed at any place outside the Territory, which if committed in the Territory would have been punishable as an offence, and for which he is, under any law relating to extradition or fugitive offenders or otherwise, liable to be apprehended or detained in custody in the Territory;
- (i) any person being or loitering in any place by night under such circumstances as to afford reasonable grounds for believing that he has committed or is about to commit an offence;
- (j) any person reasonably suspected of committing or having committed an offence under any law governing the making, supply, possession or conveyance of intoxicating liquor or of habit forming drugs or the possession or disposal of arms or ammunition;
- (k) any person reasonably suspected of being a prohibited person in the Republic or the Territory, for the purpose of any law regulating entry into or residence in the Republic or the Territory;
- (l) any person found in any gambling house or at any gambling table, the keeping or visiting whereof is in contravention of any law for the prevention or suppression of gambling or games of chance;
- (m) any person reasonably suspected of being or having been in unlawful possession of stock or produce, as defined in any law relating to the prevention of theft of stock or produce;
- (n) any person reasonably suspected of having failed to observe any condition imposed in postponing the passing of sentence or in suspending the operation of any sentence under this Ordinance;
- (o) any person reasonably suspected of having failed to pay any fine or portion thereof on the date fixed by order of court under this Ordinance;
- (p) any person who fails to surrender himself in order that he may undergo periodical imprisonment when and where he is required to do so under an order of court or under the laws relating to prisons.
- (2) Whenever it is provided in any law that the arrest of any person may be made by a police officer or constable or other official without warrant, subject to conditions or to the existence of circumstances in that law set forth, an arrest by any peace officer, without warrant or order may be made of such person, subject to those conditions or the existence of those circumstances.
- (3) A peace officer may call upon —
- (a) any person whom he has power to arrest;
- (b) any person reasonably suspected of having committed an offence; and
- (a) wat 'n misdryf in sy teenwoordigheid pleeg;
- (b) wat hy op redelike gronde daarvan verdink dat hy 'n misdryf genoem in die eerste bylae gepleeg het;
- (c) wat hy betrap terwyl hy 'n poging aanwend om 'n misdryf te pleeg of klaarblyklik 'n voorneme openbaar om dit te doen;
- (d) wat enige huisbraakgereedskap in sy besit het en geen bevredigende rekenskap van sodanige besit kan gee nie;
- (e) in wie se besit iets gekry word wat redelikerwyse vermoed word gasteelde goedere te wees of goedere wat oneerlik verkry is en wat redelikerwyse daarvan verdink word dat hy 'n misdryf ten oopsigte daarvan gepleeg het;
- (f) wat hom in die uitvoering van sy pligte belemmer, of wat uit wettige bewaring ontsnap het of 'n poging aanwend om uit wettige bewaring te ontsnap;
- (g) wat redelikerwyse daarvan verdink word dat hy 'n droster uit die Suid-Afrikaanse Weermag is;
- (h) wat betrokke was by, of teen wie 'n redelike klage ingedien is of geloofwaardige inligting ontvang is, of ten oopsigte van wie daar redelike verdenking bestaan dat hy betrokke was by, 'n daad op 'n plek buite die Gebied gepleeg wat, as dit binne die Gebied gepleeg was, as misdryf strafbaar sou gewees het, en waarvoor hy ingevolge 'n wetsbepaling op uitlewering of voortvlugtige oortreders of andersins in die Gebied in hegtenis geneem of in hegtenis aangehou kan word;
- (i) wat gedurende die nag op 'n plek verkeer of daar rondslenter onder omstandighede wat redelike gronde skep vir die vermoede dat hy 'n misdryf gepleeg het of op die punt staan om 'n misdryf te pleeg;
- (j) wat redelikerwyse daarvan verdink word dat hy 'n misdryf ingevolge 'n wetsbepaling op die vervaardiging, verskaffing, besit of vervoer van bedwelmende drank of van gewoonnevormende verdowingsmiddels of op die besit van of beskikking oor wapens of ammunisie, pleeg of gepleeg het;
- (k) wat redelikerwyse daarvan verdink word dat hy, by die toepassing van 'n wetsbepaling wat binnekoms of verblyf in die Republiek of die Gebied reël, 'n verbode persoon in die Republiek of die Gebied is;
- (l) wat gevind word in 'n dobbelhuis of by 'n dobbeltafel waarvan die aanhou of besoek 'n oortreding uitmaak van 'n wetsbepaling ter voorkoming of onderdrukking van dobbelary of gelukspiele;
- (m) wat redelikerwyse daarvan verdink word dat hy in onwettige besit is of was van vee of produkte soos bepaal in enige wet op die voorkoming van die diefstal van vee of produkte;
- (n) wat redelikerwyse daarvan verdink word dat hy versuim het om 'n voorwaarde na te kom wat by die uitstel van die oplegging van 'n vonnis of by die opskorting van die tenuitvoerlegging van 'n vonnis ingevolge hierdie ordonnansie opgelê is;
- (o) wat redelikerwyse daarvan verdink word dat hy versuim het om 'n boete of 'n gedeelte daarvan te betaal op die datum wat by hofbevel ingevolge hierdie ordonnansie bepaal is;
- (p) wat versuim om hom oor te gee sodat hy periodiese gevangenisstraf kan ondergaan wanneer en waar hy verplig is om dit te doen ingevolge 'n hofbevel of ingevolge die wette op gevangenisste.
- (2) Wanneer daar in 'n wet bepaal word dat die inhegtenisneming van iemand deur 'n polisie-offisier of konstabel of ander beampete sonder lasbrief kan plaasvind, onderworpe aan voorwaardes of die aanwesigheid van omstandighede wat in daardie wet vermeld word, kan so iemand deur 'n vredesbeampete sonder lasbrief of bevel in hegtenis geneem word, onderworpe aan daardie voorwaardes of die aanwesigheid van daardie omstandighede.
- (3) 'n Vredesbeampete kan van —
- (a) iemand wat hy bevoeg is om in hegtenis te neem;
- (b) iemand wat redelikerwyse daarvan verdink word dat hy 'n misdryf gepleeg het; en

(c) any person who may, in his opinion, be able to give evidence in regard to the commission or suspected commission of any offence, to furnish such peace officer with his full name and address.

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

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

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

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

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

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

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

(3) The owner or lawful occupier or a person who has the lawful custody or control of any property on which or in respect of which any person is found committing an offence and any person authorized thereto either generally or in a specific case, by such owner, occupier or person authorized thereto, may without warrant arrest the person so found.

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

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

27. (1) Any person arrested without warrant shall, as soon as possible, be brought to a police station or charge office and detained until a warrant is obtained for his further detention upon a charge of any offence

(c) iemand wat syne insiens moontlik getuienis kan aflê in verband met die pleeg of verdagte pleeg van 'n misdryf, eis dat hy sy volle naam en adres aan sodanige vredesbeampte verstrek.

(4) As so iemand versuim om sy volle naam en adres te verstrek nadat so 'n eis aan hom gestel is, kan die vredesbeampte wat die eis gestel het, hom onverwyd in hegtenis neem, en as so iemand nadat so 'n eis aan hom gestel is, aan so 'n vredesbeampte 'n naam of adres verstrek wat bedoelde vredesbeampte redelikerwyse vermoed vals te wees, kan so iemand in hegtenis geneem word en vir 'n tydperk van hoogstens twaalf uur aangehou word totdat die juistheid van die aldus verstrekke naam en adres nagegaan is.

(5) Iemand wat versuim om sy naam en adres te verstrek of wat 'n vase of onjuiste naam en adres verstrek wanneer dit ingevolge die bepalings van subartikel (3) of (4) van hom geëis word, is aan 'n misdryf skuldig en is by skuldigbevinding strafbaar met 'n boete van hoogstens sestig rand of met gevangenisstraf vir 'n tydperk van hoogstens drie maande.

23. Enige beampte, behalwe 'n vredesbeampte, wat die bevoegdheid regtens besit om strafregtelike lasbriewe ten uitvoer te lê, kan sonder lasbrief iemand in hegtenis neem wat —

- (a) 'n misdryf in sy teenwoordigheid pleeg;
- (b) hy op redelike gronde daarvan verdink dat hy 'n in die eerste bylae bedoelde misdryf gepleeg het;
- (c) hy betrap terwyl hy 'n poging aanwend om 'n misdryf te pleeg of klaarblyklik 'n voorneme om dit te doen openbaar.

24. (1) 'n Private persoon kan sonder lasbrief iemand in hegtenis neem wat —

- (a) in sy teenwoordigheid 'n in die eerste bylae bedoelde misdryf pleeg of 'n poging aanwend om dit te pleeg;
- (b) na sy wete kort gelede 'n in die eerste bylae bedoelde misdryf gepleeg het;
- (c) hy op redelike gronde daarvan verdink dat hy 'n in die eerste bylae bedoelde misdryf gepleeg het;
- (d) na hy op redelike gronde vermoed, 'n misdryf gepleeg het en aan die vlug is van en onmiddellik agtervolg word deur iemand wat, na bedoelde private persoon op redelike gronde vermoed, die bevoegdheid besit om daardie persoon weens daardie misdryf in hegtenis te neem;
- (e) hy ingevolge 'n wetsbepaling bevoeg is om sonder lasbrief in hegtenis te neem, ten opsigte van 'n in daardie wetsbepaling vermelde misdryf;
- (f) hy aan die baklei sien.

(2) 'n Private persoon wat 'n in paragraaf (a) of (b) van subartikel (1) bedoelde persoon sonder lasbrief in hegtenis kan neem, kan daardie persoon onverwyd agtervolg en enige ander private persoon aan wie die doel van die agtervolging meegeedeel is, kan daarby aansluit en hulp verleen.

(3) Die eienaar of wettige okkuperdeerder of iemand wat die wettige bewaring of beheer oor eiendom he waarop of ten opsigte waarvan iemand betrap word dat hy 'n misdryf pleeg, en enigiemand deur so 'n eienaar okkuperdeerder of iemand daartoe gemagtig, hetsy in algemeen of in 'n bepaalde geval, kan die persoon wat aldus betrap word, sonder lasbrief in hegtenis neem.

25. Wanneer iemand 'n ander persoon weens die pleeg van 'n misdryf sonder lasbrief in hegtenis kan neem, kan hy ook iemand wat aanbied om goed wat, na hy op redelike gronde vermoed, deur daardie persoon deur middel van so 'n misdryf verkry is, aan hom te verkoop, te veerpand of te lewer, sonder lasbrief in hegtenis neem.

26. Wanneer iemand 'n ander persoon sonder lasbrief in hegtenis neem, moet hy aan die persoon wat in hegtenis geneem word die rede vir die inhegtenisneming onverwyd meegeedeel.

27. (1) Iemand wat sonder lasbrief in hegtenis geneem word, moet so spoedig moontlik na 'n polisiestasie of aanklagkantoor gebring en aangehou word totdat lasbrief vir sy verdere aanhouding weens 'n aanklag van

until he is released by reason that no charge is to be brought against him; and unless so released he shall be soon as possible be brought before a judicial officer on a charge of any offence: Provided that a person so arrested without warrant shall not be so detained for a period longer than seven days unless a warrant for his further detention is obtained.

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

WITH WARRANT.

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

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

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

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

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

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

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

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

31. (1) Any person authorized to execute a warrant of arrest, who arrests a person, believing in good faith

'n misdryf verkry word of totdat hy vrygelaat word omdat geen aanklag teen hom ingedien staan te word nie; en tensy hy aldus vrygelaat word, moet hy so spoedig moontlik voor 'n regterlike beampete op aanklag van 'n misdryf gebring word: Met dien verstande dat iemand wat aldus sonder lasbrief in hegtenis geneem word hoogstens vir 'n tydperk van sewe dae aldus aangehou mag word tensy 'n lasbrief vir sy verdere aanhouding verkry word.

(2) Geen bepaling van hierdie artikel word so uitgelê dat dit die bepalings van hoofstuk VII of enige ander wetsbepaling uit hoofde waarvan iemand wat aangehou word, onder borgtow vrygelaat kan word, wysig nie.

MET LASBRIEF

28. (1) 'n Regter van 'n hoër hof of 'n landdros of vrederegter kan 'n lasbrief vir die inhegtenisneming van iemand of vir die verdere aanhouding van iemand wat sonder lasbrief in hegtenis geneem is, uitrek op skrifte-like aansoek deur die Prokureur-generaal of deur die plaaslike staatsaanklaer of 'n polisie-offisier onderteken, waarin vermeld word die misdryf wat na bewering gepleeg is en dat op grond van inligting onder eed daar redelike gronde vir die verdenking van daardie persoon bestaan, of op grond van inligting met dieselfde strekking deur iemand onder eed afgelê voor die regter of landdros of vrederegter wat die lasbrief uitrek: Met dien verstande dat geen landdros of vrederegter so 'n lasbrief uitrek nie behalwe waar die ten laste gelegde misdryf, na beweer word, binne sy regsgebied gepleeg is, of behalwe waar dit ten tyde van die uitreiking van die lasbrief bekend is of op redelike gronde vermoed word dat die persoon teen wie die lasbrief uitgereik word hom binne die regsgebied van daardie landdros of vrederegter bevind.

(2) 'n In subartikel (1) bedoelde lasbrief kan op 'n Sondag soos op enige ander dag uitgereik word en bly van krag totdat dit deur die persoon wat dit uitgereik het, ingetrek word of totdat dit uitgevoer word.

(3) Wanneer 'n lasbrief uitgereik word vir die inhegtenisneming van iemand wat uit hoofde van inhegtenisneming sonder lasbrief aangehou word, het so 'n lasbrief vir inhegtenisneming die uitwerking van 'n lasbrief vir sy verdere aanhouding.

29. (1) Elke vredesbeampete moet elke lasbrief vir inhegtenisneming nakom en uitvoer.

(2) 'n Vredesbeampete of ander persoon wat iemand uit hoofde van 'n lasbrief ingevolge hierdie ordonnansie in hegtenis neem, moet, as die in hegtenis geneemde persoon dit vereis, die lasbrief aan hom toon, die inhoud daarvan aan hom meegeel en hom toelaat om dit te lees.

(3) Iemand wat uit hoofde van 'n lasbrief ingevolge hierdie ordonnansie in hegtenis geneem word, moet so spoedig moontlik na 'n polisiestasie of aanklagkantoor gebring word, tensy 'n ander plek in die lasbrief uitdruklik vermeld word as die plek waarheen daardie persoon gebring moet word, en hy moet so spoedig moontlik daarna voor 'n regterlike beampete op aanklag van die in die lasbrief vermelde misdryf gebring word.

30. (1) 'n Telegram afkomstig van 'n hofbeampete of van 'n vredesbeampete waarin gemeld word dat 'n lasbrief vir die inhegtenisneming van iemand uitgereik is, is voldoende magtiging aan 'n vredesbeampete vir die inhegtenisneming en aanhouding van daardie persoon totdat voldoende tyd, maar hoogstens veertien dae, verstryk het om die oorsending van die lasbrief na die plek waar daardie persoon in hegtenis geneem is of aangehou word, te bewerkstellig, tensy die ontslag van daardie persoon voor die tyd deur 'n regter of 'n hoër hof gelas word: Met dien verstande dat so 'n regter, as gronde daarvoor aangetrek word, die verdere aanhouding van so 'n persoon kan gelas vir 'n tydperk wat in die lasgewing vermeld word maar wat hoogstens agt-en-twintig dae vanaf die datum van bedoelde persoon se inhegtenisneming mag wees.

(2) Geen bepaling van hierdie artikel word so uitgelê dat dit afbreuk doen aan die bepalings van hierdie ordonnansie of aan enige ander wet uit hoofde waarvan iemand wat aldus in hegtenis geneem is, op borgtow vrygelaat kan word nie.

31. (1) Iemand wat bevoeg is om 'n lasbrief vir inhegtenisneming uit te voer en wat 'n persoon in hegtenis

and on reasonable and probable grounds that he is the person named in the warrant, shall be protected from responsibility to the same extent and subject to the same provisions as if the person arrested had been the person named in the warrant.

(2) Any person called on to assist the person making such arrest and believing that the person in whose arrest he is called on to assist is the person for whose arrest the warrant has been issued and every member of the Prisons Service in charge of any prison who is required to receive and detain such person shall be protected to the same extent and subject to the same provisions as if the arrested person had been the person named in the warrant.

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

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

GENERAL.

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

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

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

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

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

(3) Whenever a woman is searched on her arrest, the search shall only be made by a woman and shall be made with strict regard to decency and if there is no

neem terwyl hy te goeder trou en op redelike en aanneemlike gronde van mening is dat hy die persoon is wat in die lasbrief genoem word, word teen aanspreeklikheid gevrywaar in dieselfde mate en onderworpe aan dieselfde bepalings asof die persoon wat in hegtenis geneem is die persoon was wat in die lasbrief genoem word.

(2) Iemand wat aangesê word om die persoon wat so 'n inhegtenisneming doen, hulp te verleen en wat van mening is dat die persoon by wie se inhegtenisneming hy aangesê word om hulp te verleen, die persoon is vir wie se inhegtenisneming die lasbrief uitgereik is, en elke lid van die Gevangenisdiens in beheer van 'n gevangenis van wie dit vereis word om so 'n persoon te ontvang en aan te hou, word gevrywaar in dieselfde mate en onderworpe aan dieselfde bepalings asof die persoon wat in hegtenis geneem is die persoon was wat in die lasbrief genoem word.

32. Iemand wat optree kragtens 'n lasbrief of prosesstuk wat weens 'n in die oog lopende gebrek wat betrek die inhoud of die vorm daarvan nie regsgeldig is nie, word, as hy te goeder trou en sonder strafwaardige onkunde of nalatigheid van mening is dat die lasbrief of prosesstuk regsgeldig is, teen aanspreeklikheid gevrywaar in dieselfde mate en onderworpe aan dieselfde bepalings asof die lasbrief of prosesstuk regsgeldig was, en onkunde aangaande die reg is in so 'n geval 'n verskoning: Met dien verstande dat dit 'n regsvraag is of die feite waaromtrent daar getuilenis is, strafwaardige onkunde of nalatigheid aan sy kant, deur die mening te huldig dat die lasbrief of prosesstuk regsgeldig is, kan uitmaak al dan nie.

33. 'n Ingevolge hierdie hoofstuk uitgereikte lasbrief moet gelas dat die persoon wat daarin beskrywe word, in hegtenis geneem en so spoedig moontlik op 'n aanklag van 'n in die lasbrief vermelde misdryf voor 'n regterlike beampte gebring word.

ALGEMENE BEPALINGS

34. (1) Elke manlike inwoner van die Gebied tussen die ouderdom van sestien en sestig jaar, moet wanneer hy deur 'n polisiebeampte aangesê word om dit te doen, aan so 'n polisiebeampte hulp verleen by 'n inhegtenisneming, wat daardie polisiebeampte regtens bevoeg is om te doen, van iemand wat aangekla is of verdink word weens die pleeg van 'n misdryf of so 'n polisiebeampte help om iemand wat aldus in hegtenis geneem is, in hegtenis te hou.

(2) So 'n inwoner wat sonder voldoende verskoning weier of versuim om aldus aan 'n polisiebeampte hulp te verleen wanneer hy aangesê word om dit te doen, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens veertig rand of met gevangenisstraf vir 'n tydperk van hoogstens een maand.

35. 'n Vredesbeampte of private persoon wat regtens gemagtig is om iemand ten opsigte van wie dit bekend is of vermoed word dat hy 'n misdryf gepleeg het, in hegtenis te neem, kan vir daardie doel die deure en vensters van 'n perseel ten opsigte waarvan dit bekend is of vermoed word dat die persoon wie se inhegtenisneming vereis word, hom daarbinne bevind, oopbrek en bedoelde perseel betree en visenteer: Met dien verstande dat geen vredesbeampte of private persoon ingevolge hierdie artikel mag optree nie tensy hy vantevore nie daarin geslaag het om toegang te verkry nie nadat hy dit op hoorbare wyse geëis het en die doel waarvoor hy so 'n perseel wil binne gaan, bekendgemaak het.

36. (1) Iemand wat gemagtig is om 'n inhegtenisneming te doen, moet wanneer hy 'n inhegtenisneming doen, die liggaam van die persoon wat in hegtenis geneem moet word, werklik aanraak of onder bedwang stel, tensy daar deur woord of daad 'n onderwerping aan die hegtenis is.

(2) Iemand wat 'n ander persoon ingevolge die bepalings van hierdie hoofstuk in hegtenis neem, kan so 'n persoon visenteer en moet alle voorwerpe (behalwe die nodige klere) wat aan hom gevind word in veilige bewaring plaas.

(3) Wanneer 'n vrou by haar inhegtenisneming gevisenteer word, moet die visentering slegs deur 'n vrou gedoen word en moet dit met stipte inagneming van die

woman available for such search who is a member of the police or is a prison officer, the search may be made by any woman specially named for the purpose by a peace officer.

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

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

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

39. (1) Any person who, having been arrested and being in lawful custody but not having yet been lodged in any prison, police-cell, or lock-up, escapes or attempts to escape from such custody shall be guilty of an offence and liable on conviction to the penalties prescribed in section *forty-eight* of the Prisons Act, 1959.

(2) Any person who rescues or attempts to rescue from lawful custody any other person who has been arrested but is not yet lodged in any prison, police-cell or lock-up, or who aids such other person to escape, or in an attempt to escape, from such custody, or who harbours or conceals or assists in harbouring or concealing him, knowing him to have so escaped, shall be guilty of an offence and liable on conviction to the penalties prescribed in section *forty-three* of the Prisons Act, 1959.

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

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

CHAPTER V.

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

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

- (a) stolen property or anything in respect of which any offence has been, or is suspected on reasonable grounds to have been committed, whether within the Territory or elsewhere; or
- (b) anything in respect of which there are reasonable grounds for believing that it will afford evidence as to the commission, whether within the Territory or elsewhere, of any offence; or
- (c) anything in respect of which there are reasonable grounds for believing that it is intended to be used for the purpose of committing any offence,

he may issue a warrant directing any policeman named therein or all policemen to search such person, premises or receptacle and any person found in or upon such

welvoeglikheid geskied, en indien daar geen vrou wat 'n lid van die polisie of 'n gevangenisbeampte is, vir so 'n visentering beskikbaar is nie, kan die visentering gedoend word deur enige vrou wat deur 'n vredesbeampte spesial vir die doel aangewys word.

37. (1) Wanneer iemand wat ingevolge hierdie ordonnansie gemagtig is om 'n persoon wat 'n in die eerste bylae bedoelde misdryf gepleeg het of op redelike gronde van die pleeg daarvan verdink word, in hegtenis te neem of by sy inhegtenisneming hulp te verleen, 'n poging aanwend om so 'n persoon in hegtenis te neem en daardie persoon vlug of bied weerstand en kan nie op 'n ander wyse in hegtenis geneem en verhinder word om te ontsnap nie as deur die persoon wat aldus vlug of weerstand bied, te dood, word sodanige doodslag regtens geag straffeloos manslag te wees.

(2) Geen bepaling van hierdie artikel verleen magtig vir die doodslag van iemand wat nie van die pleeg van 'n in die eerste bylae bedoelde misdryf beskuldig of verdink word nie.

38. As iemand wat in wettige hegtenis is, ontsnap of bevry word, kan die persoon uit wie se hegtenis hy ontsnap het of bevry is, hom onmiddellik agtervolg en in hegtenis neem of hom laat agtervolg en in hegtenis neem op enige plek in die Gebied.

39. (1) Iemand wat nadat hy in hegtenis geneem en in wettige hegtenis is maar nog nie in 'n gevangenis, polisie-sel of opsluitplek geplaas is nie, uit sodanige hegtenis ontsnap of 'n poging aanwend om daaruit te ontsnap, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met die strawwe wat in artikel *agt-en-veertig* van die Wet op Gevangenis 1959 voorgeskryf word.

(2) Iemand wat 'n ander persoon wat in hegtenis geneem is maar nog nie in 'n gevangenis, polisie-sel of opsluitplek geplaas is nie, uit wettige hegtenis bevry of 'n poging aanwend om hom daaruit te bevry, of wat so 'n ander persoon help om uit sodanige hegtenis te ontsnap of by 'n poging om daaruit te ontsnap, of wat so 'n ander persoon herberg of aan hom skulling verleen of daarmee behulpsaam is terwyl hy weet dat daardie persoon aldus ontsnap het, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met die strawwe wat in artikel *drie-en-veertig* van die Wet op Gevangenis 1959 voorgeskryf word.

40. Geen bepalings van hierdie hoofstuk word so uitgelê dat dit 'n bevoegdheid deur enige ander wet uitdruklik verleen om iemand in hegtenis te neem of aan te hou of hom 'n beperking op te lê, ontnem of inkort nie.

41. Geen bepaling van hierdie hoofstuk word so uitgelê dat dit enige siviele reg of aanspreeklikheid van enigiemand ten opsigte van 'n wederregtelike of kwaadwillige inhegtenisneming ontnem of inkort nie.

HOOFTUK V.

VISENTERINGSLASBRIEWE, BETREDING VAN PERSELE, INBESLAGNEMING EN AANHOUDING VAN GOED WAT MET MISDRYWE IN VERBAND STAAN, EN BEWARING VAN VROUE WAT VIR ONSEDELIKE DOELEINDES WEDERREGTELIK AANGEHOU WORD

42. (1) As dit op grond van 'n klag onder eed gedoend, vir 'n regter van 'n hoër hof, 'n landdros of 'n vrederegtiger blyk dat daar redelike gronde bestaan om te vermoed dat daar op iemand of op of by 'n perseel of in 'n houer van watter aard ook al binne sy reggebied —

- (a) gesteelde goed is of iets ten opsigte waarvan 'n misdryf hetsy in die Gebied of elders gepleeg is of op redelike gronde vermoed word gepleeg te gewees het; of
- (b) iets is ten opsigte waarvan daar redelike gronde bestaan om te vermoed dat dit tot bewys van die pleeg, hetsy in die Gebied of elders, van 'n misdryf sal strek; of
- (c) iets is ten opsigte waarvan daar redelike gronde bestaan om te vermoed dat dit bestem is om gebruik te word om 'n misdryf te pleeg.

kan hy 'n lasbrief uitreik wat 'n daarin vermelde polisiebeampte of alle polisiebeamptes gelas om so 'n persoon, perseel of houer en enigiemand wat binne of op bedoelde

premises, and to seize any such thing if found, and to take it before a magistrate to be dealt with according to law.

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

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

43. (1) If a policeman believes on reasonable grounds that the delay in obtaining a search warrant would defeat the object of the search, he may search, without warrant, any person, premises, other place, vehicle or receptacle of whatever nature and any person found in or upon such premises, other place or vehicle for any such thing as is mentioned in section *forty-two* and may seize such thing if found and take it before a magistrate: Provided that in the searching of any woman the provisions of sub-section (3) of section *thirty-six* shall *mutatis mutandis* apply.

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

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

- (a) that the internal security of the Territory or the maintenance of law and order is likely to be endangered by or in consequence of any meeting which is being or is about to be held in or upon any premises; or
- (b) that an offence has been or is being or is likely to be committed or that preparations or arrangements for the commission of any offence are being or are likely to be made in or upon any premises,

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

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

(3) Whenever any policeman in the investigation of any offence or alleged offence has reasonable grounds for believing that there is upon any premises any person who is able to give evidence in relation to the commission

perseel gevind word, te visenteer en om so iets in beslag te neem, as dit gevind word, en om dit na 'n landdros te neem om regtens oor beskik te word.

(2) So 'n lasbrief moet gedurende die dag uitgevoer word, tensy die regter, landdros of vrederegter deur die lasbrief spesiale magtiging verleen vir die uitvoering daarvan gedurende die nag, in watter geval dit aldus uitgevoer kan word, en die bepalings van subartikel (3) van artikel *ses-en-dertig* is by die visenteer van 'n vrou *mutatis mutandis* van toepassing.

(3) 'n Lasbrief in hierdie artikel bedoel, kan op 'n Sondag soos op enige ander dag uitgereik en uitgevoer word.

43. (1) As 'n polisiebeampte op redelike gronde vermoed dat die vertraging veroorsaak deur die verkryging van 'n visenteringslasbrief die doel van die visentering sal verydel, kan hy enige persoon, perseel, ander plek, voertuig of houer van watter aard ook al en enigiemand wat binne of op so 'n perseel, ander plek of voertuig gevind word, sonder lasbrief visenteer met die oog op so iets soos in artikel *twee-en-veertig* vermeld word, en kan so iets, as dit gevind word, in beslag neem en voor 'n landdros bring: Met dien verstande dat die bepalings van subartikel (3) van artikel *ses-en-dertig* by die visenteer van 'n vrou *mutatis mutandis* van toepassing is.

(2) 'n Visentering kragtens subartikel (1) geskied sover moontlik gedurende die dag en in die teenwoordigheid van twee of meer fatsoenlike inwoners van die buurt waar dit uitgevoer word.

44. (1) As dit op grond van 'n klag onder eed gedoen, vir 'n regter van 'n hoër hof, 'n landdros of 'n vrederegter blyk dat daar redelike gronde bestaan om te vermoed —

- (a) dat die binnelandse veiligheid van die Gebied of die handhawing van wet en orde waarskynlik deur of ten gevolge van 'n vergadering wat in of op een of ander perseel gehou word of staan te word in gevaar gestel sal word; of
- (b) dat 'n misdryf gepleeg is of word of waarskynlik gepleeg sal word, of dat voorbereidings of reëlings vir die pleging van 'n misdryf getref word of waarskynlik getref sal word in of op een of ander perseel,

kan hy 'n lasbrief uitreik wat 'n daarin vermelde polisiebeampte of alle polisiebeamptes gelas om bedoelde perseel op enige redelike tyd te betree ten einde sodanige ondersoek in te stel en die redelike stappe te doen wat bedoelde polisiebeampte of polisiebeamptes nodig ag vir die bewaring van die binnelandse veiligheid van die Gebied of die handhawing van wet en orde of vir die voorkoming van die pleging van 'n misdryf, en ten einde bedoelde perseel of iemand in of op bedoelde perseel te visenteer met die oog op enigiets waaromtrent bedoelde polisiebeampte of polisiebeamptes redelike gronde het om te vermoed dat dit in of op bedoelde perseel of op bedoelde persoon is en waaromtrent hy of hulle redelike gronde het om te vermoed dat dit as bewys sal dien van die pleging van 'n misdryf of dat dit bestem is om by die pleging van 'n misdryf gebruik te word, en om so iets, as dit gevind word, in beslag te neem en voor 'n landdros te bring.

(2) As 'n polisiebeampte op redelike gronde vermoed dat die vertraging verbonde aan die verkryging van 'n lasbrief ingevolge subartikel (1) die doel van die lasbrief sal verydel, kan hy self te alle redelike tye die betrokke perseel sonder lasbrief betree en aldaar die ondersoek instel en die redelike stappe doen wat hy vir die bewaring van die binnelandse veiligheid van die Gebied of die handhawing van wet en orde of vir die voorkoming van die pleging van 'n misdryf nodig ag, en as hy redelike gronde het om te vermoed dat daar in of op bedoelde perseel of op 'n persoon in of op bedoelde perseel enigiets is waaromtrent daar redelike gronde bestaan om te vermoed dat dit as bewys sal dien van die pleging van 'n misdryf of dat dit bestem is om vir die pleging van 'n misdryf gebruik te word, kan hy sonder lasbrief bedoelde perseel of persoon met die oog op so iets visenteer en so iets, as dit gevind word, in beslag neem en voor 'n landdros bring.

(3) Wanneer 'n polisiebeampte by die ondersoek van 'n misdryf of beweerde misdryf redelike gronde het om te vermoed dat daar op 'n perseel iemand is wat in staat is om getuienis met betrekking tot die pleging van daardie

of that offence, he may without warrant enter the said premises for the purpose of interrogating the said person and for taking a statement from him.

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

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

(6) Any person who wilfully obstructs, resists or hinders a policeman in the execution of any duty or the exercise of any power under this section, shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred rand or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

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

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

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

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

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

misdryf te gee, kan hy daardie perseel sonder lasbrief betree ten einde bedoelde persoon te ondervra en van hom 'n verklaring af te neem.

(4) 'n Polisiebeampte kan soveel geweld gebruik soos nodig is om toegang te verkry tot 'n perseel wat hy kragtens subartikel (1), (2) of (3) gemagtig is om te betree of om enige verset teen sy betreding daarvan te bowe te kom, en kan, indien nodig, 'n deur of venster van bedoelde perseel vir daardie doel oopbrek: Met dien verstande dat 'n polisiebeampte nie kragtens hierdie subartikel optree nie tensy hy vooraf op hoorbare wyse toegang tot die perseel geëis het en die doel waarvoor hy die toegang verlang, bekend gemaak het en geen toegang kon verkry nie: Met dien verstande voorts dat die bepalings van hierdie subartikel of subartikel (3) aan geen polisiebeampte magtig verleen om die private woning van iemand vir die in subartikel (3) bedoelde doel te betree nie behalwe met die toestemming van die okkuperer van die woning.

(5) Wanneer 'n vrou kragtens enige van die bepalings van hierdie artikel geviseente word, is die bepalings van subartikel (3) van artikel *ses-en-dertig mutatis mutandis* van toepassing.

(6) Iemand wat 'n polisiebeampte by die uitvoering van 'n plig of die uitoefening van 'n bevoegdheid kragtens hierdie artikel opsetlik hinder, teengaan of belemmer, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens tweehonderd rand of met gevangenisstraf vir 'n tydperk van hoogstens ses maande of met beide sodanige boete en sodanige gevangenisstraf.

45. (1) Iemand wat onder voorwendsel van die bepalings van artikel *drie-en-veertig* of *vier-en-veertig* wederregtelik en kwaadwillig of sonder redelike gronde om 'n lasbrief aansoek doen, dit verkry of daarkragtens optree, of wederregtelik of kwaadwillig of sonder redelike gronde die by bedoelde artikels verleende bevoegdhede tot visentering uitoefen, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens eenhonderd rand en moet ook aan die persoon wat ten tyde van die visentering van die perseel of ander plek dit wettig geokkuper het, by wyse van skadevergoeding 'n bedrag van hoogstens tweehonderd rand betaal wat die hof wat hom skuldig bevind op aansoek van bedoelde okkuperer toeken.

(2) Geen bepaling van subartikel (1) word so uitgelê dat dit 'n benadeelde persoon die reg ontneem om enige ander regsmiddel in plaas van die by daardie subartikel verleende regsmiddel aan te wend nie.

46. (1) As 'n vrederegter, of 'n polisiebeampte wat 'n rang of pos beklee wat deur die Administrateur van tyd tot tyd ten aansien van 'n bepaalde gebied vir die doelendes van hierdie artikel by kennisgewing in die *Offisiële Koerant* aangewys word, rede het om te vermoed dat daar op 'n perseel gesteelde vee of produkte, soos in 'n wet betreffende die diefstal van vee of produkte omskrywe, is of dat 'n stof of voorwerp instryd met 'n wet betreffende bedwelmende drank, gewoontevormende verdowingsmiddels, wapens en ammunisie of ontplofbare stowwe op 'n perseel gelaat is of in die bewaring of besit van iemand op 'n perseel is, kan hy te eniger tyd so 'n perseel betree en visenteer en enigemand daarop of aldaar visenteer of aan enigemand wat daarom aansoek doen skriftelik magtig vir so 'n betreding en visentering verleen.

(2) Iemand wat grond wettig okkuper, kan ten opsigte van enige perseel op daardie grond die bevoegdhede wat kragtens subartikel (1) aan 'n vrederegter verleen word, uitoefen.

(3) Iemand wat onder voorwendsel van hierdie artikel wederregtelik en kwaadwillig of sonder redelike gronde om so 'n skriftelike magtiging aansoek doen, dit verkry of daarkragtens optree, of wat wederregtelik en kwaadwillig of sonder redelike gronde die by hierdie artikel verleende bevoegdhede tot visentering uitoefen, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens eenhonderd rand en moet, bo en behalwe bedoelde boete, aan die persoon wat ten tyde van die visentering van die perseel dit wettig geokkuper het, by wyse van skadevergoeding 'n bedrag van hoogstens tweehonderd rand betaal wat die hof wat hom skuldig bevind, toeken.

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

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

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

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

- (a) any counterfeit coin or any forged bank-note or bank-note paper;
- (b) any tool, instrument, or machine, adapted and intended for making any such counterfeit coin or forged bank-note or bank-note paper;
- (c) any filings or clippings of gold or silver, or any gold or silver in bullion, dust, solution, or any other state which may be suspected on reasonable grounds to have been obtained by dealing with any current gold or silver coin in such a manner as to diminish its weight,

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

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

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

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

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

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

(4) At the conclusion of the summary trial or, as the case may be, if the attorney-general declines to

(4) Geen bepaling van subartikel (3) word so uitgelê dat dit 'n benadeelde persoon die reg ontnem om enige ander regsmiddel in plaas van die by daardie subartikel verleende regsmiddel aan te wend nie.

47. (1) As dit uit inligting onder eed blyk dat iemand in besit is van 'n rekeningboek of dokument of enige ander voorwerp hoegenaamd wat as bewyssukk by 'n strafsaak, hetsy in die Gebied of elders, vereis word, kan 'n regter van 'n hoër hof of 'n landdros of ander regterlike beampte, 'n bevel uitreik wat die beampte aan wie die bevel gerig is, gelas om van so 'n boek of dokument of voorwerp besit te neem en dit aan 'n in so 'n bevel genoemde persoon te oorhandig, en daarop kan bedoelde beampte so 'n bevel wettig uitvoer.

(2) Iemand wat hom teen so 'n beampte verset of hom hinder of iemand anders help, aanhits of aanmoedig om hom teen bedoelde beampte te verset of hom te hinder terwyl hy die bevel uitvoer, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens tweehonderd rand.

48. As iemand op enige plek hoegenaamd of in die besit van enigiemand, sonder wettige magtiging of verskoning daarvoor —

- (a) valse munt of 'n vervalste banknoot of banknootpapier;
- (b) enige gereedskap, werktuig of masjien wat geskik gemaak en bestem is om sodanige valse munt of vervalste banknoot of banknootpapier te vervaardig;
- (c) vlysels of skroot van goud of silwer, of goud of silwer in ongemunte of poeierform of in oplossing of in enige ander toestand wat op redelike gronde vermoed word verkry te gewees het deur met gangbare goud- en silwermunt op so 'n wyse te werk te gaan dat die gewig daarvan verminder word,

vind, kan die persoon wat dit vind die voorwerp of voorwerpe wat gevind is, in beslag neem en onverwyld na 'n landdros neem om regtens oor beskik te word.

49. (1) By die inhegtenisneming van iemand weens 'n aanklag van 'n in deel I van die tweede bylae bedoelde misdryf, kan die persoon wat die inhegtenisneming doen enige voertuig of houer in beslag neem wat ten tyde van die inhegtenisneming in die besit of bewaring is van die persoon wat in hechtenis geneem word en wat by die vervoer van 'n voorwerp of stof in verband waarmee bedoelde misdryf na bewering gepleeg word of is, gebruik is of so 'n voorwerp of stof bevat.

(2) Die Administrateur kan van tyd tot tyd by proklamasie in die *Offisiële Koerant* enige in die proklamasie vermelde misdryf uit deel I van die tweede bylae skrap of daaraan toevoeg.

50. (1) Wanneer by die inhegtenisneming van iemand weens 'n aanklag van 'n misdryf betreffende eiendom, die goed ten opsigte waarvan die misdryf na bewering gepleeg is in sy besit gevind word, of wanneer enige voorwerp ingevolge die bepalings van hierdie ordonnansie in beslag of besit geneem word, moet die persoon wat die inhegtenisneming doen of wat die voorwerp in beslag of besit neem, na gelang, die goed of voorwerp onverwyld na 'n landdros neem.

(2) Wanneer 'n voorwerp aldus in beslag of besit geneem word, moet die persoon wat dit in beslag of besit neem ten tyde van die inbeslagneming of inbesitneming of so spoedig daarna soos gerieflikerwys doenlik is, uitkenningsstekens waar doenlik daarop aanbring.

(3) Die landdros kan die goed of voorwerp aldus in beslag of besit geneem in die bewaring wat hy gelas, laat hou totdat 'n summiere verhoor of enige ondersoek wat ten opsigte daarvan mag plaasvind, afgesluit is; en as iemand ter strafzitting verwys word ten aansien van 'n misdryf gepleeg ten opsigte van die goed of voorwerp aldus in beslag of besit geneem, of ten aansien van 'n misdryf wat onder sulke omstandighede gepleeg is dat die goed of voorwerp aldus in beslag of besit geneem waarskynlik as bewys by die verhoor sal dien, kan die landdros dit langer hou sodat dit as bewyssukk by die verhoor kan dien.

(4) By afloop van die summiere verhoor, of as die Prokureur-generaal weier om te vervolg, na gelang, gelas

osecute, the magistrate shall direct that the thing be turned to the person from whose possession it was taken, unless he is authorized or required by law to dispose of it otherwise.

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

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

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

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

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

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

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

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

53. (1) If it appears to a magistrate on complaint made on oath by a parent, husband, relative or guardian

die landdros dat die voorwerp terugbesorg word aan die persoon uit wie se besit dit verwyder is, tensy hy regtens gemagtig of verplig is om anders daaroor te beskik.

(5) As die voorwerp aldus in beslag of besit geneem iets is wat vervals of nagemaak is of van so 'n aard is dat iemand wat dit sonder wettige magtiging of verskoning in sy besit het, aan 'n misdryf skuldig is, en as iemand vir verhoor verwys word weens 'n misdryf ten opsigte daarvan gepleeg of gepleeg onder die omstandighede soos voormeld en skuldig bevind word, dan kan die hof deur wie hy skuldig bevind word, of in enige ander geval enige regter of landdros, dit onleesbaar laat maak of laat vernietig of, as dit enige waarde besit, na die Tesourie laat stuur, sodra dit blyk dat dit nie, of nie meer, as bewysstuk teen die persoon wat dit in sy besit gehad het, vereis word nie.

(6) As die voorwerp aldus in beslag of besit geneem is ten aansien van 'n misdryf wat in 'n land of gebied buite die Gebied gepleeg is of op redelike gronde vermoed word gepleeg te gewees het, kan die landdros op aansoek en as hy oortuig is dat bedoelde misdryf in daardie land of gebied met die dood of met gevangenisstraf vir 'n tydperk van twaalf maande of langer of met 'n boete van tweehonderd rand of meer strafbaar is, gelas dat bedoelde voorwerp aan 'n lid van 'n in daardie land of gebied ingestelde polisiemag oorhandig word wat dit daarna uit die Gebied kan verwyder.

(7) Wanneer die voorwerp aldus uit die Gebied verwyder aan die landdros terugbesorg word of wanneer die landdros weier om te gelas dat die voorwerp oorhandig moet word soos voormeld, laat hy die voorwerp terugbesorg aan die persoon uit wie se besit dit geneem is tensy hy regtens gemagtig of verplig is om anders daaroor te beskik.

51. (1) As 'n wapen wat vermoed word 'n bedreiging vir die openbare rus in te hou, ingevolge 'n visenteringslasbrief in beslag geneem word, moet dit in veilige bewaring op 'n plek wat die landdros gelas, gehou word tensy die eienaar van die wapen bewys tot oortuiging van die landdros lewer dat dit nie vir 'n doel wat 'n bedreiging vir die openbare rus inhou, aangehou is nie.

(2) Iemand van wie so 'n wapen aldus verwyder is, kan, as die landdros ingevolge wie se lasbrief dit in beslag geneem is, weier om dit terug te besorg nadat aansoek daarom gedoen is, by 'n regter van 'n hoër hof wat regtsbevoegdheid besit, aansoek doen om die terugbesorging van daardie wapen. Van so 'n aansoek moet tien dae kennis aan die landdros gegee word, en die regter reik met betrekking tot die terugbesorging of veilige bewaring van bedoelde wapen die bevel uit wat hy op daardie aansoek goedvind.

52. (1) As goed of voorwerpe ten opsigte of deur middel waarvan dit vermoed word dat 'n misdryf met betrekking tot die vervalsing van handelsmerke of die bedrieglike merk van handelsware gepleeg is, ingevolge 'n visenteringslasbrief in beslag geneem en voor 'n landdros gebring word, moet die landdros summier beslis of daardie goed of voorwerpe nie ingevolge die wette betreffende die vervalsing van handelsmerke of die bedrieglike merk van handelsware verbeur is nie.

(2) As die eienaar van goed of voorwerpe wat, as die eienaar daarvan skuldig bevind sou gewees het, ingevolge bedoelde wette verbeur sou wees, onbekend is of nie gevind kan word nie, kan 'n aangifte daarvan gedoen of 'n klage ingedien word deur 'n staatsaanklaer van die distrik waarin die goed of voorwerpe in beslag geneem word, enkel met die doel om so 'n verbeuring af te dwing, en die landdros van daardie distrik laat in die *Offisiële Koerant* en in 'n nuusblad in omloop in die distrik 'n kennismeting publiseer waarin vermeld word dat tensy redes daarteen op die in die kennismeting vermelde tyd en plek aangevoer word, sodanige goed of voorwerpe verbeurd verklaar sal word.

(3) Op bedoelde tyd en plek kan die landdros sodanige goed of voorwerpe, of enige deel daarvan, verbeurd verklaar tensy die eienaar of iemand ten behoeve van hom of iemand anders wat belang het by die goed of voorwerpe, redes daarteen aanvoer.

53. (1) As dit vir 'n landdros op grond van 'n klage onder eed gedoen deur 'n ouer, eggenoot, familiebetrek-

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

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

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

- (a) being under the age of sixteen years, is detained for those purposes whether against her will or not; or
- (b) being of or over the age of sixteen years and under the age of twenty-one years, is, for those purposes, detained against her will or against the will of her father or mother or of any other person who has the lawful care or charge of her; or
- (c) being of or above the age of twenty-one years, is for those purposes, detained against her will,

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

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

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

CHAPTER VI.

PREPARATORY EXAMINATIONS.

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

- (a) in any case in which the attorney-general declines to prosecute, a superior court or any judge thereof may, upon the application of any person who in terms of section *eleven* or *twelve* is competent to prosecute in respect of that offence, direct any magistrate to take a preparatory examination against the accused or order any person to be committed for trial whether any preparatory examination has been held against such person or not;
- (b) an accused shall be deemed to have been committed for trial for or in respect of the offence charged in the indictment, if the evidence given before the magistrate contain an allegation of any fact upon which the accused might have been committed for trial upon the charge named in the indictment notwithstanding that the magistrate committed him for an offence other than that charged in the indictment or for an offence not known to the law;
- (c) an accused who is in custody when brought to trial or who appears for trial in pursuance of any recognizance entered into before any magis-

king of voog van 'n vrou of meisie, of enigiemand anders wat, volgens die oordeel van die landdros, te goeder trou in die belang van 'n vrou of meisie handel, blyk dat daar redelike gronde bestaan om te vermoed dat so 'n vrou of meisie deur iemand op 'n plek binne die landdros se regsgebied vir onsedelike doeleindest wederregtelik aangehou word, kan hy 'n lasbrief uitreik wat gerig is aan 'n vredesbeampte en hom magtig om na bedoelde vrou of meisie te soek en om haar, wanneer sy gevind word, te neem na en aan te hou in 'n veilige plek totdat sy voor 'n landdros gebring kan word; en die landdros voor wie sy gebring word, kan haar aan haar ouers, egenoot, familiebetrekings of voogde laat afgee, of andersins, na gelang die omstandighede dit toelaat of vereis, met haar handel.

(2) Die landdros wat die lasbrief uitreik, kan deur die lasbrief gelas dat iemand wat daarvan beskuldig word dat hy die vrou of meisie aldus wederregtelik aanhou, in hegtenis geneem en voor hom of 'n ander landdros wat regsgeweld besit, gebring word.

(3) 'n Vrou of meisie word geag vir onsedelike doeleindest wederregtelik aangehou te word as sy —

- (a) onder die ouderdom van sestien jaar is en vir daardie doeleindest, hetsy teen haar sin al dan nie, aangehou word; of
- (b) sestien jaar oud of ouer en onder die ouderdom van een-en-twintig jaar is en vir daardie doeleindest teen haar sin of teen die sin van haar vader of moeder of van enigiemand anders onder wie se wettige sorg of toesig sy is, aangehou word; of
- (c) een-en-twintig jaar oud of ouer is en vir daardie doeleindest teen haar sin aangehou word,

en 'n vrou of meisie word geag vir onsedelike doeleindest aangehou te word as sy deur enigiemand aangehou word sodat 'n manspersoon, hetsy 'n bepaalde man al dan nie, wederregtelik met haar vleeslike gemeenskap kan hê.

(4) 'n Vredesbeampte wat by lasbrief ingevolge hierdie artikel gemagtig word om na 'n vrou of meisie te soek, kan, indien nodig, 'n in die lasbrief vermelde perseel met geweld binnegaan en die vrou of meisie daaruit verwyder.

(5) Die lasbrief word deur die daarin vermelde vredesbeampte uitgevoer, en tensy die landdros anders gelas, word daardie vredesbeampte vergesel van die ouer, egenoot, familiebetrekking, voog of ander persoon deur wie die klakte gedoen is, as sodanige persoon dit verlang.

HOOFSTUK VI.

VOORLOPIGE ONDERSOEKE

54. Niemand word weens 'n misdryf in 'n hoëhof verhoor nie tensy hy deur 'n landdros weens of ten opsigte van die misdryf in die akte van beskuldiging ten laste gelê, ter strafzitting verwys is, hetsy die verwysing al dan nie geskied het op las van die Prokureur-generaal ingevolge die bevoegdhede by paragraaf (c) van subartikel (1) van artikel *een-en-tachtig* aan hom verleen: Met dien verstande dat —

- (a) in 'n geval waar die Prokureur-generaal weier om te vervolg, 'n hoëhof of enige regter daarvan op aansoek van iemand wat ingevolge artikel *elf* of *twaalf* bevoeg is om ten opsigte van daardie misdryf te vervolg, 'n landdros kan gelas om 'n voorlopige ondersoek teen die beskuldigde te hou, of kan gelas dat iemand ter strafzitting verwys word, hetsy 'n voorlopige ondersoek teen so iemand gehou is al dan nie;
- (b) 'n beskuldigde geag word ter strafzitting verwys te gewees het weens of ten opsigte van die aanklag in die akte van beskuldiging ten laste gelê as die getuenis voor die landdros afgelê 'n feitelike bewering inhoud op grond waarvan die beskuldigde weens die aanklag in die akte van beskuldiging vermeld, ter strafzitting verwys kon geword het, ondanks die feit dat die landdros hom weens 'n ander misdryf as dié in die akte van beskuldiging ten laste gelê of weens 'n misdryf wat regtens nie bestaan nie, verwys het;
- (c) 'n beskuldigde wat in hegtenis is wanneer hy op verhoor gestel word, of wat vir sy verhoor verskyn ooreenkomsdig 'n borgakte voor 'n landdros aan-

trate, shall be deemed to have been duly committed for trial upon the charge stated in the indictment unless he proves the contrary.

SECURING PRESENCE OF ACCUSED.

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

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

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

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

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

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

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

(4) The provisions of sub-sections (3), (4), (5), (6) and (7) of section *two hundred and eighty-nine* are applicable *mutatis mutandis* if the parent or guardian who has been warned as aforesaid and who has not been exempted under sub-section (2), fails to attend on the date and at the time appointed for the appearance of the person summoned at the preparatory examination or if it appears from evidence given under oath that he is evading service of the summons and notice referred to in sub-section (1) or if it appears from such evidence that he attended but failed to remain in attendance.

MAGISTRATES BEFORE WHOM PREPARATORY EXAMINATIONS MAY BE HELD.

58. (1) Where an offence is committed on the boundary or boundaries of two or more magisterial districts or

gegaan, geag word behoorlik ter strafzitting verwys te gewees het weens die aanklag in die akte van beskuldiging vermeld, tensy hy die teendeel bewys.

VERKRYGING VAN AANWESIGHEID VAN BESKULDIGDE

55. Indien daartoe versoek deur 'n staatsaanklaer wat besluit het om 'n voorlopige ondersoek teen iemand wat nie in hegtenis is nie, in te stel, reik die klerk van die hof waaraan daardie staatsaanklaer verbonde is, 'n dagvaarding uit wat bedoelde persoon aansé om voor die landdros van daardie hof vir 'n voorlopige ondersoek teen hom te verskyn, en oorhandig hy bedoelde dagvaarding aan die persoon wat dit ingevolge subartikel (2) van artikel *ses-en-vyftig* moet bestel.

56. (1) 'n Dagvaarding in artikel *vyf-en-vyftig* bedoel, word aan die beskuldigde gerig, en moet die aard van die misdryf wat hy na bewering gepleeg het, en die dag en uur waarop en die plek waar hy moet verskyn, aangee.

(2) Iedere dagvaarding word deur iemand wat gemagtig is om strafprosesstukke te bestel, aan die beskuldigde aan wie dit gerig is, bestel, deur dit of aan hom persoonlik te oorhandig of, as hy nie maklik gevind kan word nie, vir hom by sy besigheidsplek of sy gewone of jongsbekende verblyfplek by 'n bewoner daarvan te laat.

(3) Die bestelling van so 'n dagvaarding kan bewys word deur die getuenis onder eed van die persoon wat die bestelling gedoen het, of deur 'n beëdigde verklaring deur hom of deur 'n relaas van bestelling deur hom onderteken.

57. (1) Wanneer iemand onder die ouderdom van agtien jaar soos voormeld gedagvaar word, bestel die persoon wat die dagvaarding bestel 'n afskrif daarvan aan 'n ouer of die voog van die gedagvaarde as hy binne die regssgebied van die landdros wat die voorlopige ondersoek sal hou, gevind kan word, en aan die afskrif wat aldus bestel word, word 'n kennisgewing geheg waarin die genoemde ouer of voog aangesê word om die voorlopige ondersoek by te woon op die datum en uur waarop en op die plek waar die gedagvaarde aangesê is om te verskyn, en om gedurende die voorlopige ondersoek of, as die voorlopige ondersoek in 'n summiere verhoor omgeskep word, gedurende die verhoor aanwesig te bly.

(2) Wanneer 'n ouer of voog soos voormeld aangesê is, kan die kommissaris van kindersorg vir die distrik waarin die voorlopige ondersoek gehou staan te word, op aansoek van bedoelde ouer of voog, hom skriftelik van die verpligting om aan die genoemde aansegging gehoor te gee, vrystel, en wanneer 'n kommissaris van kindersorg so 'n vrystelling verleen het, stuur hy 'n afskrif daarvan aan die klerk van die landdroshof vir die distrik waarin die voorlopige ondersoek gehou staan te word, wat dit aan die landdros wat die voorlopige ondersoek gaan hou, voorlê.

(3) As die ouer of voog van iemand onder die ouderdom van agtien jaar teen wie 'n voorlopige ondersoek gehou word, nie 'n kennisgewing in subartikel (1) bedoel ontvang het nie, kan die landdros wat die voorlopige ondersoek hou te eniger tyd gedurende daardie ondersoek iemand gelas om 'n ouer of die voog mondeling aan te se om soos voormeld die voorlopige ondersoek by te woon en aanwesig te bly, of om so 'n skriftelike aansegging aan 'n ouer of die voog te bestel.

(4) Die bepalings van subartikels (3), (4), (5), (6) en (7) van artikel *tweehonderd negen-en-tig* is *mutatis mutandis* van toepassing as die ouer of voog wat soos voormeld aangesê is en wat nie ingevolge subartikel (2) vrygestel is nie, versuum om te verskyn op die datum en uur wat bepaal is vir die verskyning van die gedagvaarde by die voorlopige ondersoek of as dit uit getuenis onder eed afgelê blyk dat hy die bestelling van die dagvaarding en kennisgewing in subartikel (1) bedoel, ontwyk, of as dit uit sodanige getuenis blyk dat hy aanwesig was maar versuum het om aanwesig te bly.

LANDDROSTE VOOR WIE VOORLOPIGE ONDERSOEK GEHOU KAN WORD

58. (1) Wanneer 'n misdryf op die grens of grense van twee of meer landdrosdistrikte of binne 'n afstand van

within the distance of two miles beyond any such boundary or boundaries, the preparatory examination may be held in any of the said districts.

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

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

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

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

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

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

(5) Where the accused is charged with kidnapping, child-stealing or abduction, the preparatory examination may be held in the magisterial district in which the kidnapping, child-stealing or abduction took place or in any magisterial district through or in which he conveyed or concealed or detained the person kidnapped, stolen or abducted.

(6) (a) The attorney-general may, whenever he deems it expedient owing to the number of accused involved in any criminal proceedings or with a view to avoiding excessive inconvenience or the disturbance of public order, direct in writing that the preparatory examination be held at a specified place and at a specified time in any district.

(b) A copy (including a telegraphic copy) of any direction by the attorney-general under paragraph (a) shall serve as a warrant for the removal of the accused from any place where he may be in custody to any prison in the district in which the preparatory examination is to be held.

(c) Upon service of any such copy on an accused who has been released on bail, the recognizances of the bail shall be deemed to be extended to the time and place specified in the direction: Provided that the recognizances of persons bound thereby shall not be liable to forfeiture unless notice of such time and place has been given to them.

(7) In any case not falling within any of the preceding provisions of this section, the attorney-general may direct that the preparatory examination shall be held in any district.

(8) In case of any doubt or dispute as to the magisterial district in which a preparatory examination should be held or of an objection on the part of the accused

twee myl buite sodanige grens of grense gepleeg word, kan die voorlopige ondersoek in enige van genoemde distrikte gehou word.

(2) Wanneer 'n misdryf gepleeg word in of op enige voertuig wat vir 'n reis gebruik word of aan boord van enige vaartuig wat gebruik word vir 'n seereis in die territoriale waters van die Gebied of vir 'n reis op 'n rivier wat binne enige deel van die Gebied is of wat die grens van enige deel daarvan uitmaak, kan die voorlopige ondersoek gehou word in enige landdrosdistrik wat grens aan die territoriale waters waarin, of deur 'n deel waarvan of op of binne die afstand van twee myl buite die grens waarvan so 'n voertuig of vaartuig beweeg het in die loop van die reis of seereis waartydens die misdryf gepleeg is.

(3) Wanneer 'n misdryf op 'n trein gepleeg word, kan die voorlopige ondersoek in enige landdrosdistrik in 'n deel waarvan so 'n trein gereis het, gehou word.

59. (1) 'n Voorlopige ondersoek kan gehou word in enige landdrosdistrik waarin die betrokke misdryf gepleeg is of waarin enige doen of late of voorval wat 'n bestanddeel van die misdryf uitmaak, plaasgevind het, of waarin die beskuldigde in hechtenis geneem is of in hechtenis is of op enige plek wat die Prokureur-generaal bepaal en waarin die beskuldigde toestem. Enige sodanige bepaling en toestemming word deur die landdros in die notule aangegeteken.

(2) Wanneer die beskuldigde aangekla word weens diefstal of weens die verkryging van goed deur middel van 'n misdryf, kan die voorlopige ondersoek gehou word in enige landdrosdistrik waarin enige deel van die goed aldus gesteel of deur middel van so 'n misdryf verkry, in sy besit gevind word.

(3) Wanneer die beskuldigde aangekla word weens 'n misdryf wat die ontvangs van goed deur hom insluit, kan die voorlopige ondersoek gehou word in enige landdrosdistrik waarin hy enige deel van die goed in sy besit het.

(4) Wanneer die feite aantoon dat 'n beskuldigde wat weens 'n misdryf aangekla word iemand tot die pleging daarvan aangeraai of oorgehaal het of die oortreder na die pleging daarvan geherberg of bygestaan het, kan die voorlopige ondersoek gehou word in enige landdrosdistrik waarin die voorlopige ondersoek in die geval van die hoofortreder gehou sou kan word.

(5) Wanneer die beskuldigde weens menseroof, kinderdiebstal of ontvoering aangekla word, kan die voorlopige ondersoek gehou word in die landdrosdistrik waarin die menseroof, kinderdiebstal of ontvoering plaasgevind het, of in enige landdrosdistrik waardeur of waarbinne hy die ontvoerde of gesteelde persoon vervoer of weggesteek of aangehou het.

(6) (a) Die Prokureur-generaal kan, wanneer hy dit dienstig ag weens die aantal beskuldiges by 'n strafsaak betrokke of ten einde buitensporige ongerief of die verstoring van die openbare orde te vermy, skriftelik gelas dat die voorlopige ondersoek op 'n bepaalde plek en 'n bepaalde tyd in enige distrik gehou moet word.

(b) 'n Afskrif (met inbegrip van 'n telegrafiese afskrif) van 'n bevel deur die Prokureur-generaal kragtens paragraaf (a) dien as 'n lasbrief vir die verwydering van die beskuldigde van enige plek waar hy in hechtenis is na 'n gevangenis in die distrik waarin die voorlopige ondersoek gehou moet word.

(c) Wanneer so 'n afskrif aan 'n beskuldigde bestel word wat op borgtog vrygelaat is, word dit geag dat die borgakte van die borgtog uitgebrei is na die tyd en plek in die bevel bepaal: Met dien verstande dat die borgakte van persone wat daarkragtens verbind is, nie aan verbeurdverklaring onderhewig is tensy kennisgewing van bedoelde tyd en plek aan hulle gegee is nie.

(7) In 'n geval wat nie binne die bestek van enige van die voorafgaande bepaling van hierdie artikel val nie, kan die Prokureur-generaal gelas dat die voorlopige ondersoek in enige distrik gehou moet word.

(8) In geval van twyfel of 'n geskil aangaande die landdrosdistrik waarin 'n voorlopige ondersoek gehou moet word, of van 'n beswaar van die kant van die be-

the holding of such examination in any particular district or where more than one offence is alleged to have been committed by the accused but in different districts, the matter shall be referred to the attorney-general, who may direct in which district a preparatory examination or preparatory examinations shall be held, and his direction shall be conclusive and not subject to appeal to any court.

PROCEDURE AT PREPARATORY EXAMINATION.

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

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

61. Subject to the provisions of section *seventy-two* a preparatory examination shall be held at a place appointed under section *two* of the Magistrates' Courts Ordinance, 1963, for the holding of a magistrate's court (including a periodical court and a detached court) and shall be open to the public: Provided that —

- (a) a preparatory examination against a person who is or against two or more persons jointly who are all under the age of eighteen years, shall be held in a building or room (if a suitable one is available) other than that in which criminal proceedings against persons over that age are ordinarily conducted;
- (b) no person other than an accused and his attorney or counsel and other than a parent or the guardian or a person *in loco parentis* of an accused who is a minor or of a minor who is giving evidence, shall be present at a preparatory examination referred to in paragraph (a) unless his presence is necessary in connection with that examination or unless the magistrate holding the examination has authorized him to be present;
- (c) no person under the age of eighteen years other than an accused shall be present at any preparatory examination except while he is actually giving evidence thereat or unless the magistrate holding the examination has authorized him to be present.

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

63. Whenever any inferior court has stopped the summary trial of an accused under the powers conferred

skuldigde teen die hou van so 'n ondersoek in 'n bepaalde distrik, of wanneer meer as een misdryf na bewering deur die beskuldigde, maar in verskillende distrikte gepleeg is, word die aangeleentheid na die Prokureur-generaal verwys wat kan gelas in watter distrik 'n voorlopige ondersoek of voorlopige ondersoeke gehou moet word, en sy opdrag is afdoende en nie aan appèl by 'n hof onderhewig nie.

PROSEDURE BY VOORLOPIGE ONDERSOEK

60. (1) Wanneer die beskuldigde voor 'n regbsbevoegde landdros verskyn, hetsy vrywillig of nadat hy gedagvaar of met of sonder 'n lasbrief weens enige misdryf in hegtenis geneem is en die plaaslike staatsaanklaer of ander persoon wat met die vervolging in strafseake belas is, besluit het om 'n voorlopige ondersoek teen die beskuldigde in te stel, gaan die landdros daartoe oor om op die wyse hierna beskryf na die aanklagtes teen die beskuldigde ondersoek in te stel.

(2) Op enige stadium na die aanvang van 'n voorlopige ondersoek kan iemand wat verdink word van die pleging of deelneming aan die pleging van die misdryf ten opsigte waarvan die voorlopige ondersoek ingestel is, met die beskuldigde saamgevoeg word, en daarna moet die voorlopige ondersoek teen die beskuldigde en so iemand gesamentlik voortgesit word: Met dien verstande dat die getuenis wat deur 'n getuie voor so 'n samevoeging afgelê is, aan so iemand voorgelees moet word, en as hy of sy verteenwoordiger die landdros wat die voorlopige ondersoek hou, versoek om so 'n getuie terug te roep om onderkruisverhoor geneem te word, die landdros hom moet terugroep en, indien nodig, gelas dat hy gedagvaar moet word om weer voor hom te verskyn om deur genoemde persoon of sy verteenwoordiger gekruisvra en deur die staatsaanklaer herondervra te word.

61. Behoudens die bepalings van artikel *twee-en-seventig* word 'n voorlopige ondersoek gehou op 'n plek wat ingevolge artikel *twee* van die Ordonnansie op Landdroshowe 1963 vir die hou van 'n landdroshof ('n periedieke hof en 'n gedetasjeerde hof inbegrepe) aangewys is, en is dit vir die publiek toeganklik: Met dien verstande dat —

- (a) 'n voorlopige ondersoek teen 'n persoon wat, of teen twee of meer persone gesamentlik wat almal onder die ouderdom van agtien jaar is, in 'n ander gebou of vertrek (as 'n gesikte beskikbaar is) as dié waarin strafseake teen persone bo daardie ouderdom gewoonlik gevoer word, gehou word;
- (b) niemand behalwe 'n beskuldigde en sy prokureur of advokaat en 'n ouer of die voog of iemand in die plek van 'n ouer van 'n minderjarige beskuldigde of van 'n minderjarige wat getuenis aflu, by 'n voorlopige ondersoek in paragraaf (a) bedoel teenwoordig kan wees nie, tensy sy teenwoordigheid in verband met daardie ondersoek nodig is of tensy die landdros wat die ondersoek hou aan hom toestemming verleen het om teenwoordig te wees;
- (c) niemand onder die ouderdom van agtien jaar, behalwe 'n beskuldigde, by 'n voorlopige ondersoek teenwoordig kan wees nie, behalwe solank hy werklik getuenis daarby aflu, of tensy die landdros wat die ondersoek hou aan hom toestemming verleen het om teenwoordig te wees.

62. Geen onreëlmaturheid of gebrek in die inhoud of vorm van die dagvaarding of lasbrief of in die wyse van inhegtenisneming, en geen verskil tussen die aanklag in die dagvaarding of lasbrief bevat en dié in die aangifte van die misdryf bevat, of tussen enige daarvan en die getuenis wat van die kant van die vervolging by die voorlopige ondersoek aangevoer word, doen afbreuk aan die geldigheid van enige strafverrigtinge by die ondersoek of daarna nie: Met dien verstande dat as dit vir die landdros blyk dat die beskuldigde deur so 'n verskil bedrieg of mislei is, hy die ondersoek tot 'n toekomstige dag kan uitstel, en intussen die beskuldigde in hegtenis kan hou of hom op borgtogg kan vrylaat soos hierna bepaal word.

63. Wanneer 'n laer hof die summiere verhoor van 'n beskuldigde ingevolge die bevoegdheid verleen by die wet

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

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

(2) Subject to the proviso to sub-section (2) of section *sixty* and to sections *sixty-six* and *eighty-five*, the evidence given by a witness at a preparatory examination shall be given in the presence of the accused, shall be recorded and shall (except where it was recorded in shorthand writing or by mechanical means), be read over to the witness who gave it or read by such witness, and if such evidence was recorded in shorthand writing or by mechanical means, such record shall be transcribed and any document purporting to be a transcription of the original record of the said evidence and purporting to have been certified as correct under the hand of the person who transcribed such evidence, shall *prima facie* be equivalent to such original record.

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

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

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

(6) No person shall at any time publish in any manner described in sub-section (5) the name, address, school, place of occupation or any other information likely to reveal the identity of any person under the age of eighteen years against whom any preparatory examination is being or has been held: Provided that, subject to the provisions of sub-section (5), if the Administrator or if the magistrate who holds or held

wat so 'n hof beheers, gestaak het en die saak daarop in 'n voorlopige ondersoek omgeskep is, hoef die landdros nie 'n getuie wat reeds getuienis by daardie verhoor afgelê het, terug te roep nie, maar het die landdros se notule van die getuienis aldus afgelê, wat deur hom as huis gesertifiseer is, of as bedoelde getuienis in snelskrif of op meganiese wyse aangeteken is, 'n stuk wat 'n oorskrywing van die oorspronklike aantekening van bedoelde getuienis heet te wees en deur die persoon wat bedoelde getuienis oorgeskryf het, as huis gesertifiseer en onderteken heet te wees, vir alle moontlike doeleinades dieselfde regskrag en gevolg en is dit onder dieselfde omstandighede as getuienis toelaatbaar as die getuienis in die loop van 'n voorlopige ondersoek, op die wyse in artikel *vier-en-sestig* bepaal, afgelê: Met dien verstande dat as dit vir die landdros blyk dat dit geregtigheidshalwe nodig mag wees om 'n getuie wat reeds ondervra is, vir verdere ondervraging terug te roep, so 'n getuie dan gedagvaar en dienoorkomstig ondervra moet word en die getuenis deur hom afgelê, op dieselfde wyse as ander getuenis by 'n voorlopige ondersoek afgelê, aangeteken word.

64. (1) Behalwe wanneer daar regtens van 'n eed afgesien kan word, moet al die getuienis by 'n voorlopige ondersoek onder eed of onder bevestiging, wanneer laasgenoemde regtens veroorloof is, afgeneem word, en iedere getuie moet, voordat hy getuienis afgelê, voor die landdros voor wie hy ondervra staan te word, 'n eed afgelê of bevestig, na gelang, dat in al sy getuienis hy die waarheid, die algemene waarheid, en niks anders as die waarheid nie, sal praat, en iedere getuie moet afsonderlik van die ander ondervra word.

(2) Behoudens die voorbeholdsbeplaling by subartikel (2) van artikel *sestig* en artikels *ses-en-sestig* en *vyf-en-tagting*, word die getuienis van 'n getuie by 'n voorlopige ondersoek in die teenwoordigheid van die beskuldigde afgelê, aangeteken en (behalwe waar dit in snelskrif of op meganiese wyse aangeteken is) aan die getuie wat dit afgelê het, voorgelees of deur bedoelde getuie gelees en as sodanige getuienis in snelskrif of op meganiese wyse aangeteken is, word die aantekeninge oorgeskryf en 'n stuk wat 'n oorskrywing van die oorspronklike aantekening van genoemde getuienis heet te wees en deur die persoon wat sodanige getuienis oorgeskryf het, as huis gesertifiseer en onderteken heet te wees, is *prima facie* gelykstaande aan so 'n oorspronklike aantekening.

(3) Die beskuldigde of sy verteenwoordiger kan so 'n getuie onder kruisverhoor neem, en daarna kan die staatsaanklaer hom herondervra.

(4) Getuenis wat ingevolge artikel *vyf-en-tagting* in die afwesigheid van die beskuldigde afgelê is, kan aan hom by die voorlopige ondersoek voorgelees word en word geag by daardie ondersoek afgelê te gewees het, en daarop is die voorbecondsbeplaling by subartikel (2) van artikel *sestig* van toepassing.

(5) Wanneer 'n voorlopige ondersoek gehou word ten opsigte van 'n aanklag dat die beskuldigde 'n onsedelike daad teenoor iemand anders gepleeg het of gepoog het om dit te pleeg, of 'n daad verrig het of gepoog het om 'n daad te verrig om die pleging van 'n onsedelike daad teenoor of ten opsigte van iemand anders te bewerkstellig of aan te help, of dat die beskuldigde afpersing gepleeg het of gepoog het om dit te pleeg of 'n wederregtelike misdryf wat bestaan uit die eis van iemand van 'n voordeel wat nie eisbaar was nie en die inboeseming van vrees by so iemand, wat so iemand gedwing het om so 'n voordeel af te staan, mag niemand te eniger tyd deur middel van die radio of in enige stuk enige inligting met betrekking tot genoemde voorlopige ondersoek of enige inligting wat daarby aan die lig gebring is, publiseer nie, tensy die landdros wat die voorlopige ondersoek hou, ná raadpleging met die persoon teen of ten opsigte van wie die misdryf wat ten late gelê word na bewering gepleeg is (of as hy minderjarig is, sy voog) skriftelik tot sodanige publikasie instem.

(6) Niemand mag te eniger tyd op enige wyse in subartikel (5) beskryf, die naam, adres, skool of werkplek van iemand onder die ouderdom van agtien jaar teen wie 'n voorlopige ondersoek gehou word of gehou is, of enige ander inligting wat waarskynlik die identiteit van so iemand aan die lig sal bring, publiseer nie: Met dien verstande dat as die Administrateur of as die landdros wat die voorlopige ondersoek hou of gehou het, meen dat so-

the preparatory examination is of the opinion that such publication would be just and equitable and in the interest of any particular person, he may by order dispense with the prohibition of this sub-section to such an extent as may be specified in the order.

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

65. If after a preparatory examination has commenced, the court is, upon application made in person by an accused or his representative, satisfied —

- (a) that the physical condition of that accused is such that he is unable to attend or that it is undesirable that he should attend the examination; or
- (b) that circumstances in connection with the illness or death of a member of that accused's family have arisen which make his presence elsewhere necessary or expedient,

the court may, if in its opinion the examination cannot be postponed without undue prejudice, embarrassment or inconvenience to the prosecution or any co-accused or any witness in attendance or subpoenaed to attend, authorize the absence of that accused from the examination for a period fixed by the court and subject to such conditions as it deems fit to impose.

66. (1) If after a preparatory examination has commenced, an accused —

- (a) absconds; or
- (b) conducts himself in such a manner that his removal from the court is desirable and is ordered by the court; or
- (c) is granted leave of absence under section *sixty-five*; or
- (d) is absent for any other reason,

the court may direct that the preparatory examination be proceeded with in his absence, and thereafter the said examination shall, except to the extent to which a special procedure is in this Chapter directed to be observed in the case of an absent accused, be proceeded with in all respects as if that absent accused were present.

(2) A direction referred to in sub-section (1) shall not be made if the court is of opinion that a postponement of the examination can be granted without undue prejudice, inconvenience or embarrassment to the prosecution or any co-accused or any witness in attendance or subpoenaed to attend.

(3) A preparatory examination in regard to which a direction is made that it be proceeded with in the absence of an accused, shall in respect of that accused, unless he is discharged under the provisions of sub-section (3) of section *seventy*, be postponed if he is not in attendance at the stage at which the provisions of section *sixty-eight* come into operation and be proceeded with, subject to the provisions of sub-sections (4) and (5), from that stage when the accused is again in attendance.

(4) If an accused in respect of whom the court has directed that a preparatory examination be proceeded with in his absence again attends at such examination, the evidence recorded in his absence shall not be required to be read over to him, but, if he was not represented during his absence, the court shall briefly inform him of the nature and purport of that evidence and permit him to inspect the record and to make or cause copies thereof to be made at all reasonable times under the supervision of the clerk of the court.

(5) If an accused in whose absence a preparatory examination was directed to be proceeded with again attends the examination, the court may, unless such accused was legally represented during his absence, upon the application of that accused or his representative recall for further examination any witness who testified at the examination during that accused's absence.

daniige publikasie regverdig en billik en in die belang van 'n bepaalde persoon sal wees, hy, behoudens die bepalings van subartikel (5), by bevel vrystelling van die verbood in hierdie subartikel bevat in die mate wat in die bevel bepaal word, kan verleen.

(7) Iemand wat subartikel (5) of (6) oortree, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens eenhonderd rand of met gevangenisstraf vir 'n tydperk van hoogstens drie maande of met beide sodanige boete en sodanige gevangenisstraf.

65. As die hof na die aanvang van 'n voorlopige ondersoek, op aansoek persoonlik gerig deur 'n beskuldigde of sy verteenwoordiger, oortuig is —

- (a) dat die fisiese toestand van daardie beskuldigde sodanig is dat hy nie in staat is om die ondersoek by te woon nie of dat dit onwenslik is dat hy die ondersoek moet bywoon; of
- (b) dat omstandighede in verband met die siekte of dood van 'n lid van daardie beskuldigde se familie ontstaan het wat die beskuldigde se teenwoordigheid elders nodig of raadsaam maak,

kan die hof, as die ondersoek syne insiens nie uitgestel kan word nie sonder onbehoorlike benadeling, belemmering of ongerief vir die vervolging of 'n medebeskuldigde of 'n getuie wat teenwoordig is of gedagvaar is om teenwoordig te wees, die afwesigheid van daardie beskuldigde van die ondersoek magtig vir 'n tydperk deur die hof bepaal en onderhewig aan die voorwaardes wat die hof goedvind om op te lê.

66. (1) As 'n beskuldigde na die aanvang van 'n voorlopige ondersoek —

- (a) vlug; of
- (b) hom op so 'n wyse gedra dat sy verwijdering uit die hof wenslik is en deur die hof gelas word; of
- (c) verlof tot afwesigheid kragtens artikel *vyf-en-sestig* toegestaan word; of
- (d) om enige ander rede afwesig is,

kan die hof gelas dat die voorlopige ondersoek in sy afwesigheid voortgaan, en daarna word, behalwe vir sover hierdie hoofstuk 'n spesiale prosedure voorskryf wat in die geval van 'n afwesige beskuldigde gevvolg moet word, met bedoelde ondersoek in alle opsigte voortgegaan asof daardie afwesige beskuldigde teenwoordig was.

(2) 'n Lasgewing bedoel in subartikel (1) word nie uitgereik nie as die hof meen dat 'n uitstel van die ondersoek verleen kan word sonder onbehoorlike benadeling, ongerief of belemmering vir die vervolging of 'n medebeskuldigde of 'n getuie wat teenwoordig is of gedagvaar is om teenwoordig te wees.

(3) 'n Voorlopige ondersoek met betrekking waartoe 'n lasgewing uitgereik is dat dit in die afwesigheid van 'n beskuldigde voortgaan, word met betrekking tot daardie beskuldigde, tensy hy kragtens die bepalings van subartikel (3) van artikel *sewentig* ontslaan word, uitgestel as hy nie teenwoordig is in die stadium waarop die bepalings van artikel *agt-en-sestig* in werking tree nie, en word, onderhewig aan die bepalings van subartikels (4) en (5), vanaf daardie stadium voortgesit wanneer die beskuldigde weer teenwoordig is.

(4) As 'n beskuldigde ten opsigte van wie die hof gelas het dat 'n voorlopige ondersoek in sy afwesigheid voortgaan, weer daardie ondersoek bywoon, word nie vereis dat die getuenis wat tydens sy afwesigheid afgeneem is aan hom voorgelees word nie, maar, as hy nie tydens sy afwesigheid verteenwoordig was nie, deel die hof hom kortlik die aard en strekking van daardie getuenis mee en laat die hof hom toe om op alle redelike tye onder toesig van die klerk van die hof die notule na te gaan en om afskrifte daarvan te maak of te laat maak.

(5) As 'n beskuldigde in wie se afwesigheid dit gelas is dat 'n voorlopige ondersoek voortgaan, weer die ondersoek bywoon, kan die hof, tensy 'n regstuurvoerder tydens die beskuldigde se afwesigheid vir hom opgetree het, op aansoek van daardie beskuldigde of sy verteenwoordiger 'n getuie wat by die ondersoek in die afwesigheid van daardie beskuldigde getuig het, vir verdere ondervraging oproep.

67. Whenever a court has in the course of a preparatory examination against two or more accused made a direction under sub-section (1) of section *sixty-six* and is unable to conclude the said examination in respect of an absent accused by reason of the provisions of sub-section (3) of the said section, the preparatory examination may be concluded against the accused then present in all respects as if he were the only accused appearing thereat.

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

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

(3) Before or after the accused's statement, if any, is made as aforesaid he may call and examine witnesses in his defence and, either before or after the examination of any such witness, may himself give evidence on oath.

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

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

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

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

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

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

(2) If the attorney-general determines, under the provisions of section *eighty-one*, to indict the accused for trial in a superior court, for any offence disclosed by the evidence taken at the preparatory examination, he may direct any magistrate of the district in which the accused is in custody, or if the accused is on bail, any

67. Wanneer 'n hof tydens 'n voorlopige ondersoek teen twee of meer beskuldigdes 'n lasgewing kragtens subartikel (1) van artikel *ses-en-sestig* uitgereik het en vanweë die bepalings van subartikel (3) van bedoelde artikel nie die ondersoek ten opsigte van 'n afwesige beskuldigde kan beëindig nie, kan die voorlopige ondersoek teen die beskuldigde wat dan teenwoordig is in alle opsigte beëindig word asof hy die enigste beskuldigde is wat daarby verskyn.

68. (1) Na die ondervraging van die getuienis ter stawing van die aanklag, vra die landdros die beskuldigde wat dan teenwoordig is wat hy in antwoord op die aanklag teen hom wil sê, as hy iets wil sê, en waarsku hy hom terselfdertyd dat hy nie verplig is om enige verklaring af te lê nie maar dat wat hy sê as getuienis teen hom aangevoer kan word.

(2) Die beskuldigde kan dan of in 'n latere stadium van die ondersoek 'n verklaring aflê of getuienis onder eed aflê, en iedere verklaring of getuienis aldus afgelê word vir sover dit by die aanklag ter sake is, neergeskryf en, nadat dit aan hom voorgelees is, deur hom onderteken, as hy gevwing is om dit te onderteken, en ook deur die landdros, en word by die blote voorlegging daarvan en sonder verdere bewys as getuienis voor enige hof toegeleent, tensy dit bewys word dat die verklaring of getuienis inderdaad nie afgelê is nie of dat die handtekeninge of merke daarby inderdaad nie die handtekeninge of merke is van die persone wie se handtekeninge of merke hulle heet te wees nie.

(3) Voor- of nadat die verklaring (as daar een is) van die beskuldigde soos voormeld afgelê word, kan hy getuienis vir sy verdediging oproep en ondervra en, of voor of na die ondervraging van so 'n getuie, self getuienis onder eed aflê.

(4) Geen bepaling van hierdie artikel verhinder 'n landdros om nadat hy enige getuienis deur of ten behoeve van die beskuldigde aangehoor het, verdere getuienis ten behoeve van die vervolging aan te hoor of om die ondersoek te heropen nie.

69. Geen bepaling van hierdie hoofstuk verhinder 'n aanklaer om 'n erkenning of 'n bekentenis of ander verklaring of getuienis deur 'n beskuldigde gedoen of afgelê, wat ingevolge hoofstuk XIII as getuienis teen hom toelaatbaar sou wees, as getuienis aan te bied nie.

70. (1) Sodra 'n voorlopige ondersoek beëindig is en die landdros meen dat die getuienis as 'n geheel beskou nie voldoende is om die beskuldigde op verhoor te stel nie, ontslaan hy hom; en in daardie geval verval enige borgakte ten opsigte van die aanklag aangegaan tensy die Prokureur-generaal binne agt-en-twintig dae, soos hieronder bepaal word, gelas dat die beskuldigde ter straf-sitting verwys word of dat hy voor die hof van 'n streek-afdeling verhoor word of dat 'n verdere ondersoek gehou word.

(2) Ondanks die feit dat die beskuldigde aldus ontslaan is, kan 'n lasbrief vir sy inhegtenisneming, op grond van ander inligting onder eed as dié wat by die voorlopige ondersoek aangeteken is, op las van die Prokureur-generaal uitgereik word deur 'n persoon wat ingevolge hoofstuk IV gemagtig is om lasbriewe vir inhegtenisneming uit te reik, en by die inhegtenisneming van die beskuldigde word 'n voorlopige ondersoek ten opsigte van die misdryf wat die beskuldigde ten laste geleë word, opnuut begin.

(3) Geen bepaling van hierdie artikel verhinder 'n landdros om 'n beskuldigde in 'n vroeër stadium van 'n voorlopige ondersoek te ontslaan nie as om redes deur die landdros aangeteken, hy meen dat die aanklag ongegrond is.

71. (1) Sodra 'n voorlopige ondersoek beëindig is, stuur die aanklaer, as hy inligting of redelike gronde het om te vermoed dat die beskuldigde vantevore weens 'n misdryf skuldig bevind is, besonderhede van die beweerde vorige skuldigbevinding regstreeks aan die Prokureur-generaal deur.

(2) As die Prokureur-generaal ingevolge die bepalings van artikel *een-en-tachtig* besluit om die beskuldigde vir verhoor voor 'n hoë hof aan te kla weens 'n misdryf wat deur die getuienis by die voorlopige ondersoek afgeneem, aan die lig gebring is, kan hy opdrag gee aan enige landdros van die distrik waarin die beskuldigde in hegtenis

magistrate of the district in which the accused was committed for trial or sentence, or with the consent of the accused, any other magistrate, to re-open the preparatory examination for the purpose of ascertaining whether the accused admits that he was previously convicted as aforesaid.

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

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

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

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

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

SPECIAL POWERS AND DUTIES OF MAGISTRATE ON PREPARATORY EXAMINATION.

72. A magistrate holding a preparatory examination may —

- (a) adjourn the examination to any place within or outside his jurisdiction if, through the inability, from illness or other cause, of the accused or a witness to attend at a place where the magistrate usually sits or if, from any other reasonable cause, it appears desirable to do so;
- (b) if it appears to him to be in the interest of good order or public morals or of the administration of justice, direct that the preparatory examination shall be held behind closed doors or that, with such exceptions as he may direct, females or minors or the public generally or any class thereof shall not be present thereat, and if a preparatory examination is to be held or is being held in respect of a charge referred to in sub-section (5) of section *sixty-four*, the magistrate may, at the request of the person against or in connection with whom the offence charged is alleged to have been committed, or if he is a minor, at the request of that person or of his guardian, whether made in writing before the commencement of the preparatory examination or orally at any time during the preparatory examination, direct that every person whose presence is not necessary in connection with the preparatory examination or any person or class of person mentioned in the request, shall not be present thereat;
- (c) direct that, while any person under the age of eighteen years is giving evidence, no person other than a person whose presence at the preparatory examination is necessary and other than a parent or the guardian or a person in *locum parentis* of the witness or of an accused who is a minor and other than an attorney or counsel of an accused, shall be present thereat;
- (d) regulate the conduct of the examination in any way which may appear to him desirable and which is not inconsistent with the provisions of this Ordinance or of any other law;
- (e) if it appears in the course of the examination that the magistrate's court of the district in which the examination is held, has jurisdiction to deal summarily with the offence which is the subject of the examination, and that it is desirable to try the accused summarily, with the consent of the prosecutor and the accused, stop the examination and place the accused on trial for that offence before such court, and the evidence already taken

is of, as die beskuldigde onder borgtogg is, aan enige landdros van die distrik waarin die beskuldigde ter strafsetting of vir vonnis verwys is, of, met toestemming van die beskuldigde, aan enige ander landdros, om die voorlopige ondersoek te heropen om vas te stel of die beskuldigde erken dat hy vantevore soos voormeld skuldig bevind is.

(3) (a) Die landdros heropen die voorlopige ondersoek ooreenkomsdig die opdrag van die Prokureur-generaal en deel aan die beskuldigde besonderhede van die beweerde vorige skuldigbevinding mee, en vra hom om te erken of te ontken dat hy aldus vantevore skuldig bevind is.

(b) As die beskuldigde erken dat hy aldus vantevore skuldig bevind is, word sy erkenning op skrif gestel en deur hom onderteken as hy gewillig is om dit te onderteken, en ook deur die landdros.

(c) Niemand behalwe die landdros, die staatsaanklaer, die beskuldigde, sy regadviseur en die nodige geleide van die beskuldigde mag by enige stappe deur die landdros ingevolge hierdie subartikel gedoen, teenwoordig wees nie.

(4) Afskrifte van enige erkenning of ontkenning deur die beskuldigde ingevolge hierdie artikel gedoen, word so spoedig moontlik aan die Prokureur-generaal deurgestuur.

(5) Behoorlike sorg word deur iedere beampete gedra dat, behalwe soos in hierdie artikel bepaal word, geen inligting met betrekking tot enige beweerde vorige skuldigbevinding van die beskuldigde aan enige openbaar word nie voordat bewys van so 'n vorige skuldigbevinding aangebied word soos in hoofstuk XV bepaal.

BESONDERE BEVOEGDHEDE EN PLIGTE VAN LANDDROS BY VOORLOPIGE ONDERSOEK

72. 'n Landdros wat 'n voorlopige ondersoek hou, kan —

- (a) die ondersoek na enige plek binne of buite sy regsgebied verdaag indien weens die onvermoë, as gevolg van ongesteldheid of ander oorsaak, van die beskuldigde of 'n getuie om die plek waar die landdros gewoonlik hofsittings hou, by te woon, of indien weens enige ander redelike oorsaak, dit wenslik blyk om dit te doen;
- (b) wanneer dit vir hom ter wille van die goeieorde of die openbare sedes of die regsgedeling nodig blyk, gelas dat die voorlopige ondersoek agter gesloten deure gehou word of dat, met sodanige uitsonderings soos hy gelas, vrouspersone of minderjariges of die publiek in die algemeen of enige kategorie daarvan nie daarby teenwoordig mag wees nie, en as 'n voorlopige ondersoek gehou staan te word of gehou word ten opsigte van 'n aanklag in subartikel (5) van artikel *vier-en-sestig* bedoel, kan die landdros op versoek van die persoon teen of ten opsigte van wie die misdryf wat ten laste gelê word, na bewering gepleeg is of, as hy minderjarig is, op versoek van daardie persoon of van sy voog, hetsoek skriftelik voor die aanvang van die voorlopige ondersoek of mondeling te eniger tyd gedurende die voorlopige ondersoek gedoen, gelas dat iedereen wie se teenwoordigheid nie in verband met die voorlopige ondersoek nodig is nie, of enige persoon of kategorie persone in die versoek vermeld, nie daarby teenwoordig mag wees nie;
- (c) gelas dat solank enige persoon onder die ouderdom van agtien jaar getuenis afle, niemand behalwe iemand wie se teenwoordigheid by die voorlopige ondersoek nodig is en behalwe 'n ouer of die voog of iemand in die plek van 'n ouer van die getuie of van 'n minderjarige beskuldigde en behalwe 'n prokureur of advokaat van 'n beskuldigde, daarby teenwoordig mag wees nie;
- (d) die waarneming van die ondersoek op enige wyse reël wat syns insiens wenslik is en wat nie met die bepalings van hierdie ordonnansie of 'n ander wet onbestaanbaar is nie;
- (e) as dit in die loop van die ondersoek blyk dat die landdroshof van die distrik waarin die ondersoek gehou word, regsvvoeg is om die misdryf wat die onderwerp van die ondersoek uitmaak, summier te bereg, en dat dit wenslik is om die beskuldigde summier te verhoor, met instemming van die aanklaer en die beskuldigde, die ondersoek staak en die beskuldigde weens daardie misdryf voor bedoelde hof op verhoor stel, en die getuenis reeds

at the examination, shall thereupon be deemed to have been recorded as evidence at such trial: Provided that either the prosecutor or the accused may require any person who has given evidence at the examination to be recalled for further examination: Provided further that, if the accused so requests, any evidence already taken at the examination shall be read to him;

- (f) if he is of opinion that a person under the age of eighteen years against whom the preparatory examination is held, is a child in need of care within the meaning of that expression as defined in section *one* of the Children's Ordinance, 1961 (Ordinance 31 of 1961), and that it is desirable to deal with him in terms of sections *twenty-eight* and *twenty-nine* of that Ordinance, with the consent of the prosecutor at any stage of the examination before committing the accused for trial or sentence, stop the proceedings and order that the child be brought before a children's court mentioned in section *four* of the said Ordinance and be dealt with under the said sections *twenty-eight* and *twenty-nine*;
- (g) if it appears in the course of the examination that the court of a regional division has jurisdiction to deal summarily with the offence which is the subject of the examination, and that it is desirable to try the accused summarily, with the consent of the prosecutor and the accused, stop the examination and proceedings shall then be recommenced *de novo* before the court of the regional division concerned.

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

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

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

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

COMMITTAL OF ACCUSED.

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

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

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

(4) Nothing in this section contained shall be construed as modifying the provisions of section *twenty-nine* of the Prisons Act, 1959 (Act 8 of 1959): Provided that

by die ondersoek afgeneem, word daarop geag as getuienis by die verhoor aangeteken te gewees het: Met dien verstande dat of die aanklaer of die beskuldigde kan eis dat 'n persoon wat by die ondersoek getuienis afgelê het, vir verdere ondervraging teruggeroep word: Met dien verstande voorts dat as die beskuldigde dit versoek, enige getuienis reeds by die ondersoek afgelê, aan hom voorgelees moet word;

- (f) as hy meen dat iemand onder die ouderdom van agtien jaar teen wie die voorlopige ondersoek gehou word, 'n sorgbehoewende kind is binne die bedoeling van daardie uitdrukking soos in artikel een van die Kinderordonnansie 1961 (Ordonnansie 31 van 1961) bepaal, en dat dit wenslik is om met hom kragtens artikels *agt-en-twintig* en *negen-en-twintig* van daardie ordonnansie te handel, die verrigtinge met instemming van die aanklaer in enige stadium van die ondersoek staak voordat hy die beskuldigde ter strafzitting of vir vennis verwys, en gelas dat die kind voor 'n kinderhof vermeld in artikel *vier* van die genoemde ordonnansie gebring word en kragtens genoemde artikels *agt-en-twintig* en *negen-en-twintig* met hom gehandel word;
- (g) as dit in die loop van die ondersoek blyk dat die hof van 'n streekafdelingregsbevoeg is om die misdryf wat die onderwerp van die ondersoek uitmaak, summier te bereg en dat dit wenslik is om die beskuldigde summier te verhoor, met instemming van die aanklaer en die beskuldigde, die ondersoek staak, en die verrigtinge begin dan weer van nuuts of aan voor die hof van die betrokke streekafdeling.

73. Die landdros wat 'n voorlopige ondersoek hou en die aanklaer moet die ondersoeke ter plaatse wat die besondere omstandighede van die geval vereis, instel of laat instel, en in 'n geval van manslag of van ernstige liggaamlike besering aan iemand, die lyk of die beseerde persoon laat ondersoek deur 'n geregistreerde geneesheer of, as 'n geregistreerde geneesheer nie beskikbaar is nie, deur die bekwaamste beskikbare persoon wat 'n skrifte-like verklaring van die verskynsels en feite by sodanige ondersoek waargeneem, moet voltooi en onderteken.

74. Die landdros wat 'n voorlopige ondersoek hou, laat 'n lys opmaak van alle dokumente en enige ander voorwerpe hoegenaamd wat in die loop van die ondersoek deur die getuies vertoon is en waarskynlik as bewys by die verhoor van die beskuldigde gebruik sal word, en laat etikette daaraan heg of laat dit op 'n ander manier merk, en laat alle sodanige dokumente en voorwerpe in veilige bewaring hou totdat die verhoor plaasvind.

75. (1) Die landdros stuur so spoedig moontlik na die beëindiging van 'n voorlopige ondersoek wat deur hom gehou is, 'n afskrif van die notule daarvan aan die Prokureur-generaal vir sy oorweging.

(2) As die vervolging deur 'n private aanklaer ingestel is, stuur die Prokureur-generaal, as hy weier om van staatsweé te vervolg, so 'n afskrif saam met so 'n sertifikaat soos in artikel *veertien* bedoel word, aan daardie private aanklaer.

VERWYSING VAN BESKULDIGDE

76. (1) Wanneer dit by die beëindiging van die voorlopige ondersoek vir die landdros blyk dat daar voldoende rede bestaan om die beskuldigde weens 'n oortreding op verhoor te stel, verwys die landdros die beskuldigde ter strafzitting voor so 'n bevoegde hof soos die Prokureur-generaal besluit, en verwys hy hom by wyse van lasbrief na 'n gevangenis waar hy aangehou word totdat hy weens die oortreding op verhoor gestel word of totdat hy op borgtogg vrygelaaat of mettertyd regtens vrygestel word.

(2) 'n Lasbrief ingevolge subartikel (1) uitgereik moet die misdryf waarvan die beskuldigde aangekla word, duidelik aangee.

(3) 'n Landdros kan 'n bevel vir verwysing of ontslag uitrek ofskoon 'n gedeelte van die ondersoek deur 'n ander landdros gehou is.

(4) Geen bepaling van hierdie artikel word so uitgelê dat dit die bepalings van artikel *negen-en-twintig* van die Wet op Gevangenis 1959 (Wet 8 van 1959) wysig nie: Met dien verstande dat 'n verwysing in die genoemde

reference in the said section twenty-nine to section sixty-seven of the Children's Act, 1937 (Act 31 of 1937), the Republic shall be construed as a reference to section thirty-six of the Children's Ordinance, 1961 (Ordinance 31 of 1961).

77. (1) If an accused when making a statement in terms of section sixty-eight states that he is guilty of the charge, then the magistrate shall, except where the charge is one of treason, murder or rape, further say to him the words following or words to the like effect:

"Do you wish the witnesses again to appear to give evidence against you at your trial? If you do not you will now be committed for sentence instead of being committed for trial."

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

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

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

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

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

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

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

CONSIDERATION OF PREPARATORY EXAMINATION BY ATTORNEY-GENERAL

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

- (a) decline to prosecute the accused and shall thereupon cause his decision to be transmitted to the magistrate, who, if the accused is in custody, shall cause him to be liberated forthwith, or if he is not in custody, shall inform him of the attorney-general's decision; or
- (b) if the magistrate has committed the accused for trial or sentence, indict the accused for trial before a superior court, or except where the preparatory examination was held by the court of a regional division, give directions for the trial of

artikel negen-en-twintig na artikel sewen-en-dertig van die Kinderwet 1937 (Wet 31 van 1937) van die Republiek uitgelê moet word as 'n verwysing na artikel ses-en-dertig van die Kinderordonnansie 1961 (Ordonnansie 31 van 1961).

77. (1) As 'n beskuldigde, wanneer hy ingevolge artikel agt-en-sestig 'n verklaring afle, verklaar dat hy op die aanklag skuldig is, moet die landdros, behalwe wanneer die aanklag hoogverraad, moord of verkragting is, hom die volgende woorde of woorde met dieselfde strekking toevoeg: „Verlang jy dat die getuies weer moet verskyn om getuienis teen jou af te lê by jou verhoor? As jy dit nie verlang nie sal jy nou vir vonnis in plaas van strafslitting verwys word.”

(2) As die beskuldigde in antwoord op so 'n vraag verklaar dat hy nie verlang dat die getuies weer moet verskyn om getuienis teen hom af te lê nie, word sy verklaring op skrif gestel, aan hom voorgelees, deur die landdros en die beskuldigde onderteken, by die getuienis van die getuies gehou en aan die Prokureur-generaal gestuur.

(3) In 'n geval soos in subartikel (2) bedoel, moet die landdros, in plaas van die beskuldigde ter strafslitting te verwys, hom vir vonnis verwys deur so 'n bevoegde hof soos die Prokureur-generaal besluit, en verwys die landdros hom by wyse van lasbrief na 'n gevangeris waar hy aangehou word totdat bedoelde hof sitting hou of totdat hy op borgtog vrygelaat of mettertyd regtens vrygestel word.

78. In 'n geval waar 'n beskuldigde ter strafslitting of vir vonnis of verdere ondersoek weens 'n misdryf verwys is deur 'n landdros van 'n ander distrik as die distrik waarin die misdryf na bewering gepleeg is, kan bedoelde landdros die beskuldigde by wyse van lasbrief of na 'n gevangeris in die distrik waarin die misdryf na bewering gepleeg is, of na enige ander gevangeris verwys.

79. Die landdros van enige distrik moet op 'n aansoek te dien effekte deur die Prokureur-generaal onderteken, 'n lasbrief uitrek vir die oorplaasing van 'n beskuldigde wat weens 'n strafregtelike aanklag in die gevangeris van daardie distrik kragtens 'n lasbrief aangehou word, na die gevangeris van enige ander distrik in die aansoek aangedui vir aanhouding daarin vir verdere ondersoek, verhoor of vonnis of totdat hy mettertyd regtens daaruit vrygestel of oorgeplaas word.

80. (1) Wanneer dit blyk dat daar nie voldoende gronde is om die beskuldigde onmiddellik ter strafslitting te verwys of om hom te ontslaan nie en dit vir die landdros waarskynlik lyk dat verdere getuienis beskikbaar kan word, kan die landdros die beskuldigde by wyse van lasbrief vir 'n tydperk van hoogstens veertien dae vir verdere ondersoek verwys.

(2) 'n Verwysing vir verdere ondersoek kan, indien nodig, om 'n rede wat na die mening van die landdros voldoende is, meer as een maal geskied, en sodanige rede word in die lasbrief vir herverwysing aangegee.

(3) Iedere lasbrief vir verwysing vir verdere ondersoek moet die tyd wanneer die beskuldigde weer voor die landdros vir ondersoek gebring moet word, aangee: Met dien verstande dat die landdros met toestemming van die beskuldigde die ondersoek kan voortsit voor die verstryking van die tydperk in die lasbrief vermeld.

OORWEGING VAN VOORLOPIGE ONDERSOEK DEUR PROKUREUR-GENERAAL

81. (1) Na oorweging van die voorlopige ondersoek wat aan hom soos voormeld deurgestuur is, kan die Prokureur-generaal —

- (a) weler om die beskuldigde te vervolg en daarop laat hy sy beslissing aan die landdros deurstuur, wat, as die beskuldigde in hechtenis is, hom onverwyld vry laat stel of, as hy nie in hechtenis is nie, hom van die Prokureur-generaal se beslissing verwittig; of
- (b) as die landdros die beskuldigde ter strafslitting of vir vonnis verwys het, die beskuldigde vir verhoor voor 'n hoër hof aankla of, behalwe waar die voorlopige ondersoek deur die hof van 'n streekafdeling gehou is, opdragte uitrek vir die verhoor van die

the accused before the court of the regional division having jurisdiction in the place where the preparatory examination was held on a charge of any offence disclosed by the evidence taken at the preparatory examination, and shall inform the magistrate accordingly; or

- (c) (i) even if the magistrate has discharged the accused, indict the accused for trial before a superior court on a charge of any offence disclosed by the evidence taken at the preparatory examination and direct the magistrate so to commit the accused for trial if, in the attorney-general's opinion, the accused ought to have been so committed or, except where the preparatory examination was held by the court of a regional division, give directions for the trial of the accused before the court of the regional division having jurisdiction in the place where the preparatory examination was held;
- (ii) in either of the cases mentioned in sub-paragraph (i) order the magistrate to issue a warrant for the re-arrest of the accused if he has been discharged from custody, or direct that the recognizances shall remain in operation if the accused has been admitted to bail or give such other directions in respect of further proceedings against the accused as the attorney-general may think right and determine; or
- (d) unless the offence charged is treason, murder or rape, or the preparatory examination was held by the court of a regional division, remit the case to be dealt with under its ordinary jurisdiction, by the magistrates' court of the district in which the preparatory examination was held; or
- (e) unless the offence charged is treason, murder or rape, or the preparatory examination was held by the court of a regional division, remit the case to be dealt with by the magistrate's court of such district, under any increased jurisdiction conferred upon such court by any law governing magistrates' courts or by any other law; or
- (f) in any case in which a person has been committed for sentence under section *seventy-seven* unless the offence charged is treason, murder or rape, or the preparatory examination was held by the court of a regional division, remit the case to be dealt with by the magistrate's court of such district, either under its ordinary jurisdiction or under any increased jurisdiction conferred upon such court by any law governing magistrates' courts or by any other law; or
- (g) direct the magistrate to re-open the preparatory examination and take further evidence generally or in respect of any particular matter; or
- (h) take such measures and give such directions for the trial of the accused before a competent court as he may deem most expedient.

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

GENERAL.

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

83. An accused who is committed for trial or sentence for any offence, may demand from the person who has

beskuldigde voor die hof van die streekafdeling watregsbevoegdheid het op die plek waar die voorlopige ondersoek gehou is, op aanklag van 'n misdryf wat deur die getuenis by die voorlopige ondersoek afgeneem, aan die lig gebring is, en verwittig hy die landdros dienooreenkomsdig; of

- (c) (i) selfs as die landdros die beskuldigde ontslaai het, die beskuldigde voor 'n hoër hof aankla op aanklag van 'n misdryf wat deur die getuenis by die voorlopige ondersoek afgeneem, aan die lig gebring is en die landdros gelas om die beskuldigde aldus ter strafzitting te verwys as die beskuldigde na die oordeel van die Prokureur-generaal aldus verwys behoort te gewees het of, behalwe waar die voorlopige ondersoek deur die hof van 'n streekafdeling gehou is opdragte uitreik vir die verhoor van die beskuldigde voor die hof van die streekafdeling watregsbevoegdheid het op die plek waar die voorlopige ondersoek gehou is;
- (ii) in die een of ander in subparagraaf (i) bedoelde geval, die landdros gelas om 'n lasbrieven vir die herinhegtenisneming van die beskuldigde uit te reik, as hy uit hegtenis vrygestel is, of gelas dat die borgaktes van krag bly as borgtog aan die beskuldigde toegestaan is of sodanige ander opdragte ten opsigte van verdere stappe teen die beskuldigde uitreik soos die Prokureur-generaal goedvind en bepaal;
- (d) tensy die misdryf wat ten laste gelê word hoogverraad, moord of verkragting is, of die voorlopige ondersoek deur die hof van 'n streekafdeling gehou is, die saak terugverwys om deur die landdroshof van die distrik waarin die voorlopige ondersoek gehou is, ingevolge sy gewone regsbevoegdheid bereg te word; of
- (e) tensy die misdryf wat ten laste gelê word hoogverraad, moord of verkragting is, of die voorlopige ondersoek deur die hof van 'n streekafdeling gehou is, die saak terugverwys om deur die landdroshof van sodanige distrik bereg te word ingevolge enige verhoogde regsbevoegdheid wat deur enige wet op landdroshowe of deur enige ander wet aan sodanige hof verleen word; of
- (f) in 'n geval waar iemand ingevolge artikel *seventeen* vir vonnis verwys is, tensy die misdryf wat ten laste gelê word hoogverraad, moord of verkragting is, of die voorlopige ondersoek deur die hof van 'n streekafdeling gehou is, die saak terugverwys om deur die landdroshof van sodanige distrik bereg te word, of ingevolge sy gewone regsbevoegdheid, of ingevolge enige verhoogde regsbevoegdheid wat deur enige wet op landdroshowe of deur enige ander wet aan sodanige hof verleent word; of
- (g) die landdros gelas om die voorlopige ondersoek te heropen en om verdere getuenis in die algemeen of ten opsigte van 'n bepaalde aangeleenthed af te neem; of
- (h) die maatreëls tref en die opdragte uitreik wat hy die dienstigste ag vir die verhoor van die beskuldigde voor 'n bevoegde hof.

(2) Wanneer die Prokureur-generaal 'n saak na 'n landdroshof terugverwys, meld hy uitdruklik of hy die saak kragtens paragraaf (d), (e) of (f) van subartikel (1) van hierdie artikel terugverwys, en meld hy ook uitdruklik of hy die saak terugverwys om ingevolge die gewone regsbevoegdheid van die landdroshof of ingevolge enige voormalde verhoogderegsbevoegdheid bereg te word.

ALGEMEEN

82. 'n Saak wat ingevolge 'n bepaling van artikel *een-en-tachtig* na 'n landdroshof terugverwys word, word deur so 'n hof in alle opsigte in ooreenstemming met die toepaslike bepaling van hoofstuk IX tot en met hoofstuk XVII en ook in ooreenstemming met en onderworpe aan die wet op so 'n hof, bereg; en enige skuldig bevinding en enige vonnis ten opsigte daarvan opgelê, is aan hersiening of appèl onderworpe soos by bedoelde wet voorgeskryf.

83. 'n Beskuldigde wat weens 'n misdryf ter strafzitting of vir vonnis verwys word, kan 'n afskrif van die

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

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

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

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

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

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

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

88. The provisions of this Chapter relating to a district established under the Magistrates' Courts Ordinance, 1963, shall apply *mutatis mutandis* to any regional division established under the said Ordinance, in regard to preparatory examinations held by the court of a regional division under section *ninety-two* of the said Ordinance.

CHAPTER VII.

BAIL.

BEFORE CONCLUSION OF PREPARATORY EXAMINATION.

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

(2) If an accused released on bail before the preparatory examination is concluded, does not appear at

getuienis wat by die voorlopige ondersoek afgelê is en op grond waarvan hy aldus verwys is, en van sy eie verklaring of getuienis (indien daar is) van die persoon in wie se regmatige bewaring dit is, vorder, en bedoelde persoon moet binne 'n redelike tyd vanaf sodanige vordering en, tensy 'n advokaat deur die hof aangewys is om die beskuldigde *pro deo* te verdedig, teen betaling van 'n redelike bedrag van hoogstens acht sent per folio van honderd woorde, so 'n afskrif aan die beskuldigde of sy prokureur of agent oorhandig: Met dien verstande dat as so 'n vordering nie gedoen word nie voor die dag bepaal vir die aanvang van die verhoor van die persoon ten behoeve van wie die vordering gedoen word, bedoelde persoon nie op so 'n afskrif geregtig is nie, tensy die regter wat by die verhoor voorsit van oordeel is dat so 'n afskrif sonder vertraging van of ongerief aan die verhoor, gemaak en oorhandig kan word: Met dien verstande voorts dat as so 'n regter dit goedvind hy die verhoor kan uitstellen omdat die beskuldigde nie vantevore so 'n afskrif ontvang het nie.

84. Iedere beskuldigde is geregtig om ten tyde van sy verhoor sonder die betaling van enige geldie al die getuienis, of 'n afskrif daarvan, en die verklaring of getuienis van die beskuldigde self, by die voorlopige ondersoek afgeneem, in te sien.

85. (1) 'n Landdros kan te eniger tyd op versoek van die plaaslike staatsaanklaer enige persoon wat waarskynlik ter sake dienende getuienis oor 'n beweerde misdryf kan aflê, hetsy dit bekend is of vermoed word al dan nie wie die persoon is deur wie die misdryf gepleeg is, aansê om voor hom te verskyn.

(2) Die bepalings van artikels *eenhonderd een-en-taggig, eenhonderd twee-en-taggig, eenhonderd vier-en-taggig, eenhonderd ses-en-taggig, eenhonderd sewen-en-taggig* en *eenhonderd vier-en-negentig* is van toepassing ten opsigte van persone wat ingevolge hierdie artikel aangesê word om te verskyn en getuienis af te lê: Met dien verstande dat die ondervraging van sulke persone in afsondering kan geskied op enige plek deur die landdros vir daardie doel aangewys.

86. (1) Behoudens enige wet met betrekking tot die bestuur van gevangenisse, het die vriende en regadviseurs van 'n beskuldigde die reg van toegang tot hom.

(2) Terwyl die voorlopige ondersoek gehou word, is 'n beskuldigde geregtig op die bystand van sy regadviseurs.

87. Wanneer 'n beskuldigde ter strafsetting of vir vonnis verwys word, kan hy 'n juiste afskrif van die lasbrief eis van die beampete in wie se regmatige bewaring dit is of van die lid van die gevangenisdienst in bevel van die gevangenis waarin hy aangehou word, wat onderhewig is aan betaling van 'n boete van 'n bedrag van hoogstens eenhonderd rand as hy weier om so 'n afskrif binne ses uur nadat dit deur die beskuldigde of sy regadviseur aangevra is, te verstrek, en sodanige boete is by wyse van siviele geding deur die beskuldigde verhaalbaar.

88. Die bepalings van hierdie hoofstuk met betrekking tot 'n distrik ingevolge die Ordonnansie op Landdroshewe 1963 ingestel, is met betrekking tot voorlopige ondersoeke deur die hof van 'n streekafdeling ingevolge artikel *twee-en-negentig* van genoemde ordonnansie gehou, *mutatis mutandis* van toepassing op enige streekafdeling ingevolge genoemde ordonnansie ingestel.

HOOFSTUK VII.

BORGTOG

VOOR BEEINDIGING VAN VOORLOPIGE ONDERSOEK

89. (1) Geen beskuldigde teen wie 'n voorlopige ondersoek ingestel is, is voor die uitreiking van 'n lasbrief vir sy verwysing ter strafsetting of vir vonnis geregtig om op borgtog vrygelaat te word nie: Met dien verstande dat behalwe waar die misdryf hoogverraad of moord is, die landdros die beskuldigde voor beeindiging van die voorlopige ondersoek na goedgunne op borgtog kan vrylaat.

(2) As 'n beskuldigde wat voor die beeindiging van die voorlopige ondersoek op borgtog vrygelaat is, nie op die tyd en plek in die borgakte vermeld, verskyn nie, kan

the time and place mentioned in the recognizance, the magistrate may declare the recognizance forfeited, adjourn the examination, and issue a warrant for his arrest.

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

(b) The conditions of the recognizance shall be that the accused shall appear at a time and place specified in writing and as often as may be necessary thereafter within a period of six months, until the preparatory examination is concluded.

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

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

AFTER CONCLUSION OF PREPARATORY EXAMINATION.

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

- (a) where any person has been committed for trial or for sentence upon a charge of any such offence, the magistrate to whom application for bail is made, may, if he has reason to believe that notwithstanding any conditions of a recognizance, such person is not likely to appear as required or to comply with any condition imposed (without prejudice to such person's rights under section *ninety-nine*) refuse to admit him to bail;
- (b) where any person has been committed for trial upon a charge of rape, the magistrate to whom application for bail is made, may (without prejudice to such person's rights under section *ninety-nine*) refuse to admit him to bail; and
- (c) where a woman has been committed for trial upon a charge of having murdered her newly born child or where a person under sixteen years of age has been committed for trial on a charge of murder, the magistrate to whom application for bail is made, may admit such woman or person to bail.

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

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

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

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

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

die landdros die borggeld verbeurd verklaar, die ondersoek verdaag en 'n lasbrief vir sy inhegtenisneming uitreik.

(3) (a) Wanneer 'n beskuldigde kragtens hierdie artikel op borgtog vrygelaat word, word 'n borgakte deur slegs die beskuldigde of deur die beskuldigde en een of meer borge aangegaan, na gelang die landdros met inagneming van die aard en omstandighede van die geval besluit.

(b) Die voorwaardes van die borgakte is dat die beskuldigde op 'n tyd en plek wat skriftelik aangegee word, en so dikwels dit binne 'n tydperk van ses maande daarna nodig blyk, moet verskyn totdat die voorlopige ondersoek beëindig is.

(4) Die landdros kan voorts enige voorwaarde aan die borgakte toevoeg wat hy in die belang van die regspiegeling nodig of raadsaam ag aangaande —

- (a) tye waarop en plekke waar en persone by wie die beskuldigde hom persoonlik moet aanmeld;
- (b) plekke waarheen dit vir hom verbode is om te gaan;
- (c) verbod op kommunikasie deur die beskuldigde met getuies vir die vervolging; of
- (d) enige ander aangeleentheid rakende sy gedrag.

NA BEEINDIGING VAN VOORLOPIGE ONDERSOEK

90. Elkeen wat weens 'n ander misdryf as hoogverraad of moord ter strafsetting of vir vonnis verwys word, is geregtig om, sodra die lasbrief vir verwysing vir sy verhoor of vonnis uitgereik is, op borgtog vrygelaat te word: Met dien verstaande dat —

- (a) waar iemand op 'n aanklag van so 'n misdryf ter strafsetting of vir vonnis verwys is, die landdros by wie aansoek om borgtog gedoen word, as hy rede het om te vermoed dat ondanks enige voorwaardes van 'n borgakte, so iemand waarskynlik nie sal verskyn soos vereis word nie of nie enige opgelegde voorwaarde sal nakom nie (sonder benadeling van so iemand se regte kragtens artikel *negen-en-negentig*) kan weier om hom op borgtog vry te laat;
- (b) waar iemand op 'n aanklag van verkrating ter strafsetting verwys is, die landdros by wie aansoek om borgtog gedoen word (sonder benadeling van so iemand se regte kragtens artikel *negen-en-negentig*) kan weier om hom op borgtog vry te laat; en
- (c) waar 'n vrou op 'n aanklag dat sy haar pasgebore kind vermoor het, ter strafsetting verwys is, of waar iemand onder die ouderdom van sestien jaar op 'n aanklag van moord ter strafsetting verwys is, die landdros by wie aansoek om borgtog gedoen word, so 'n vrou of so iemand op borgtog kan vrylaat.

91. 'n Beskuldigde kan ten tyde van sy verwysing, by die landdros of regter wat die lasbrief vir verwysing toestaan, mondeling aansoek doen om onmiddellik op borgtog vrygelaat te word.

92. (1) 'n Beskuldigde kan te eniger tyd na sy verwysing by die landdros wat die lasbrief vir verwysing toegestaan het, of by die landdros binne wie se distrik hy aangehou word, of by die hoër hof wat regsvoegdheid besit of by 'n regter daarvan, skriftelik aansoek doen om op borgtog vrygelaat te word: Met dien verstaande dat wanneer verwysing geskied ingevolge 'n lasbrief deur 'n hoër hof of 'n regter daarvan uitgereik, die beskuldigde slegs by daardie hoër hof of by een van die regters daarvan aansoek om borgtog kan doen.

(2) 'n Skriftelike aansoek om borgtog geskied by wyse van petisie en word vergesel van 'n afskrif van die lasbrief vir verwysing of van 'n beëdigde verklaring dat 'n afskrif geweier word.

93. (1) 'n Landdros by wie 'n aansoek om borg ingevolge artikel *twee-en-negentig* gedoen word, moet binne vier-en-twintig uur daarna, as die misdryf vir hom borgbaar is, sy beslissing daaromtrek gee en as die aansoek toegestaan word, die bedrag van die borggeld bepaal.

(2) Ten einde vas te stel of 'n misdryf ten opsigte waarvan die beskuldigde verwys is, vir hom borgbaar is of nie, aanvaar die landdros die aanklag teen die beskuldigde soos hy dit op die lasbrief vir verwysing vind.

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

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

(2) The conditions of the recognizance shall be —

- (a) that the accused shall at any time within a period of twelve months from the date of the recognizance appear at and undergo any further examination which the magistrate or the attorney-general may consider desirable or appear to answer any indictment that may be presented, or charge that may be made, against him in any competent court for the offence with which he is charged;
- (b) that he shall attend during the hearing of the case and to receive sentence; and
- (c) that he shall accept service of any summons to undergo further examination or any indictment or charge, notice of trial, or summons thereon or any other notice under this Ordinance at a certain and convenient place within the Territory chosen by him and specified in the recognizance.

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

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

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

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

IN CASES TRIED BY INFERIOR COURTS

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

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

(b) The conditions of the recognizance shall be that the accused shall appear at a time and place to be specified in writing and as often as may be necessary

94. Wanneer daar in die geval van 'n besering aan iemand, ten opsigte van diegraad of aard van die misdryf deur die beskuldigde gepleeg, twyfel bestaan weens die feit dat dit onseker is of die beseerde persoon sal sterf of herstel, kan die regter of landdros by wie deur of namens die beskuldigde om borgtogg aansoek gedaan word, weier om die aansoek toe te staan totdat alle gevvaar vir die lewe van die beseerde persoon verby is.

95. (1) Die borgakte wat by die vrylating van 'n beskuldigde op borgtogg na afloop van die voorlopige ondersoek aangegaan word, word deur die hof, regter of landdros (na gelang) of met slegs die beskuldigde of met die beskuldigde en een of meer borge, na goeddunke van die hof, regter of landdros volgens die aard en omstandighede van die geval aangegaan.

(2) Die voorwaarde van die borgakte is —

- (a) dat die beskuldigde te eniger tyd binne 'n tydperk van twaalf maande vanaf die datum van die borgakte, by enige verdere ondersoek wat die landdros of die Prokureur-generaal wenslik ag, moet verskyn en so 'n ondersoek moet ondergaan, of op 'n akte van beskuldiging of aanklag wat weens die misdryf waarvan hy aangekla word, in 'n bevoegde hof teen hom voorgelê of ingebring word, moet verskyn om hom te verantwoord;
- (b) dat hy aanwesig moet wees gedurende die verhoor van die saak en om gevonnis te word; en
- (c) dat hy bestelling van 'n dagvaarding om verdere ondersoek te ondergaan of 'n akte van beskuldiging of klagskrif, kennisgewing van verhoor, of dagvaarding daarby of enige ander kennisgewing in gevolge hierdie ordonnansie, by 'n bepaalde en gerieflike plek binne die Gebied deur hom gekies en in die borgakte aangegee, moet aanvaar.

(3) Die voormalde hof, regter of landdros kan voorts enige voorwaarde aan die borgakte toevoeg wat hy in belang van die regsgleiding nodig of raadsaam ag aangaande —

- (a) tye waarop en plekke waar en persone by wie die beskuldigde hom persoonlik moet aanmeld;
- (b) plekke waarheen dit vir hom verbode is om te gaan;
- (c) verbod op kommunikasie deur die beskuldigde met getuies vir die vervolging; of
- (d) enige ander aangeleentheid rakende sy gedrag.

(4) Die borgakte bly van krag ondanks die feit dat, wanneer die verhoor plaasvind, daar om een of ander rede geen uitspraak gegee word nie, tensy die akte van beskuldiging of aanklag teruggetrek word.

96. As dit op die dag wat vir die verhoor van 'n strafsaak bepaal is, uit die relaas van die bevoegde beampete of uit ander voldoende bewys blyk dat 'n afskrif van die akte van beskuldiging en kennisgewing van verhoor, of in die geval van 'n terugverwysing na 'n landdroshof, die dagvaarding of aanklag, behoorlik bestel is, en die beskuldigde, nadat sy naam drie keer binne of naby die hofgebou uitgeroep is, nie verskyn nie, kan die aanklaer by die hof om 'n lasbrief vir die inhegtenisneming van die beskuldigde aansoek doen, en kan hy by die hof aansoek doen dat die beskuldigde en sy borge (as daar is) ooreenkomsdig hul borgakte opgeroep word, en, as hy versuim om te verskyn, dat die borggeld onmiddellik verbeurd verklaar word; en so 'n verbeurdverklaring het die uitwerking van 'n vonnis op die borgakte teen die beskuldigde en sy borge onderskeidelik vir die bedrae daarin aangegee.

IN SAKE DEUR LAER HOWE VERHOOR

97. (1) Wanneer 'n strafverhoor voor 'n laer hof verdaag of uitgestel word en die beskuldigde in hechtenis gehou word, kan die hof na goeddunke die beskuldigde op die hieronder bepaalde wyse op borgtogg vrylaat.

(2) (a) Wanneer 'n laer hof 'n beskuldigde kragtens hierdie artikel op borgtogg vrylaat, word 'n borgakte deur slegs die beskuldigde of deur die beskuldigde en een of meer borge aangegaan, na gelang die hof met inagneming van die aard en omstandighede van die geval besluit.

(b) Die voorwaarde van die borgakte is dat die beskuldigde op 'n tyd en plek wat skriftelik aangegee word, en so dikwels dit binne 'n tydperk van ses maande

thereafter within a period of six months, until final judgment in his case has been given, to answer the charge of the offence alleged against him or the charge of any other offence which may appear to the attorney-general or the local public prosecutor to have been committed by the accused.

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

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

GENERAL FOR ALL CRIMINAL PROCEEDINGS.

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

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

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

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

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

102. Any court, judge, magistrate or other judicial officer may, if it or he is of opinion that it is necessary or advisable in the interests of justice that the conditions of a recognizance entered into under the provisions of this Chapter be amended or supplemented, issue a warrant for the arrest of the accused and may, when the accused is brought before it or him, amend or supplement the said conditions as the court, judge, magistrate or other judicial officer may deem fit.

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

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

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

104. The sureties for the attendance and appearance of an accused released on bail may bring the accused into the court at which he is bound to appear during

daarna nodig blyk totdat uitspraak finaal in sy saak gedoen is, moet verskyn om te antwoord op die aanklages weens die misdryf hom ten laste gelê of die aanklages weens 'n ander misdryf wat volgens dit vir die Prokureur-generaal of die plaaslike staatsaanklaer voorkom, deur die beskuldigde gepleeg is.

(3) Die hof kan voorts enige voorwaarde aan die borgakte toevoeg wat hy in belang van die regstelling nodig of raadsaam ag aangaande —

- (a) tye waarop en plekke waar en persone by wie die beskuldigde hom persoonlik moet aannemel;
- (b) plekke waarheen dit vir hom verbode is om te gaan;
- (c) verbod op kommunikasie deur die beskuldigde met getuies vir die vervolging; of
- (d) enige ander aangeleenthed rakende sy gedrag.

ALGEMEEN VIR ALLE STRAFSAKE

98. Die borggeld in 'n saak vereis, word bepaal na goeddunke van die hof, regter, landdros of voorsittende beampete van 'n laer hof by wie die aansoek om op borgtogg vrygelaat te word, gedoen word: Met dien verstande dat niemand verplig mag word om buitensporige borggeld te verstrek nie.

99. (1) Wanneer 'n beskuldigde veronreg voel ter gevolge van die weiering van 'n landdros of van 'n laer hof om hom op borgtogg vry te laat of deurdat so 'n landdros of hof buitensporige borggeld bepaal het of onredeklike voorwaardes gestel het, kan hy teen die weiering of buitensporige borggeld by die hoër hof wat regstellingheid besit, of, ingeval daardie hof nie dan sitting hou nie by 'n regter daarvan, appelleer.

(2) Die hoër hof of regter by wie kragtens subartikel (1) geappelleer word, kan so 'n bevel ten opsigte van die appèl uitvaardig soos in die omstandighede van die saak vir die hof of regter billik voorkom.

100. 'n Hoër hof wat regstellingheid ten opsigte van 'n misdryf besit, kan op enige stadium van enige verrigtinge in enige hof ten opsigte van daardie misdryf, die beskuldigde op borgtogg vrylaat, hetsoy die misdryf een van die in artikel *negentig* bedoelde misdrywe is al dan nie.

101. Wanneer, weens 'n dwaling, bedrog of andersins ontoereikende borge aanvaar is of as hulle daarna ontoereikend word, kan die hof, regter, landdros of ander regterlike beampete wat die borgtogg toegestaan het, 'n lasbrief vir inhegtenisneming uitrek wat gelas dat die beskuldigde voor hom gebring word en hom beveel om toereikende borge te vind en as hy versuim om dit te doen hom gevange sit.

102. 'n Hof, regter, landdros of ander regterlike beampete kan, as hy meen dat dit in belang van die regstelling nodig of raadsaam is om die voorwaardes van die borgakte wat ingevolge die bepalings van hierdie hoofstuk aangegaan is, te wysig of aan te vul, 'n lasbrief vir die inhegtenisneming van die beskuldigde uitrek en kan wanneer die beskuldigde voor hom gebring word, die beoelde voorwaardes wysig of aanvul na gelang die hof, regter, landdros of ander regterlike beampete goedvind.

103. (1) Enige van die borge vir die bywoning en verskyning van 'n beskuldigde op borgtogg vrygelaat, kan te eniger tyd by die hof, regter, landdros of regterlike beampete voor wie die borgakte aangegaan is, aansoek doen om die borgakte of geheel en al of vir sover dit op die aansoekers betrekking het, op te hef.

(2) Wanneer so 'n aansoek gedoen word, reik die hof, regter, landdros of ander regterlike beampete 'n lasbrief vir inhegtenisneming uit wat gelas dat die beskuldigde voor hom gebring word.

(3) By die verskyning van die beskuldigde ingevolge die lasbrief of by sy vrywillige oorgawe, gelas die hof, regter, landdros of ander regterlike beampete dat die borgakte of geheel en al of vir sover dit op die aansoekers betrekking het, opgehef word en sê hy die beskuldigde aan om ander toereikende borge te vind, en as hy versuim om dit te doen, kan hy hom gevange sit.

104. Die borge vir die bywoning en verskyning van 'n beskuldigde wat op borgtogg vrygelaat is, kan die beskuldigde in die hof bring waarin hy verplig is om te

my sitting thereof and then, by leave of the court, tender him in discharge of the recognizance at any time before sentence, and thereupon the accused shall be committed to a prison there to remain until discharged by due course of law; but such court may release the accused on bail for his appearance at any time it deems fit.

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

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

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

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

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

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

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

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

(a) issue an order declaring the recognizance forfeited, and such order shall have the effect of a

verskyn gedurende enige sitting daarvan en hom dan, met verlof van die hof, te eniger tyd voor vonnis ter nakoming van die borgakte oorlewer, en daarna word die beskuldigde na 'n gevangenis verwys om daar te bly totdat hy mettertyd regtens ontslaan word; maar die hof kan die beskuldigde te eniger tyd na goeddunke op borgtog vir sy verskyning vrylaat.

105. Die pleit of skuldigbevinding van 'n beskuldigde wat soos voormeld op borgtog vrygelaat is, hef nie die borgakte op nie wat vir sy verskyning gedurende die verhoor en totdat vonnis gevel van hy ontslaan word, van krag bly, maar die hof kan die beskuldigde by sy verhoor gevange sit of kan hom verplig om ondanks so 'n borgakte nuwe of addisionele borge vir sy verskyning vir verhoor of vonnis (na gelang) te vind en so 'n gevangesetting onthef die borge.

106. As 'n borg wat 'n borgakte aangegaan het, sterf voordat 'n verbeurdverklaring sou kon plaasvind, word sy boedel van alle aanspreeklikheid ten opsigte van die borgakte onthef, maar die beskuldigde kan verplig word om 'n nuwe borg te vind.

107. Wanneer 'n beskuldigde ingevolge 'n bepaling van hierdie hoofstuk op borgtog vrygelaat is, kan 'n landdros na goeddunke, op aansoek van 'n vredesbeampte en op skriftelike inligting onder eed van daardie beampte dat daar rede bestaan om te vermoed dat die beskuldigde op die punt staan om te vlug ten einde die gereg te ontwyk, 'n lasbrief vir die inhegtenisneming van die beskuldigde uitrek en, as hy oortuig is dat dieregsbedeling anders verydel sou word, hom, as hy in hegtenis geneem is, gevange sit totdat sy verhoor plaasvind.

108. (1) (a) Wanneer iemand deur 'n hof, regter, landdros of regterlike beampte aangesê word om ingevolge 'n bepaling van hierdie ordonnansie borgaktes met of sonder borge aan te gaan, kan daardie hof, regter, landdros of regterlike beampte, behalwe in die geval van 'n borgakte vir goeie gedrag, in plaas van hom sodanige borgaktes te laat aangaan, hom of iemand anders ten behoeve van hom toelaat om die bedrag geld in kontant of in staatseffekte wat die hof, regter, landdros of regterlike beampte bepaal, te deponeer.

(b) Skriftelike voorwaarde van dieselfde aard as die voorwaarde van hierdie hoofstuk ten opsigte van borgaktes voorgeskryf, word ten opsigte van die gedeponeerde geld of effekte gestel, en al die bepalings van hierdie hoofstuk wat die omstandighede waarin die borgselde wat deur slegs die beskuldigde verstrek is, verbeurd verklaar moet word, sy inhegtenisneming wanneer hy op die punt staan om te vlug, en die kwytsekelding van verbeurdverklaarde borggeld voorskryf, is *mutatis mutandis* ten opsigte van die gedeponeerde geld of effekte van toepassing.

(2) (a) As iemand weens 'n ander misdryf as 'n misdryf in deel II van die tweede bylae vermeld, aangekla word, kan 'n polisiebeampte wat 'n rang of pos beklee wat deur die Administrateur van tyd tot tyd vir die doelendes van hierdie artikel by kennisgewing in die *Offisiële Koerant* aangewys is, hy 'n polisiestasie of -pos, te eniger tyd wanneer geen regterlike beampte beskikbaar is nie, so iemand op borgtog vrylaat as hy of iemand anders ten behoeve van hom by so 'n polisiebeampte die bedrag geld deponeer wat die polisiebeampte bepaal, of aan die polisiebeampte die sekuriteit in plaas van borggeld verstrek wat laasgenoemde toereikend ag.

(b) Die bepalings van subartikel (1) met betrekking tot voorwaarde, verbeurdverklaring en kwytsekelding van verbeurdverklaarde borggeld is *mutatis mutandis* van toepassing in verband met geld of sekuriteit wat ingevolge hierdie subartikel gedeponeer of verstrek is.

109. As dit vir die betrokke hof, regter, landdros of ander regterlike beampte blyk dat enige voorwaarde van 'n borgakte voor hom aangegaan, nie nagekom is nie, of as dit vir die hof, regter, landdros of ander regterlike beampte voor wie 'n beskuldigde moet verskyn ingevolge 'n borgakte voor 'n ander hof, regter, landdros of regterlike beampte aangegaan, blyk dat enige voorwaarde van bedoelde borgakte nie nagekom is nie, kan daardie hof, regter, landdros of ander regterlike beampte —

(a) 'n bevel uitrek waarby die borgakte verbeurd verklaar word, en so 'n bevel het die uitwerking van

judgment on the recognizance for the amounts therein named against the person admitted to bail and his sureties respectively;

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

110. The Administrator or any person acting under his authority, may in his discretion remit the whole or any portion of any amount forfeited under this Chapter.

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

- (a) release him without bail and warn him to appear before a court or magistrate at a time and on a date then fixed by the court, magistrate or policeman; or
- (b) release him without bail to the care of the person in whose custody he is and warn that person to bring him or cause him to be brought before a court or magistrate at a time and on a date then fixed as aforesaid; or
- (c) place him in a place of safety (as defined in section *one* of the Children's Ordinance, 1961 (Ordinance 31 of 1961)) pending his appearance or further appearance before a court or magistrate, or until he is otherwise dealt with according to law.

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

112. (1) Whenever any person has been arrested on a charge of having committed any offence, the attorney-general may, if he considers it necessary in the interest of the safety of the public or the maintenance of public order, issue an order that such person shall not be released on bail or otherwise before the expiration of a period of twelve days after the date of his arrest.

(2) Notwithstanding the provisions of this Ordinance or any other law, but subject to the provisions of sub-section (3), no person shall be released on bail or otherwise contrary to the terms of an order issued under sub-section (1).

(3) The attorney-general may at any time before its expiration rescind any order issued under sub-section (1).

(4) Any telegraphic copy purporting to be a copy of an order under sub-section (1) transmitted by telegraph, shall for all purposes be *prima facie* proof of the facts set forth in such copy.

(5) Subject to the provisions of sub-section (6), the provisions of this section shall lapse on the first day of June, 1965.

(6) The operation of the provisions of this section may from time to time by resolution of the Legislative Assembly of the Territory be extended for a period not exceeding twelve months at a time.

CHAPTER VIII.

CONSTITUTION OF SUPERIOR COURTS.

113. Subject to the provisions of section *one hundred and seventeen*, in any criminal case pending before a superior court the trial of the accused shall be before a judge of the Supreme Court and two assessors appointed to such superior court from time to time, as occasion

'n vonnis op die borgakte vir die daarin vermelde bedrae teen die onder borgtow vrygestelde persoon en sy borge onderskeidelik;

- (b) 'n lasbrief uitrek vir die inhegtenisneming van die onder borgtow vrygestelde persoon en daarna, indien oortuig dat die regspiegeling andersins veryde sou word, hom, wanneer hy aldus in hegtenis ge-neem is, gevangen sit totdat sy verhoor plaasvind.

110. Die Administrateur of iemand wat op sy gesag handel, kan na goeddunke die geheel of 'n gedeelte van 'n bedrag wat ingevolge hierdie hoofstuk verbeurd verklaar is, kwytskeld.

111. (1) As iemand onder die ouderdom van agtien jaar weens 'n ander misdryf as hoogverraad, moord of verkringting aangekla word, kan 'n hof, of landdros of polisiebeampte wat ingevolge 'n bepaling van hierdie hoofstuk so iemand op borgtow kan vrylaat, in plaas van hom op borgtow vry te laat, of in plaas van hom aan te hou —

- (a) hom sonder borgtow vrylaat en hom waarsku om voor 'n hof of landdros op die uur en dag wat daar deur die hof, landdros of polisiebeampte bepaal word, te verskyn;
- (b) hom sonder borgtow onder die sorg van die persoon in wie se bewaring hy is, vrylaat en daardie persoon waarsku om hom voor 'n hof of landdros te bring of te laat bring op die uur en dag wat daar soos voormeld bepaal word; of
- (c) hom, in afwagting van sy verskyning of verdere verskyning voor 'n hof of landdros, of totdat andersins regtens met hom gehandel word, in 'n veiligheidsplek soos in artikel *een* van die Kinderordon-nansie 1961 (Ordonnansie 31 van 1961) bepaal plaas.

(2) Iemand wat, nadat hy ingevolge paragraaf (b) van subartikel (1) gewaarsku is, sonder rederike verskoning (die bewyslas waarvan op hom rus) versuim om daardie waarskuwing te gehoorsaam, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens twintig rand of, by wanbetaling van daardie boete, met gevangenisstraf vir 'n tydperk van hoogstens een maand.

112. (1) Wanneer iemand in hegtenis geneem is op 'n aanklag dat hy 'n misdryf gepleeg het, kan die Prokureur-generaal, as hy dit in belang van die veiligheid van die publiek of die handhawing van die openbare orde nodig ag, 'n bevel uitrek dat so iemand nie voor die verstryking van 'n tydperk van twaalf dae na die datum van sy inhegtenisneming op borgtow of andersins vrygelaat mag word nie.

(2) Ondanks die bepalings van hierdie ordonnansie of 'n ander wet, maar behoudens die bepalings van subartikel (3) word niemand in stryd met die bepalings van 'n bevel kragtens subartikel (1) uitgereik, op borgtow of andersins vrygelaat nie.

(3) Die Prokureur-generaal kan te eniger tyd voor die verstryking van 'n bevel kragtens subartikel (1) uitgereik, die bevel intrek.

(4) 'n Telegrafiese afskrif wat 'n afskrif van 'n telegrafies versende bevel kragtens subartikel (1) heet te wees, is vir alle doeleindes bewys *prima facie* van die feite wat in die afskrif uiteengesit word.

(5) Behoudens die bepalings van subartikel (6) verval die bepalings van hierdie artikel op die eerste dag van Junie 1965.

(6) Die toepassing van die bepalings van hierdie artikel kan van tyd tot tyd by besluit van die Wetgewende Vergadering van die Gebied vir 'n tydperk van hoogstens twaalf maande op 'n keer verleng word.

HOOFSTUK VIII.

INSTELLING VAN HOËR HOWE

113. Behoudens die bepalings van artikel *eenhonderd en sewentien* moet die verhoor van die beskuldigde in 'n strafsaak wat voor 'n hoër hof aanhangig is, plaasvind voor 'n regter van die Hooggeregshof en twee assessor wat van tyd tot tyd soos omstandighede dit vereis deur

may require, by the Judge President, who shall be advocates of not less than five years standing or persons holding or qualified to hold within the Republic or the Territory the office of magistrate. The judge shall preside over the court.

114. Whenever a superior court exercises jurisdiction for the trial and punishment of crimes and offences, the judge and assessors shall have and perform the powers and duties laid down in this Chapter.

115. (1) Before the trial the judge shall administer an oath to the persons appointed as assessors in terms of section *one hundred and thirteen* that they will administer justice to all persons alike without fear, favour or prejudice and in accordance with the law and customs of the Territory, and thereupon they shall be members of the court.

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

(b) Any reference in this Chapter to an assessor having taken an oath shall include a reference to an assessor who has made a solemn affirmation under this sub-section.

116. (1) It is the duty of the judge —

- (a) subject to the provisions of paragraph (e) of sub-section (1) of section *one hundred and seventeen* to decide all questions of law arising in the course of the trial, and especially all questions as to the relevancy of facts which it is proposed to prove, and the admissibility of evidence or the propriety of questions asked by or on behalf of the parties and, in his discretion, to prevent production of inadmissible evidence whether it is or is not objected to by the parties;
- (b) to decide upon the meaning and construction of all documents given in evidence at the trial;
- (c) to decide upon all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given;
- (d) to decide whether any question which arises is for himself or for himself and the other members of the court, and upon this point his decision shall bind the other members of the court.

(2) (a) The judge may adjourn the argument upon any such matter or question as is mentioned in paragraphs (a) to (d) of sub-section (1) and may sit alone for the hearing of such argument and the decision of such matter or question.

(b) Whenever the judge shall give a decision in terms of paragraphs (a) to (d) of sub-section (1) he shall give reasons for that decision.

117. (1) It is the duty of the judge and the other members of the court —

- (a) to decide which view of the facts is true and then to return the verdict which under such view ought according to law to be returned;
- (b) to determine the meaning of all technical terms (other than terms of law) and words used in an unusual sense which it may be necessary to determine, whether such words occur in documents or not;
- (c) to decide all questions which according to law are to be deemed questions of fact;
- (d) to decide whether general indefinite expressions do or do not apply to particular cases unless such expressions refer to legal procedure or unless their meaning is to be ascertained according to law, in either of which cases it is the duty of the judge alone to decide their meaning;
- (e) to decide all questions of law governing the punishment and to determine the punishment to be awarded.

(2) It shall not be incumbent on the court to give any reasons for its decision or finding on any matter under paragraphs (a) to (e) of sub-section (1).

118. Subject to the provisions of sub-section (2) of section *one hundred and twenty*, all questions or matters

die Regter-president by sodanige hoer hof aangestel word, en wat advokate van minstens vyf jaar ondervinding of persone wat die amp van landdrost in die Republiek of in die Gebied beklee of bevoeg is om dit te beklee, moet wees. Die regter sit in die hof voor.

114. Wanneer 'n hoer hofregsbevoegdheid by die verhoor en bestrafning van misdade en misdrywe uitgeoefen, het die regter en die assessor die bevoegdhede en verrig hulle die pligte wat in hierdie hoofstuk neergelê word.

115. (1) Voor die verhoor lê die regter aan die persone wat ingevolge artikel *eenhonderd en dertien* as assessor aangestel is 'n eed op dat hulle aan alle persone op gelyke voet reg sal laat geskied sonder vrees, begunseling van vooroordeel en ooreenkomsdig die reg en gebruikte van die Gebied, en daarop is hulle lede van die hof.

(2) (a) As 'n assessor weier of onwillig is om 'n eed af te lê, kan die regter hom toelaat om 'n plegtige verklaring af te lê wat dieselfde krag en uitwerking het asof die assessor wat dit doen, die eed in die gewone vorm afgelê het.

(b) 'n Verwysing in hierdie hoofstuk na 'n assessor wat die eed afgelê het, sluit 'n verwysing in na 'n assessor wat 'n plegtige verklaring ingevolge hierdie subartikel afgelê het.

116. (1) Dit is die regter se plig —

- (a) om behoudens die bepalings van paragraaf (e) van subartikel (1) van artikel *eenhonderd en sewentien* oor alle regsvrae wat in die loop van die verhoor voorkom, te beslis, en veral alle vrae betreffende die tersaaklikheid van feite wat na voorname bewys gaan word en die toelaatbaarheid van getuienis of die behoorlikheid van vrae gestel deur of namens die partye; en, om na goeddunke die aanvoering van ontoelaatbare getuienis te voorkom, ongeag of die partye daarteen beswaar het of nie;
- (b) om oor die betekenis en uitleg van alle dokumente wat by die verhoor as getuienis voorgelê word, te beslis;
- (c) om te beslis oor alle feite wat moontlik bewys moet word ten einde getuienis van bepaalde aangeleenthede te kan aanvoer;
- (d) om te beslis of enige vraag wat ontstaan deur hom of deur hom en die ander lede van die hof beslis moet word en sy beslissing hieroor verbind die ander lede van die hof.

(2) (a) Die regter kan die beredenering oor enige feit of vraag bedoel in paragrafe (a) tot (d) van subartikel (1) verdaag en kan vir die verhoor van sodanige beredenering en die beslissing van so 'n feit of vraag alleen sit.

(b) Wanneer die regter 'n beslissing kragtens paragrafe (a) tot (d) van subartikel (1) vel, gee hy sy redes vir die beslissing.

117. (1) Dit is die plig van die regter en ander lede van die hof —

- (a) om te beslis watter beskouing van die feite juis is en dan die uitspraak te gee wat met die oog op daardie beskouing regtens gegee behoort te word;
- (b) om die betekenis van alle tegniese uitdrukings (behalwe regstydrukings) en alle woorde wat in 'n ongewone sin gebesig word, wat moontlik bepaal moet word, te bepaal hetsy hulle in dokumente voorkom of nie;
- (c) om oor alle vrae wat regtens feitevrae geag word, te beslis;
- (d) om te beslis of algemene, onbepaalde uitdrukings op bepaalde gevalle van toepassing is of nie, tensy sodanige uitdrukings op regstydrukings betrekking het of tensy hul betekenis volgens wet bepaal moet word, en in elk so 'n geval is dit die plig van die regter om alleen hul betekenis te bepaal;
- (e) om alle regsvrae wat die straf beheers te beslis en om te bepaal watter straf opgelê moet word.

(2) Die hof is nie verplig om enige redes vir sy beslissing of bevinding op enige punt kragtens paragrafe (a) tot (e) van subartikel (1) te gee nie.

118. Behoudens die bepalings van subartikel (2) van artikel *eenhonderd en twintig* word alle vrae of punte

except those which under the provisions of this Chapter must be decided or determined by the judge alone, shall be decided or determined by the majority of the members of the court.

119. If any person, having been duly appointed by the Judge President under the provisions of this Chapter to be an assessor for the trial of crimes and offences, shall, after having taken the oath, fail without reasonable excuse faithfully to perform the duties imposed upon him by such appointment, he shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred rand or, in default of payment, to imprisonment for a period not exceeding one year.

120. (1) If at any time during a trial any one of the assessors appointed in terms of section *one hundred and thirteen* dies or becomes in the opinion of the judge incapable of continuing to act as assessor, the judge may if he thinks fit, with the consent of the accused and the prosecutor, direct that the trial shall proceed without such assessor.

(2) Where the trial proceeds in pursuance of a direction given in terms of sub-section (1) the decision of the court shall be unanimous.

(3) If the judge does not direct as provided in sub-section (1) or where the court is unable, as required by sub-section (2), to agree on a decision on any charge in the indictment or the punishment to be awarded, the accused, unless already released on bail, shall remain in custody and may be tried again, but he shall have the same rights to be released on bail as upon an original committal for trial for the offence for which he is charged, and the court or the magistrate may in a proper case, as provided by Chapter VII, release him on bail accordingly.

(4) If the court is unable, as required by sub-section (2), to agree on a decision on any charge in the indictment or the punishment to be awarded, and the person accused is again tried on such charge, then the judge and the assessor who were members of the court which failed to agree as aforesaid shall not be competent to be members of any subsequent court constituted to try the accused on such charge.

121. The Administrator may prescribe by regulation a tariff of allowances which may be paid out of public moneys to persons other than members of the Public Service appointed under the provisions of this Chapter to be an assessor for the trial of crimes or offences. Any such tariff may differentiate between persons according to the distance which they have to travel to attend the court.

122. (1) Whenever the attorney-general decides to indict an accused upon a charge of treason, sedition or public violence, or of contravening any provision of paragraph (a) or (b) of section *eleven* of the Suppression of Communism Act, 1950 (Act 44 of 1950), or of an attempt, conspiracy or incitement to commit such an offence, and is of opinion that it is in the interest of the administration of justice that the accused be tried by a special criminal court, he shall state in writing to the Administrator such his opinion and the facts upon which it is based and specify the offence for which he proposes to indict the accused.

(2) (a) The Administrator may thereupon constitute a special criminal court to sit at any place in the Territory at which the accused might otherwise have been tried before a superior court for such offence.

(b) Such special criminal court shall have jurisdiction to try any charge for an offence referred to in sub-section (1) which may be made in the indictment lodged by the attorney-general in respect of the accused, and to sentence the accused, if convicted of such an offence, to any punishment that may by law be imposed therefor.

(3) (a) A special criminal court shall consist of at least two and not more than three judges of the Supreme Court and the decision of the court shall be unanimous.

buiten dié wat ingevolge die bepalings van hierdie hoofstuk deur die regter alleen beslis of uitgemaak moet word deur die meerderheid van die lede van die hof beslis of uitmaak.

119. As iemand wat die Regter-president behoorlik kragtens die bepalings van hierdie hoofstuk aangestel het as assessor vir die verhoor van misdade en misdrywe nadat hy die eed afgelê het, sonder rederike verskoning versum om die pligte wat hom by so 'n aanstelling opgelê is, getrou na te kom, is hy skuldig aan 'n misdryf en is hy by skuldigbevinding strafbaar met 'n boete van hoogste vyfhonderd rand of by wanbetaling met gevangenisstraf vir 'n tydperk van hoogstens een jaar.

120. (1) As te eniger tyd gedurende 'n verhoor enig een van die assessore wat kragtens artikel *eenhonderd en dertien* aangestel is, sterf of, volgens die regter se oordeel onbekwaam word om verder as assessor te dien, kan die regter na goedunke en met instemming van die beskuldigde en die aanklaer gelas dat die verhoor sonder die bedoelde assessor voortgesit moet word.

(2) Waar die verhoor ingevolge 'n lasgewing kragtens subartikel (1) voortgesit word, moet die beslissing van die hof eenparig wees.

(3) As die regter nie kragtens subartikel (1) gelas nie of waar die hof nie in staat is om volgens voorskrif van subartikel (2) in verband met 'n beslissing aangaande 'n aanklag in die akte van beskuldiging, of oor die straf wat opgelê moet word, ooreen te kom nie, bly die beskuldigde, tensy hy reeds op borgtug vrygelaat is, in hegtenis en kan hy weer verhoor word, maar het hy dieselfde regter om op borgtug vrygelaat te word as by 'n oorspronklik verwysing ter strafzitting weens die misdryf waarvan hy aangekla is, en die hof of die landdros kan hom in 'n toe paslike geval soos in hoofstuk VII bepaal, dienooreen komstig op borgtug vrylaat.

(4) As die hof nie in staat is om volgens voorskrif van subartikel (2) in verband met 'n beslissing aangaande 'n aanklag in die akte van beskuldiging of die straf wat opgelê moet word, ooreen te kom nie, en die beskuldigde weer op die aanklag verhoor word, dan is die regter en die assessor wat lede was van die hof wat soos voormeld nie in staat was om ooreen te kom nie, onbevoeg om lede wees van 'n hof wat daarna saamgestel word om die beskuldigde op die bedoelde aanklag te verhoor.

121. Die Administrateur kan by regulasie 'n tarief van toelaes voorskryf wat uit die staatskas betaal kan word aan persone (buiten lede van die staatsdiens) wa kragtens die bepalings van hierdie hoofstuk aangestel word as assessore by die verhoor van misdade of misdrywe. So 'n tarief kan onderskei tussen persone na gele lang van die afstand wat hulle moet aflê om die hof by te woon.

122. (1) Wanneer die Prokureur-generaal besluit om 'n beskuldigde op 'n akte van beskuldiging te vervolg weens 'n aanklag van hoogverraad, ooproer of openbare geweldpleging of weens 'n oortreding van 'n bepaling van paragraaf (a) of (b) van artikel *elf* van die Wet op die Onderdrukking van Kommunisme 1950 (Wet 44 van 1950) of weens 'n poging, sameswering of uitlokking tot die pleging van so 'n misdryf en dit in die belang van die regsgleiding beskou dat die beskuldigde deur 'n spesiale strafhof verhoor word, deel hy sy mening en die feite waarop dit berus, skriftelik aan die Administrateur mede en meld hy die misdryf waarvoor hy voornemens is om die beskuldigde op 'n akte van beskuldiging te vervolg.

(2) (a) Die Administrateur kan daarop 'n spesiale strafhof saamstel om op enige plek in die Gebied sittende te hou waar die beskuldigde andersins voor 'n hoëre hof vir die bedoelde misdryf verhoor sou kon geword het.

(b) So 'n spesiale strafhof het regsgleiding wat enige aanklag van 'n in subartikel (1) bedoelde misdryf wat gemaak word in die akte van beskuldiging wat ten opsigte van die beskuldigde deur die Prokureur-generaal ingedien word, te verhoor, en die beskuldigde, as hy aan so 'n misdryf skuldig bevind word, te vonnis tot enig straf wat regtens daarvoor opgelê kan word.

(3) (a) 'n Spesiale strafhof bestaan uit minstens twee en hoogstens drie regters van die Hooggereghof en die beslissing van die hof moet eenparig wees.

(b) The Administrator shall designate an officer in the public service or a judge's clerk to act as registrar of such court.

(4) (a) The constitution of such special criminal court shall be notified in the *Official Gazette*, together with the names of the members thereof, the name and official address of the registrar thereof, and the date on which and the place at which it will commence its sittings.

(b) At any time after the constitution of the court is so notified, the attorney-general may lodge with the registrar thereof any such indictment aforesaid.

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

(6) If at any time in the course of the proceedings in connection with or during a trial before a special criminal court consisting of three judges, one of the judges dies or becomes incapable to continue with the proceedings or the trial the proceedings or the trial shall be continued before the two remaining judges as if the court as originally constituted consisted of only those two judges.

(7) At the conclusion of every session of a special criminal court, the registrar thereof shall transmit the records of the proceedings of that session to the registrar of the Supreme Court, and such records shall thereupon become records of the latter court.

CHAPTER IX.

PROCEDURE BEFORE COMMENCEMENT OF TRIAL. IN SUPERIOR COURT.

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

- (i) the court is satisfied that, in consequence of the absence of material evidence or of some other sufficient cause, the trial cannot then be proceeded with, without defeating the ends of justice; or
- (ii) before the close of such first session an order is obtained from the court under the provisions of section *one hundred and twenty-four* for his removal for trial elsewhere.

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

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

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

(b) Die Administrateur wys 'n beampte in die staatsdiens of 'n regtersklerk aan om as griffier van so 'n hof op te tree.

(4) (a) Die samestelling van so 'n spesiale strafhof word in die *Offisiële Koerant* bekend gemaak tesame met die name van die lede daarvan, die naam en amptelike adres van die griffier daarvan en die datum waarop en die plek waar die hof se sittings 'n aanvang sal neem.

(b) Die Prokureur-generaal kan te eniger tyd nadat die samestelling van die hof aldus bekend gemaak is, 'n akte van beskuldiging soos voormeld by die griffier daarvan indien.

(5) Buitens vir sover in hierdie artikel anders bepaal word, is die bepalings van hierdie ordonnansie met betrekking tot 'n verhoor deur 'n hoër hof *mutatis mutandis* van toepassing ten opsigte van die verhoor van 'n beskuldigde deur 'n spesiale strafhof: Met dien verstande dat as 'n spesiale strafhof nie volgens voorskrif van paragraaf (a) van subartikel (3) op 'n beslissing ten opsigte van 'n aanklag in die akte van beskuldiging ooreen kan kom nie, en die beskuldigde weer op bedoelde aanklag verhoor word, geen regter wat 'n lid was van die hof wat nie soos voormeld ooreen kon kom nie, dan bevoeg is om lid te wees van 'n latere spesiale strafhof wat saamgestel word om die beskuldigde op so 'n akte van beskuldiging te verhoor nie.

(6) As te eniger tyd in die loop van die verrigtinge in verband met gedurende 'n verhoor voor 'n spesiale strafhof bestaande uit drie regters, een van die regters sterf of onbekwaam word om met die verrigtinge of die verhoor voort te gaan, word die verrigtinge of die verhoor voor die twee oorblywende regters voortgesit asof die hof wat oorspronklik saamgestel is, net uit daardie twee regters bestaan het.

(7) Na die afloop van elke sitting van 'n spesiale strafhof stuur die griffier daarvan die notule van die verrigtinge van daardie sitting aan die griffier van die Hooggereghof en die bedoelde notule word daarop prosesstukke van die laasgenoemde hof.

HOOFSTUK IX.

PROSEDURE VOOR AANVANG VAN DIE VERHOOR IN HOËR HOF

123. (1) (a) Behalwe vir sover uitdruklik anders in hierdie ordonnansie met betrekking tot die verdaging van 'n hof bepaal word, word iedere persoon wat ter straf-sitting of vir vonnis verwys is en wat die Prokureur-generaal besluit het om voor 'n hoër hof te vervolg, by die eerste sitting van daardie hof wat vir die verhoor van strafake na die datum van verwysing gehou word, op verhoor gestel of anders op borgtog vrygelaat, as een-en-dertig dae tussen die datum van die verwysing en die datum waarop bedoelde sitting gehou word, verloop het, tensy —

- (i) die hof oortuig is dat ten gevolge van die gebrek aan weselike getuenis of om 'n ander voldoende rede, daar nie dan met die verhoor voortgegaan kan word sonder om dieregsbedeling te verydel nie; of
- (ii) voor die afsluiting van bedoelde eerste sitting 'n bevel kragtens artikel *eenhonderd vier-en-twintig* van die hof vir sy verplaasing vir verhoor elders verkry word.

(b) As so iemand nie by die eerste sitting van bedoelde hof wat gehou word na verstryking van ses maande vanaf die datum van sy verwysing, op verhoor gestel word nie, en nie tevore vir verhoor na elders verplaas is nie, word hy ontslaan van sy gevangesetting vir die misdryf ten opsigte waarvan hy verwys is.

(2) By die toepassing van hierdie artikel word iemand in 'n geval waarin die Prokureur-generaal kragtens artikel *een-en-tachtig* 'n verdere ondersoek gelas het nie geag ter straf-sitting verwys te wees nie, totdat bedoelde verdere ondersoek voltooi is.

(3) Die beskuldigde kan, met sy eie skriftelike toestemming en met toestemming van die Prokureur-generaal, te eniger tyd na sy verwysing op verhoor gestel word, al het die voormalde tydperk van een-en-dertig dae nog nie verstryk nie.

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

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

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

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

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

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

IN INFERIOR COURT.

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

CHAPTER X.

PROCEDURE AT TRIAL.

IN SUPERIOR AND INFERIOR COURTS

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

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

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

128. When two or more persons are charged jointly, whether with the same offence or with different offences, the court may, at any time during the trial on the application of the prosecutor or of any of the accused, direct that the trial of the accused or any of them shall be held separately from the trial of the other or others of them, and for that purpose may, abstain from giving a judgment as to any of such accused.

129. (1) Subject to the provisions of section *one hundred and thirty-one*, every criminal trial shall take place, and the witnesses shall, save as is otherwise expressly provided by this Ordinance or any other law, give their evidence *viva voce*, in open court in the

124. (1) Wanneer 'n akte van beskuldiging teen 'n beskuldigde in 'n hoër hof ingedien is, kan 'n regter van die hof, op aansoek deur of namens die Prokureur-generaal of deur of namens die beskuldigde, beveel dat die verhoor op 'n ander plek as die in die akte van beskuldiging genoemde plek, en op 'n in die bevel genoemde tyd, gehou moet word.

(2) Wanneer 'n bevel kragtens hierdie artikel uitgereik word is die gevolge in alle opsigte en met betrekking tot alle persone dieselfde asof die Prokureur-generaal besluit het om die beskuldigde op die in die bevel genoemde plek en tyd te vervolg, en as die beskuldigde op borgtug vrygelaat is, word die borgakte van die borgtug geag dienooreenkomsdig na bedoelde tyd en plek uitgebrel te wees.

(3) Die borgaktes van persone wat verplig is om as getuies te verskyn, word op soortgelyke wyse geag na dieselfde tyd en plek uitgebrel te wees.

(4) Kennisgewing van bedoelde tyd en plek moet aan die persone wat onder die borgaktes verbind is, gegee word, anders is hulle borgelde nie aan verbeurdverklaring onderhewig nie.

125. (1) Wanneer 'n saak na elders vir verhoor verplaas word en die beskuldigde in hegtenis is, reik die hof wat die bevel vir verplaasing toestaan, 'n lasbrief uit vir die onverwylde verplaasing van die beskuldigde na die gevangenis van die distrik waarheen die saak verplaas is.

(2) Die beskuldigde word by die volgende strafsetting van die hof waarheen die saak verplaas is, op verhoor gestel, of anders word hy van sy gevangesetting vir die misdryf waarvoor hy vir verhoor verplaas is, ontslaan: Met dien verstande dat as so 'n sitting binne een-en-twintig dae na die verplaasing van die beskuldigde na, en sy aankoms by, bedoelde gevangenis gehou word, hy nie, behalwe met sy eie skriftelike toestemming en die toestemming van die Prokureur-generaal, by daardie sitting verhoor word nie.

IN LAER HOF

126. Wanneer iemand wat op 'n aanklag in hegtenis geneem is, ingevolge artikel *seven-en-twintig* of sub-artsikel (3) van artikel *negen-en-twintig* voor 'n regterlike beampte gebring word, begin bedoelde beampte onverwyl met sy verhoor of 'n voorlopige ondersoek op bedoelde aanklag of, as die aangeleentheid deur 'n ander hof of regterlike beampte beregbaar is, verwys hy sy saak na so 'n hof of beampte.

HOOFTUK X.

PROSEDURE BY VERHOOR, IN HOER EN LAER HOWE

127. (1) Wanneer dit by die verhoor van 'n persoon wat weens 'n misdryf voor 'n hoër of laer hof aangekla word, blyk dat hy nie regtens deur daardie hof beregbaar is nie, kan die hof op versoek van die beskuldigde gelas dat hy voor 'n bevoegde hof verhoor word, en sy verhoor dienooreenkomsdig uitstel.

(2) As die beskuldigde nie so 'n versoek doen nie, word die verhoor voortgesit, en het die uitspraak en vonnis in alle opsigte dieselfde gevolge asof die hof van die begin afregsbevoegdheid gehad het om die beskuldigde te verhoor.

(3) Hierdie artikel doen geen afbreuk aan die reg van die beskuldigde om teen dieregsbevoegdheid van 'n hof te pleit nie.

128. Wanneer twee of meer persone gesamentlik aangekla word, hetby weens dieselfde misdryf of weens verskillende misdrywe, kan die hof te eniger tyd gedurende die verhoor op aansoek van die aanklaer of van enige van die beskuldigdes gelas dat die verhoor van die beskuldigdes of van enige van hulle afsonderlik van die verhoor van die ander een, of van die ander, geskied, en te dien einde kan die hof hom van 'n uitspraak ten opsigte van enige van sodanige beskuldigdes onthou.

129. Behoudens die bepalings van artikel *eenhonderd een-en-dertig* geskied elke strafverhoor en lê die getuies buiten waar hierdie ordonnansie of 'n ander wet uitdruklik anders bepaal, hul getuenis mondeling af in die ope hof

presence of the accused, unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable, in which event the court may order him to be removed and may direct the trial to proceed in his absence.

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

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

(4) A superior court may, whenever it thinks fit, and an inferior court may, if it appears to that court to be in the interest of good order or public morals or of the administration of justice, direct that a trial shall be held with closed doors or that (with such exceptions as the court may direct) females or minors or the public generally or any class thereof shall not be present thereat; and if an accused is to be tried or is on trial on a charge referred to in sub-section (5) of section *sixty-four*, the court may, at the request of the person against or in connection with whom the offence charged is alleged to have been committed (or if he is a minor, at the request of that person or of his guardian) whether made in writing before the trial or orally at any time during the trial direct that every person whose presence is not necessary in connection with the trial or any person or class of person mentioned in the request shall not be present thereat.

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

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

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

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

130. If two or more accused, after a preparatory examination, are charged jointly at a trial before a court of any regional division established under section *two* of the Magistrates' Courts Ordinance, 1963, or at a trial before a superior court, with any offence, referred to in sub-section (1) of section *one hundred and twenty-two* or with having committed or attempted to commit murder or arson or an offence —

- (a) under Chapter I of the Riotous Assemblies and Criminal Law Amendment Ordinance, 1930 (Ordinance 9 of 1930); or
- (b) under section *thirty-three* of the Atomic Energy Act, 1948 (Act 35 of 1948); or
- (c) relating to illicit dealing in or illegal possession of precious minerals or unwrought precious metals or rough or uncut diamonds; or

in die teenwoordigheid van die beskuldigde, tensy hy hom op so 'n wyse gedra dat die voortsetting van die verrigtinge in sy teenwoordigheid ondoenlik is, en in so 'n geval kan die hof gelas dat hy verwyder word en dat die verhoor in sy afwesigheid voortgesit word.

(2) As die beskuldigde gedurende die verhoor sonder verlof afwesig is, kan die hof gelas dat 'n lasbrief vir sy inhegtenisneming uitgereik word, en as hy in hegtenis geneem word, moet hy onverwyd voor die hof gebring word.

(3) Die hof kan te eniger tyd gedurende die verhoor gelas dat enige persoon (behalwe die beskuldigde self) wat as 'n getuie opgeroep staan te word, die hof verlaat en afwesig bly totdat hy opgeroep word, en dat hy in die hof bly nadat sy getuienis afgelê is.

(4) 'n Hoë hof kan, wanneer hy dit goedvind, en 'n laer hof kan, as dit na die mening van daardie hof ter wille van die goeie orde of openbare sedes of die regbedoeling nodig blyk, gelas dat 'n verhoor agter geslote deure plaasvind of dat (met sodanige uitsonderings soos die hof gelas) vrouspersone of minderjariges of die publiek in die algemeen of enige klas daaruit nie daarby aanwesig mag wees nie; en as 'n beskuldigde verhoor staan te word of verhoor word op 'n aanklag in subartikel (5) van artikel *vier-en-sestig* bedoel, kan die hof op versoek van die persoon teen of ten opsigte van wie die misdryf wat ten laste gelê word, na bewering gepleeg is (of, as hy minderjarig is, op versoek van daardie persoon of van sy voog) hetsy skriftelik voor die verhoor of mondeling te eniger tyd gedurende die verhoor gedoen, gelas dat iedereen wie se teenwoordigheid nie in verband met die verhoor nodig is nie, of enige persoon of klas persone in die versoek vermeld, nie daarby aanwesig mag wees nie.

(5) Niemand behalwe die persoon wat verhoor word en sy prokureur of advokaat en behalwe 'n ouer of die voog van 'n minderjarige wat verhoor word, of iemand wat teenoor hom in die plek van 'n ouer staan, mag in enige hof by die verhoor van iemand onder die ouderdom van agtien jaar weens enige aanklag teenwoordig wees nie, tensy sy teenwoordigheid in verband met die verhoor nodig is, of tensy die regter of regterlike beampte wat by die verhoor voorsit, aan hom toestemming verleen het om daarby teenwoordig te wees.

(6) Niemand onder die ouderdom van agtien jaar, behalwe iemand wat verhoor word, mag by 'n strafregte-like verhoor in enige hof teenwoordig wees nie, behalwe solank hy werklik getuienis daarby afle of tensy die regter of regterlike beampte wat by die verhoor voorsit, aan hom toestemming verleen het om daarby teenwoordig te wees.

(7) Die regter of regterlike beampte wat by 'n verhoor voorsit, kan gelas dat solank 'n getuie onder die ouderdom van agtien jaar getuienis by daardie verhoor afle, niemand, behalwe 'n prokureur of advokaat van 'n persoon wat verhoor word, en behalwe 'n ouer of die voog van die getuie of van 'n minderjarige wat verhoor word, of iemand wat teenoor die getuie of minderjarige in die plek van 'n ouer staan, wie se teenwoordigheid nie in verband met die verhoor nodig is nie, daarby teenwoordig mag wees nie.

(8) 'n Verhoor in 'n laer hof van 'n beskuldigde wat onder die ouderdom van agtien jaar is, of van twee of meer beskuldigdes gesamentlik wat almal onder daardie ouderdom is, geskied in 'n ander gebou of vertrek (as 'n gesikte beskikbaar is) as dié waarin strafake teen persone bo daardie ouderdom gewoonlik verhoor word.

130. As twee of meer beskuldigdes na 'n voorlopige ondersoek by 'n verhoor voor 'n hof van 'n streekafdeling ingestel kragtens artikel *twee* van die Ordonnansie op Landdroshewe 1963, of by 'n verhoor voor 'n hoë hof, gesamentlik aangekla word weens enige misdryf genoem in subartikel (1) van artikel *eenhonderd twee-en-twintig* of weens die pleging van moord of brandstigting, of poging daarsoe of 'n misdryf —

- (a) ingevolge hoofstuk I van die Oproerige Samekomste en Kriminele Wet Wysigingsordonnansie 1930 (Ordonnansie 9 van 1930); of
- (b) ingevolge artikel *drie-en-dertig* van die Wet op Atoomkrag 1948 (Wet 35 van 1948); of
- (c) betreffende die onwettige handel in of die onwettige besit van edele minerale of onbewerkte edele metale of ruwe of ongeslypte diamante; of

- (d) relating to the supply of intoxicating liquor to natives or coloured persons; or
- (e) relating to insolvency; or
- (f) in connection with which facts relating to "prescribed material" as defined in section one of the Atomic Energy Act, 1948 (Act 35 of 1948), may have to be considered; or
- (g) in connection with which facts may have to be considered, for the proper understanding of which an expert knowledge of bookkeeping, accounts, geology, mineralogy or metallurgy may be necessary; or
- (h) towards or in connection with a non-European if the accused or any of the accused is a European or towards or in connection with a European, if the accused or any of the accused is a non-European;

or with the same or different offences as aforesaid or with such an offence together with any other offence, and the court is, at any time after the commencement of the trial, satisfied upon application made in person by any such accused or his representative —

- (a) that the physical condition of that accused is such that he is unable to attend or that it is undesirable that he should attend the trial; or
- (b) that circumstances in connection with the illness or death of a member of that accused's family have arisen which make his presence elsewhere necessary or expedient,

the court may, if in its opinion the trial cannot be postponed without undue prejudice, embarrassment or inconvenience to the prosecution or any co-accused or any witness in attendance or subpoenaed to attend, authorize the absence of that accused from the trial for a period fixed by the court and subject to such conditions as it deems fit to impose.

131. (1) If an accused at a trial referred to in section one hundred and thirty —

- (a) absconds; or
- (b) is removed from the court as provided in subsection (1) of section one hundred and twenty-nine; or
- (c) is granted leave of absence under section one hundred and thirty; or
- (d) is absent for any other reason,

the court before which the trial takes place may at any time during the trial direct that the trial be proceeded with in the absence of that accused if he has pleaded to the charge or if it appears by the return of the proper officer or by other sufficient proof that a copy of the charge and, in the case of a superior court, of the notice of trial have been duly served.

(2) A direction referred to in sub-section (1) shall not be made if the court is of opinion that a postponement of the trial can be granted without undue prejudice, embarrassment or inconvenience to the prosecution or any co-accused or any witness in attendance or subpoenaed to attend.

(3) When the accused are called upon to plead to the charge, the court shall order a plea of not guilty to be entered on behalf of an absent accused in respect of whom the court has directed that the trial be proceeded with in his absence, and a plea so entered shall for all purposes have the same effect as if it had been actually pleaded.

(4) If an accused in respect of whom a court has made a direction under sub-section (1) attends or again attends the trial, he may, unless he was legally represented during his absence, examine any witness who gave evidence during his absence, and inspect the record of the proceedings or require the court to have such record read over to him.

(5) If the examination referred to in sub-section (4) takes place after the close of the evidence for the prosecution or any co-accused, the prosecution or such

- (d) betreffende die verskaffing van bedwelmende dran aan naturelle of kleurlinge; of
- (e) betreffende insolvensie; of
- (f) in verband waarmee feite betreffende „voorgeskre we materiaal" soos bepaal in artikel een van di Wet op Atoomkrag 1948 (Wet 35 van 1948) moontlik oorweeg moet word; of
- (g) in verband waarmee feite moontlik oorweeg moet word vir die behoorlike begrip waarvan deskundige kennis van boekhouding, rekeninge, geologie, mineraalogie of metallurgie moontlik nodig is; of
- (h) teenoor of in verband met 'n nie-blanke as die beskuldigde of enige van die beskuldigdes 'n blanke is of teenoor of in verband met 'n blanke as die beskuldigde of enige van die beskuldigdes 'n nie-blanke is;

of weens dieselfde of verskillende misdrywe soos voormel of weens so 'n misdryf saam met enige ander misdryf en die hof te eniger tyd na die aanvang van die verhoor op aansoek persoonlik gerig deur enige sodanige beskuldigd of sy verteenwoordiger oortuig is —

- (a) dat die liggaamlike toestand van daardie beskuldigde sodanig is dat hy nie in staat is om die verhoor by te woon nie of dat dit onwenslik is dat hy die verhoor moet bywoon; of
- (b) dat omstandighede in verband met die siekte of dood van 'n lid van daardie beskuldigde se familie ontstaan het wat sy teenwoordigheid elders nodig maak,

kan die hof as die verhoor syns insiens nie uitgestel kan word nie sonder onbehoorlike benadeling, belemmering of ongerief vir die vervolging of 'n mede-beskuldigde of 'n getuie wat teenwoordig is of gedagvaar is om teenwoordig te wees, die afwesigheid van daardie beskuldigde van die verhoor magtig vir 'n tydperk deur die hof bepaal en onderhewig aan die voorwaardes wat die hof goedvind om op te lê.

131. (1) As 'n beskuldigde by 'n verhoor bedoel in artikel eenhonderd en dertig —

- (a) vlug; of
- (b) uit die hof verwyder word soos bepaal by sub artikel (1) van artikel eenhonderd negen-en-tweintig; of
- (c) verlof tot afwesigheid toegestaan word kragtens artikel eenhonderd en dertig; of
- (d) om enige ander rede afwesig is,

kan die hof voor wie die verhoor plaasvind, te eniger tyd gedurende die verhoor gelas dat die verhoor moet voortgaan in die afwesigheid van daardie beskuldigde as hy op die aanklag gepleit het of as dit uit die relaas van die bevoegde beampete of uit ander voldoende bewys blyk dat 'n afskrif van die aanklag, en in die geval van 'n hoër hof van die kennisgewing van verhoor, behoorlik bestel is.

(2) 'n Lasgewing bedoel in subartikel (1) word nie uitgereik nie as die hof meen dat 'n uitstel van die verhoor toegestaan kan word sonder onbehoorlike benadeling, belemmering of ongerief vir die vervolging of 'n mede-beskuldigde of 'n getuie wat teenwoordig is of gedagvaar is om teenwoordig te wees.

(3) Wanneer die beskuldigdes aangesê word om op die aanklag te pleit, gelas die hof dat 'n pleit van onskuldig aangeteken word namens 'n afwesige beskuldigde ten opsigte van wie die hof gelas het dat die verhoor in sy afwesigheid moet voortgaan, en 'n aldus aangetekende pleit het vir alle doeleindes dieselfde uitwerking asof die inderdaad gepleit was.

(4) As 'n beskuldigde ten opsigte van wie 'n hof 'n lasgewing kragtens subartikel (1) uitgereik het, die verhoor bywoon of weer bywoon, kan hy, tensy 'n regsvrees teenwoordiger tydens sy afwesigheid vir hom opgetree het enige getuie ondervra wat tydens sy afwesigheid getuieni afgelê het en die notule van die verrigtinge naslaan en verlang dat die hof die bedoelde notule aan hom moet laat voorlees.

(5) As die ondervraging bedoel in subartikel (4) plaasvind nadat die getuenis vir die vervolging of 'n mede-beskuldigde afgesluit is, kan die vervolging of daar die mede-beskuldigde ten opsigte van enige geskilpunt

accused may, in respect of any issue raised by the examination, lead evidence in rebuttal of any evidence relating to the issue so raised.

(6) (a) When the evidence in respect of all the accused present has been closed and the evidence in respect of any absent accused has not been closed, the court shall, subject to the provisions of paragraph (b), postpone the proceedings until such absent accused is in attendance and, if necessary, further postpone the proceedings until the evidence in respect of that accused has been closed.

(b) If it appears to the court that the presence of such an absent accused cannot reasonably be obtained, the court may direct that the proceedings in respect of the accused present be concluded as if his trial had been separated from the trial of the absent accused at the stage at which that accused became absent from the trial and when such absent accused is again in attendance, his trial shall continue from that stage of the proceedings at which he became absent and the court shall not be required to be differently constituted merely by reason of such separation.

(c) When the evidence in respect of all the accused at the trial has been closed and any accused is absent when the verdict is to be delivered, the verdict may be delivered in respect of all the accused or be withheld until all the accused are present or be delivered in respect of any accused present and withheld in respect of the absent accused until he is again in attendance.

132. (1) The prosecutor may before any evidence is adduced address the court for the purpose of explaining the charge and opening the evidence intended to be adduced for the prosecution but without comment thereon.

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

(3) If, at the close of the case for the prosecution, the court considers that there is no evidence that the accused committed the offence charged in the charge or any other offence of which he might be convicted thereon, it may then return a verdict of not guilty.

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

133. Every person charged with an offence is entitled to make his defence at his trial and to have the witnesses examined or cross-examined by his counsel, if the trial is before a superior court, or by his counsel or his attorney, if the trial is before an inferior court: Provided that upon his trial before an inferior court, an accused under the age of sixteen years may be assisted by his natural or legal guardian, and that any accused who in the opinion of the court requires the assistance of another person, may, with the permission of the court be so assisted.

134. (1) If during the trial in any court of a person under the age of eighteen years who is charged with any offence other than murder or rape, it appears to the judge or judicial officer presiding at that trial that

wat ontstaan het uit die ondervraging getuenis lei ter weerlegging van enige getuenis betreffende die geskille-punt wat aldus ontstaan het.

(6) (a) Wanneer die getuenis ten opsigte van al die beskuldigdes wat teenwoordig is, afgesluit is en die getuenis ten opsigte van 'n afwesige beskuldigde nie afgesluit is nie, stel die hof behoudens die bepalings van paraagraaf (b) die verrigtinge uit totdat daardie afwesige beskuldigde teenwoordig is en, indien nodig, stel die hof die verrigtinge verder uit totdat die getuenis ten opsigte van daardie beskuldigde afgesluit is.

(b) As dit vir die hof blyk dat die teenwoordigheid van so 'n afwesige beskuldigde nie redelikerwyse verkry kan word nie, kan die hof gelas dat die verrigtinge ten opsigte van die beskuldigde wat teenwoordig is, afgehandel word asof sy verhoor van die verhoor van die afwesige beskuldigde geskei was in die stadium waarop daardie beskuldigde van die verhoor afwesig geraak het, en wanneer so 'n afwesige beskuldigde weer teenwoordig is, gaan sy verhoor voort vanaf die stadium van die verrigtinge waarop hy afwesig geraak het en is dit nie nodig dat die hof vanweë die bedoelde skeiding anders saamgestel word nie.

(c) Wanneer die getuenis ten opsigte van al die beskuldigdes by die verhoor afgesluit is en 'n beskuldigde afwesig is wanneer uitspraak gelewer moet word, kan uitspraak ten opsigte van al die beskuldigdes gelewer word of teruggehou word totdat al die beskuldigdes teenwoordig is, of gelewer word ten opsigte van die beskuldigdes wat teenwoordig is en teruggehou word ten opsigte van die afwesige beskuldigde totdat hy weer teenwoordig is.

132. (1) Die aanklaer kan, voordat enige getuenis aangevoer word, die hof toespreek om die aanklag te verduidelik en die getuenis in te lei wat bedoel word om vir die vervolging aangevoer te word, maar sonder kommentaar daarop.

(2) Die aanklaer moet dan die getuies vir die vervolging ondervra en enige toelaatbare dokumentêre bewys inlewer en uitlees, en, in die geval van 'n verhoor voor 'n hoër hof en in 'n saak wat na 'n landdroshof teruggewys is, asook in die geval van 'n verhoor voor die hof van 'n streekafdeling wat geskied op las van die Prokureurgeneraal ingevolge paragraaf (b) of (c) van subartikel (1) van artikel *een-en-tachtig* enige getuenis, asook die verklaring, deur die beskuldigde in die teenwoordigheid van die landdros by die voorlopige ondersoek afgelê, uitlees.

(3) As by afsluiting van die vervolging se kant van die saak, die hof meen dat daar geen bewys is dat die beskuldigde die misdryf wat in die aanklag ten laste gelê word of enige ander misdryf waaraan hy daarop skuldig bevind sou kan word, gepleeg het nie, kan die hof 'n uitspraak van onskuldig gee.

(4) By die afsluiting van die getuenis vir die vervolging moet die bevoegde beampete van die hof die beskuldigde, of elke beskuldigde, as daar meer as een is, of sy regsvteenwoordiger, vra of hy voorinemens is om getuenis vir sy verdediging aan te voer, en as hy bevestigend antwoord, kan hy self of deur middel van sy regsvteenwoordiger die hof toespreek om die getuenis wat hy voorinemens is om vir die verdediging aan te voer, in te lei, maar sonder kommentaar daarop, en daarna moet hy of sy regsvteenwoordiger sy getuies ondervra en enige toelaatbare dokumentêre bewys inlewer en uitlees.

133. Iedereen wat weens 'n misdryf aangekla word, is geregtig om sy verdediging by sy verhoor te stel en die getuies te laat ondervra of kruisvra deur sy advokaat, as die verhoor voor 'n hoër hof geskied, of deur sy advokaat of sy prokureur as die verhoor voor 'n laer hof geskied: Met dien verstande dat 'n beskuldigde onder die ouderdom van sesien jaar by sy verhoor voor 'n laer hof deur sy natuurlike of wettige voog bygestaan kan word, en dat enige beskuldigde wat, volgens die oordeel van die hof, die bystand van iemand anders nodig het, met vergunning van die hof aldus bygestaan kan word.

134. (1) As dit gedurende die verhoor, in enige hof, van iemand onder die ouderdom van agtien jaar wat van enige misdryf, behalwe moord of verkragting, aangekla word, vir die regter of regterlike beampete wat daardie

the said person is a child in need of care within the meaning of that expression as defined in section *one* of the Children's Ordinance, 1961 (Ordinance 31 of 1961), and that it is desirable to deal with that person in terms of sections *twenty-eight* and *twenty-nine* of that Ordinance, he may stop the trial and order that the said person be brought before a children's court mentioned in section *four* of the said Ordinance and be dealt with under the said sections *twenty-eight* and *twenty-nine*.

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

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

136. A trial may, if it is necessary or expedient, be adjourned at any time of the trial, whether evidence has or has not been given.

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

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

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

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

139. (1) If, when the accused is called upon to plead to a charge, it appears to be uncertain for any reason whether he is capable of understanding the proceedings at the trial, so as to be able to make a proper defence, the procedure described in section *twenty-eight* of the Mental Disorders Act, 1916 (Act 38 of 1916), shall be followed.

(2) If the court finds that he is so capable, the trial shall proceed as in other cases.

(3) If the court finds that he is not so capable, the accused shall be dealt with in accordance with the provisions of section *twenty-eight* of the Mental Disorders Act, 1916 (Act 38 of 1916).

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

(5) The provisions of this section shall be read as being additional to and not in substitution for the provisions of section *twenty-eight* of the Mental Disorders Act, 1916 (Act 38 of 1916).

140. (1) Every objection to an indictment for any formal defect apparent on the face thereof shall be taken before the accused has pleaded but not afterwards.

verhoor voorsit, blyk dat bedoelde persoon 'n sorgbehoewe kind is binne die bedoeling van daardie uitdrukking soos in artikel *een* van die Kinderordonnansie 1961 (Ordonnansie 31 van 1961) bepaal, en dat dit wenslik is dat met daardie persoon kragtens artikels *agt-en-twintig en negen-en-twintig* van daardie ordonnansie gehandel word kan hy die verhoor staak en gelas dat bedoelde persoon voor 'n kinderhof in artikel *vier* van genoemde ordonnansie vermeld, gebring word, en dat kragtens genoemde artikels *agt-en-twintig en negen-en-twintig* met hom behandel word.

(2) As so 'n lasgewing in die loop van 'n verhoor na skuldigbevinding uitgereik word, word daardie bevinding van nul en gener waarde vir sover dit betrekking het op die persoon op wie bedoelde lasgewing betrekking het, en geag nie gedoen te gewees het nie.

135. Behoudens die bepalings van artikel *eenhonderd drie-en-twintig* en as dit nodig of dienstig is, kan enige hof voor wie 'n verhoor aanhangig is, die verhoor tot 'n tyd en na 'n plek en op die voorwaarde wat vir so 'n hof gepas voorkom, uitstel en indien nodig of dienstig kan dien van tyd tot tyd verder uitgestel word.

136. 'n Verhoor kan, indien nodig of dienstig, op enige tydstip daarvan verdaag word, hetsy getuienis afgelê nie.

137. (1) Wanneer 'n verhoor soos voormeld uitgestel van verdaag word, kan die hof gelas dat die beskuldigde aangehou word totdat hy volgens wet vrygestel word, of hom op borgtog vrylaat of, as hy reeds op borgtog vrygelaat is, sy borgtog verleng, en die borgtog van die getuies verleng.

(2) Wanneer die verhoor van 'n beskuldigde wat nie in hegtenis is nie en wat nie op borgtog vrygelaat is nie aldus uitgestel of verdaag word, word geag dat 'n dagvaarding aan hom bestel is om te verskyn op die tyd toe wanneer, en die plek waarna, die verhoor uitgestel of verdaag is.

138. (1) Behoudens die bepalings van artikel *drie honderd sewen-en-dertig* moet die beskuldigde op die dag vir sy verhoor of vonnis op 'n aanklag bepaal, voor die hof verskyn of, as hy in hegtenis is, voor die hof gebring word, en in die ope hof verwittig word van die misdryf waarvan hy aangekla word, soos in die aanklag uiteen gesit, en aangesê word om onmiddellik daarop te pleit behalwe waar, in die geval van 'n akte van beskuldiging of dagvaarding, die beskuldigde daarteen beswaar maai om aldus te pleit en die hof be vind dat 'n afskrif van die akte van beskuldiging of dagvaarding nie behoorlik aan hom bestel is nie.

(2) As die beskuldigde voor 'n hoër hof aangekla word nadat hy op borgtog vrygelaat is, het sy pleit op die akte van beskuldiging die gevolg dat sy borgtog beëindig word, tensy die hof die teendeel gelas, en moet hy daarna tot afloop van die verhoor in hegtenis gehou word in alle opsigte op dieselfde wyse asof hy nie op borgtog vrygelaat was nie.

139. (1) As dit, wanneer die beskuldigde aangesê word om op 'n aanklag te pleit, om een of ander rede blyk onseker te wees of hy in staat is om die verrigtinge by die verhoor te begryp sodat hy in staat sal wees om sy verdediging behoorlik te voer, word die prosedure in artikel *agt-en-twintig* van die Wet op Geestesgebreken 1916 (Wet 38 van 1916) beskryf, gevolg.

(2) As die hof be vind dat hy aldus in staat is, word die verhoor soos in ander gevalle voortgesit.

(3) As die hof be vind dat hy nie aldus in staat is nie word met die beskuldigde ooreenkomsdig die bepalings van artikel *agt-en-twintig* van die Wet op Geestesgebreken 1916 (Wet 38 van 1916) gehandel.

(4) Iemand wat aldus be vind word nie in staat te wees om die verrigtinge by die verhoor te begryp nie, kan te eniger tyd daarna, wanneer hy aldus in staat is, weer weens die misdryf aangekla en verhoor word.

(5) Die bepalings van hierdie artikel word uitgelê as 'n byvoeging tot en nie ter vervanging nie van die bepalings van artikel *agt-en-twintig* van die Wet op Geestesgebreken 1916 (Wet 38 van 1916).

140. (1) Iedere beswaar teen 'n akte van beskuldiging op grond van 'n op die oog duidelike formele gebrek daar in word gemaak voordat die beskuldigde gepleit het maar nie daarna nie.

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

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

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

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

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

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

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

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

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

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

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

- (a) that he is guilty of the offence charged, or, with the concurrence of the prosecutor, of any other offence of which he might be convicted on the charge; or
- (b) that he is not guilty; or
- (c) that he has already been convicted of the offence with which he is charged; or
- (d) that he has already been acquitted of the offence with which he is charged; or
- (e) that he has received the Royal or State President's pardon for the offence charged; or
- (f) that the court has no jurisdiction to try him for the offence; or
- (g) that the prosecutor has no title to prosecute.

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

(4) The accused may plead and except together.

(5) Together with his plea the accused may offer an explanation of his attitude in relation to the charge,

(2) So 'n beswaar teen 'n dagvaarding of aanklag wat deur 'n laer hof verhoor staan te word, word by wyse van eksepsie gemaak en wel voordat die beskuldigde gepleit het, maar nie daarna nie.

(3) Iedere hof voor wie so 'n beswaar op grond van 'n formele gebrek gemaak word, kan, as dit nodig geag word en as die beskuldigde nie daardeur by sy verdediging benadeel sal word nie, die aanklag onverwyld in so 'n oopsig laat wysig soos die hof gelas, en daarna word die verhoor voortgesit asof so 'n gebrek nie bestaan het nie.

141. (1) As die beskuldigde slegs 'n eksepsie opwerp en nie pleit nie, moet die hof die aangeleentheid onverwyld in verhoor neem en daaroor beslis, en as die eksepsie van die hand gewys word, word hy aangesê om op die aanklag te pleit.

(2) Wanneer die beskuldigde tegelykertyd pleit en 'n eksepsie opwerp, berus dit by die hof of die pleit of die eksepsie eerste afgehandel word.

142. (1) Voordat hy pleit, kan die beskuldigde by die hof aansoek doen om die aanklag nietig te verklaar op grond daarvan dat dit daarop bereken is om hom by sy verdediging te benadeel of te belemmer.

(2) Die hof kan op so 'n aansoek die aanklag nietig verklaar of gelas dat dit op so 'n wyse gewysig word soos die hof billik ag, of die hof kan weier om enige bevel op die aansoek uit te reik.

(3) As die beskuldigde aanvoer dat sy naam in die aanklag verkeerd aangegee word, kan die hof, nadat hy deur middel van 'n beëdigde verklaring of op 'n ander wyse van die fout oortuig is, gelas dat dit gewysig word.

143. (1) As die beskuldigde voornemens is om ingevolge artikel *eenhonderd twee-en-twintig* aansoek te doen om die nietigverklaring van 'n aanklag, of om 'n eksepsie op te werk, of om enige pleit in artikel *eenhonderd vier-en-veertig* vermeld, behalwe die pleit van skuldig of onskuldig, te pleit, moet hy redelike kennis (met inagneming van die omstandighede van elke besonder geval) gee aan die Prokureur-generaal of sy verteenwoordiger, as die verhoor voor 'n hoër hof geskied, of aan die staatsaanklaer, as die verhoor voor 'n laer hof geskied, of aan die private aanklaer, wanneer dit 'n private vervolging is, met oopgaaf van die gronde waarop hy die nietigverklaring van die aanklag verlang, of waarop sy eksepsie of pleit berus.

(2) Die Prokureur-generaal of die aanklaer, na gelang, kan afsien van 'n kennisgewing wat ingevolge subartikel (1) vereis word: Met dien verstande dat die hof, by bewys van gegronde rede, van sodanige kennisgewing vrystelling kan verleen of die verhoor kan verdaag sodat sodanige kennis gegee kan word.

144. (1) As die beskuldigde nie beswaar maak dat 'n afskrif van die aanklag nie behoorlik aan hom bestel is, nog aansoek doen dat dit ingevolge artikel *eenhonderd twee-en-veertig* nietig verklaar word nie, moet hy of daarop pleit of 'n eksepsie daarteen opwerp op grond daarvan dat dit nie 'n misdryf inhoud wat deur die hof beregbaar is nie.

(2) As die beskuldigde op die aanklag pleit, kan hy pleit of —

- (a) dat hy skuldig is aan die misdryf wat ten laste gelê word of, met instemming van die aanklaer, aan enige ander misdryf waarvan hy op die aanklag skuldig bevind sou kan word; of
- (b) dat hy onskuldig is; of
- (c) dat hy reeds weens die misdryf waarvan hy aangekla word, skuldig bevind is; of
- (d) dat hy reeds van die misdryf waarvan hy aangekla word, vrygespreek is; of
- (e) dat hy Koninklike of Staatspresidensiële gracie ten opsigte van die misdryf wat ten laste gelê word, ontvang het; of
- (f) dat die hof nie regsvvoegdheid het om hom weens die misdryf te verhoor nie; of
- (g) dat die aanklaer nie geregtig is om te vervolg nie.

(3) Twee of meer pleite kan tegelykertyd gepleit word behalwe dat die pleit van skuldig nie saam met enige ander pleit op dieselfde aanklag gepleit kan word nie.

(4) Die beskuldigde kan tegelykertyd pleit en 'n eksepsie opwerp.

(5) Die beskuldigde kan tesame met sy pleit 'n verduideliking met betrekking tot sy houding tot die aanklag

or a statement indicating the basis of his defence, and such explanation or statement shall be recorded and shall form a portion of the record of the case.

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

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

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

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

147. Upon a plea to the jurisdiction of the court, the court shall proceed to satisfy itself in such manner and upon such evidence as it thinks fit, whether it has jurisdiction or not.

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

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

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

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

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

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

- (a) for want of the averment of any matter which need not be proved;
- (b) because any person mentioned therein is designated by a name of office or other descriptive appellation instead of by his proper name;
- (c) because of an omission to state the time at which the offence was committed in any case where time is not of the essence of the offence;
- (d) because the offence is stated to have been committed on a day subsequent to the laying of the complaint or the service of the charge or on an impossible day or on a day that never happened;

of 'n verklaring wat die grondslag van sy verdediging aandui, aanbied, en bedoelde verduideliking of verklaring word aangeteken en maak deel uit van die notule van die saak.

(6) Iemand wat een maal aangesê is om ten opsigte van 'n aanklag te pleit is, behalwe soos in hierdie ordonnansie of in enige ander wet uitdruklik bepaal word geregtig om te eis dat hy of vrygespreek of skuldig bevind word.

145. (1) Iemand wat weens die onwettige publikasie van lasterlike bewerings aangekla word en wat ter verdediging aanvoer dat die lasterlike bewerings waar is en dat dit in die openbare belang was dat die publikasie moes geskied, moet die aangeleentheid uitdruklik pleit en kan dit saam met enige ander pleit, behalwe die pleit van skuldig, pleit.

(2) Kennis van so 'n pleit word, tensy daarvan afgesien word, ooreenkomsdig artikel *eenhonderd drie-en-veertig* gegee.

146. By enige pleit van vorige skuldigbevinding aan of vryspraak van die misdryf wat ten laste gelê word, is dit voldoende vir die beskuldigde om te verklaar dat hy, na gelang, volgens wet skuldig bevind is aan of vrygespreek is van die misdryf wat ten laste gelê word.

147. By 'n pleit teen dieregsbevoegdheid van die hof, moet die hof homself op die wyse en deur middel van die getuenis wat hy goedvind, oortuig of hyregsbevoegdheid het of nie.

148. As die beskuldigde 'n pleit behalwe die pleit van skuldig of 'n pleit teen dieregsbevoegdheid van die hof pleit, word as gevolg van die pleit, en sonder enige verdere formaliteit, geag dat hy geëis het dat die geskilpunte deur sy pleit geopper, bereg word deur die hof.

149. (1) Wanneer iemand deur 'n landdros na 'n hoëhof vir vonnis verwys is, of die saak teen hom deur die Prokureur-generaal na 'n landdroshof vir vonnis terugverwys is, word hy aangesê om op die aanklag te pleit op dieselfde wyse asof hy, in die geval van so 'n verwysing, ter strafzitting verwys was en, in die geval so 'n terugverwysing, summier verhoor word, en kan hy pleit dat hy skuldig is of aan die misdryf wat ten laste gelê word of, met instemming van die aanklaer, aan enige ander misdryf waaraan hy op die aanklag skuldig bevind sou kan word.

(2) As hy onskuldig pleit, gelas die hof, indien oortuig dat hy voor die landdros behoorlik erken het dat hy aan die misdryf wat ten laste gelê word, skuldig was, en dat hy aldus skuldig was, dat 'n pleit van skuldig aangeteken word of teken die hof so 'n pleit aan ondanks sy pleit van onskuldig, en 'n pleit aldus aangeteken het diezelfde gevolg asof dit inderdaad gepleit was.

(3) As die hof nie aldus oortuig is nie of as dit, hoewel die beskuldigde skuldig pleit, na ondersoek van die getuenis blyk dat hy inderdaad nie die misdryf wat ten laste gelê word, of enige ander misdryf waarvan hy op die aanklag skuldig bevind sou kan word, gepleeg het nie, word 'n pleit van onskuldig aangeteken.

150. As die beskuldigde, wanneer hy aangesê word om op 'n aanklag te pleit, weier om regstreeks daarop te pleit of daarop te antwoord, kan die hof na goedvinde gelas dat 'n pleit van onskuldig namens die beskuldigde aangeteken word, en 'n pleit aldus aangeteken het diezelfde gevolg asof dit inderdaad gepleit was.

151. (1) Geen aanklag ten opsigte van enige misdryf word as gebrekkig beskou nie —

- (a) weens gebrek aan die bewering van enigets wat nie bewys hoof te word nie;
- (b) omdat 'n daarin vermelde persoon deur 'n amptenaam of ander bekrywingsnaam in plaas van deur sy eienaam aangedui word;
- (c) omdat in 'n geval waar tyd nie 'n wesenlike standdeel van die misdryf uitmaak nie, die tyd wanneer die misdryf gepleeg is, nie vermeld word nie;
- (d) omdat dit beweer word dat die misdryf gepleeg is na die indiening van die klage of die bestelling van die aanklag of op 'n dag wat onmoontlik is of nooit voorgeval het nie;

- (e) for want of, or imperfection in, the addition of any accused or any other person;
- (f) for want of the statement of the value or price of any matter or thing or the amount of damage, injury or spoil in any case where the value or price or the amount of damage, injury or spoil is not of the essence of the offence.

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

- (a) proof may be given that the act or offence in question was committed on a day or during a period more than three months before or after the day or period stated in the charge unless it is made to appear to the court before which the trial is pending that the accused is likely to be prejudiced thereby in his defence upon the merits;
- (b) if the court considers that the accused is likely to be prejudiced thereby in his defence upon the merits, it shall reject such proof and the accused shall be deemed not to have pleaded to the charge.

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

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

153. No charge of publishing a blasphemous, seditious, obscene, or defamatory libel, or of selling or exhibiting any obscene book, pamphlet, newspaper, or other printed or written matter shall be open to objection or deemed insufficient on the ground that it does not set out the words thereof: Provided that the court may order that particulars shall be furnished by the prosecutor stating what passages in such book, pamphlet, newspaper, printing, or writing are relied on in support of the charge.

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

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

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

155. Whenever an indictment or charge in respect of any offence is defective for want of the averment of

- (e) weens nie-byvoeging of 'n gebrek in die byvoeging van enige beskuldigde of enige ander persoon;
- (f) weens nie-vermelding van die waarde of prys van 'n voorwerp of saak of die bedrag van skade, nadeel of buit in 'n geval waar die waarde of prys of die bedrag van die skade, nadeel of buit nie 'n wesenlike bestanddeel van die misdryf uitmaak nie.

(2) As 'n besondere dag of tydperk in 'n aanklag aangegee word as die dag waarop of tydperk waarin enige daad of misdryf gepleeg is, word bewys dat so 'n daad of misdryf gepleeg is op enige ander dag of gedurende enige ander tydperk wat nie meer is nie as drie maande vroeër of later as die dag of tydperk daarin vermeld, geag sodanige bewering te staaf, as tyd nie 'n wesenlike bestanddeel van die misdryf uitmaak nie: Met dien verstande dat —

- (a) bewys gelewer kan word dat die betrokke daad of misdryf gepleeg is op 'n dag of gedurende 'n tydperk wat meer as drie maande vroeër of later is as die dag of tydperk in die aanklag vermeld, tensy dit aan die hof voor wie die verhoor aanhangig is, getoon word dat die beskuldigde waarskynlik daardeur by sy verdediging ten opsigte van die meriete benadeel sal word;
- (b) as die hof meen dat die beskuldigde waarskynlik daardeur by sy verdediging ten opsigte van die meriete benadeel sal word, hy sodanige bewys moet verwerp en die beskuldigde geag moet word nie ten opsigte van die aanklag te gepleit het nie.

152. (1) As in 'n saak die verdediging van die beskuldigde berus op wat gewoonlik 'n *alibi* genoem word, en die hof voor wie die verhoor dien, meen dat die beskuldigde by die voer van so 'n verdediging benadeel kan word as bewyse toegelaat sou word dat die betrokke daad of misdryf op 'n ander dag of tyd gepleeg is as die dag of tyd in die aanklag vermeld, verwerp die hof sodanige bewys, ofskoon die dag of tyd wat dit die voorname is om te bewys, binne 'n tydperk van drie maande voor of na die dag vermeld in die aanklag val, en daarop tree diezelfde gevole in wat in die laaste voorbehoudbepaling by subartikel (2) van artikel *eenhonderd een-en-vyftig* bedoel word, ondanks andersluidende bepalings van daardie artikel.

(2) As in een of ander geval geen dag in die aanklag aangegee word nie, of 'n dag wat onmoontlik is of nooit voorgeval het nie aangegee word, kan die beskuldigde te eniger tyd voordat hy pleit, aansoek doen by 'n hoér hof watregsbevoegdheid het, of by enige regter daarvan of by die hof voor wie hy aangekla word, en so 'n hof of regter moet, wanneer deur middel van 'n beëdigde verklaring of op 'n ander wyse oortuig dat die beskuldigde waarskynlik by sy verdediging ten opsigte van die meriete benadeel sal word tensy 'n dag of tyd aangegee word, sodanige bevel uitreik soos onder die omstandighede van die besondere geval billik voorkom.

153. Geen aanklag weens die publikasie van 'n godslasterlike, opruiende, onbetaamlike of lasterlike geskrif of weens die verkoop of uitstalling van enige onbetaamlike boek, pamphlet, nuusblad of ander gedrukte of geskrewe stof is aan beswaar onderhewig of word gebrekkig beskou op grond daarvan dat dit nie die woorde daarvan uiteensit nie: Met dien verstande dat die hof kan gelas dat besonderhede deur die aanklaer verstrek word wat vermeld op watter dele in so 'n boek, pamphlet, nuusblad, drukwerk of geskrif daar ter stawing van die aanklag gesteun word.

154. (1) Die hof kan in enige geval as hy dit goed vind, hetsy voor of by die verhoor, gelas dat besonderhede van 'n bewering in die aanklag aan die beskuldigde verstrek word, en kan, indien nodig, die verhoor verdaag sodat sodanige besonderhede verstrek kan word.

(2) Bedoelde besonderhede word gratis aan die beskuldigde of sy advokaat of prokureur verstrek en word in die notule aangeteken; en die verhoor word in alle opsigte voortgesit asof die aanklag in ooreenstemming met bedoelde besonderhede gewysig was.

(3) By beslissing oor die vraag of 'n besonderheid nodig is of nie, en of 'n gebrek in 'n akte van beskuldiging in 'n hoér hof of 'n aanklag by terugverwysing na 'n laer hof, van wesenlike belang vir 'n billike beregting van die saak is of nie, kan die hof die voorlopige ondersoek in aanmerking neem.

any matter which is an essential ingredient of the offence, the defect shall be cured by evidence at the trial in respect of the offence proving the presence of such a matter which should have been averred, unless the want of such averment was brought to the notice of the court before judgment.

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

(2) The amendment may be made on such terms (if any) as to postponing the trial as the court thinks reasonable.

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

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

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

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

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

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

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

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

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

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

(4) If sentence is not passed upon an accused forthwith upon his conviction in an inferior court or if, by reason of any decision or order of a superior court on appeal, review or otherwise, it is necessary to add to or vary any sentence passed in an inferior court, or to pass sentence afresh in such court, any judicial officer of that

155. Wanneer 'n akte van beskuldiging of aanklag ten opsigte van 'n misdryf gebrekbaar is weens gebrek aan die bewering van enigets wat 'n weselike bestanddeel van die misdryf is, word die gebrek by die verhoor ten opsigte van die misdryf deur getuienis herstel wat die aanwesigheid bewys van so iets wat beweer moes geword het, tensy die gebrek aan dié bewering vóór uitspraak onder die aandag van die hof gebring is.

156. (1) Wanneer daar by 'n verhoor op 'n aanklag 'n verskil blyk te wees tussen die bewering daarin en die bewys wat ter stawing van daardie bewering aangebied word, of as dit blyk dat enige woorde of besonderhede wat in die aanklag moes ingevoeg gewees het, wegelaat is, of dat enige woorde of besonderhede wat moes wegelaat gewees het, ingevoeg is, of dat daar enige ander fout in die aanklag is, kan die hof te eniger tyd voor uitspraak gegee word, as hy meen dat die aanbring van die nodige wysiging aan die aanklag nie die beskuldigde by sy verdediging sal benadeel nie, gelas dat die aanklag (hetself dit 'n misdryf inhoud nie) vir sover nodig gewysig word, beide wat betref die deel daarvan waarin die verskil, weglaat, invoeging of fout voorkom, en wat betref enige ander deel daarvan wat dit nodig mag word om te wysig.

(2) Die wysiging kan aangebring word op die voorwaardes (as daar is) wat die hof redelik ag met betrekking tot die uitstel van die verhoor.

(3) By wysiging van die aanklag ooreenkomsdig die bevel van die hof, word die verhoor ten opsigte van die gewysigde aanklag op die bepaalde tyd voortgesit, in alle opsigte op dieselfde wyse en met dieselfde gevolg asof dit van die begin af in die gewysigde vorm was.

(4) Die feit dat 'n aanklag nie soos in hierdie artikel bepaal, gewysig is nie, doen geen afbreuk aan die geldigheid van die verrigtinge ten opsigte daarvan nie, tensy die hof geweler het om die wysiging toe te laat.

157. Iedere uitspraak gedoen en vonnis gevel na die aanbring van 'n wysiging ingevolge hierdie ordonnansie het in alle opsigte dieselfde regskrag en gevolge asof die aanklag van die begin af in die vorm was waarin dit was nadat so 'n wysiging aangebring is.

158. As dit te eniger tyd na die aanvang van 'n verhoor beweer word of blyk dat die beskuldigde nie by sy volle verstand is nie, of as daar by so 'n verhoor ter verdediging aangevoer word dat die beskuldigde vanweë kranksinnigheid nie strafregtelik aanspreeklik was vir die doen of late wat na bewering die misdryf waarvan hy aangekla word, uitmaak nie, moet met hom gehandel word op die wyse voorgeskryf deur die wet met betrekking tot geestesgebreke.

159. (1) Nadat al die getuienis aangevoer is, kan die aanklaer die hof toespreek, en daarna kan die beskuldigde, of iedere beskuldigde, as daar meer as een is, self of deur middel van sy regsvteenwoordiger die hof toespreek.

(2) As die beskuldigde of sy regsvteenwoordiger in sy toespraak 'n regsvraag opper, kan die aanklaer repliek lewer, maar slegs op die regsvraag aldus geopper.

160. 'n Reger of beampete wat voorsit by enige hof voor wie iemand weens 'n misdryf verhoor word, kan sy eindbeslissing ten opsigte van aangeleenthede wat by die verhoor geopper word, voorbehou, en sy beslissing, wanneer dit ook al gegee word, word geag ten tyde van die verhoor gegee te gewees het.

161. (1) Alle uitsprake en vonnis in strafake wat voor enige hof dien, moet in die ope hof uitgespreek word.

(2) Voordat hy vonnis oplê, kan die hof getuienis aanhoor wat hy goedvind ten einde homself te vergewis van die gepaste vonnis wat opgelê behoort te word.

(3) 'n Lasbrief vir die uitvoering van 'n vonnis wat deur 'n hof in 'n strafsaak opgelê is, kan deur die regter of beampete wat die vonnis opgelê het of deur enige ander regter of regterlike beampete van daardie hof uitgereik word.

(4) As 'n beskuldigde nie onmiddellik by sy skuldigheidsbevinding in 'n laer hof vonnis opgelê word nie of as, vanweë 'n beslissing of bevel van 'n hoër hof by appell, hersiening of andersins, dit nodig is om 'n vonnis wat in 'n laer hof opgelê is, te wysig of iets daarby te voeg of om opnuut vonnis in so 'n hof op te lê, kan enige regterlike beampete van daardie hof, by afwesigheid van die regterlike beampete wat, na gelang, die beskuldigde skuldig

court may, in the absence of the judicial officer who convicted the accused or passed the sentence, as the case may be, pass sentence on the accused after consideration of the evidence recorded and in the presence of the accused.

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

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

CASES REMITTED TO A MAGISTRATE'S COURT.

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

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

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

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

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

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

(4) Except where specially provided in Chapter XIII or in any other law, no evidence of any witness not previously examined in the presence of both the presiding magistrate and such accused shall be read or used at the subsequent trial, but such witness, if a necessary one, shall be again summoned and be examined in like manner as if he had not been before examined in the case: Provided that if the evidence is that of a witness who was previously examined at a preparatory examination in the absence of the accused, and the magistrate who presided at that preparatory examination is the magistrate who presiding at the subsequent trial, the accused may, subject to the right to cross-examine that witness, consent to such evidence being read or used at such trial.

bevind of die vonnis opgelê het, en na oorweging van die aangetekende getuenis, die beskuldigde in sy teenwoordigheid vonnis oplê.

162. (1) Geen uitspraak of vonnis of ander verrigtinge, van watter aard ook al, van 'n hof in 'n strafsaak is ongeldig nie bloot omdat dit op 'n Sondag gedaan, opgelê of ingestel is.

(2) Wanneer 'n verkeerde uitspraak of vonnis per abuis gedaan of opgelê word, kan die hof voor of onmiddellik na aantekening daarvan, die uitspraak of vonnis wysig, wat daarna geld soos dit uiteindelik gewysig is.

IN SAKE WAT NA 'N LANDDROSHOF TERUGVERWYS IS

163. (1) As 'n saak na 'n landdroshof vir vonnis terugverwys word, deel die voorsittende beampete die beskuldigde, wanneer hy voor sy hof gebring word, mee dat die voorlopige ondersoek in die loop waarvan hy vrywillig erken het dat hy skuldig is, aan die Prokureur-generaal deurgestuur en daarna deur daardie beampete na die hof terugverwys is, en word die bepalings van artikel *eenhonderd negen-en-veertig* deur die hof *mutatis mutandis* nagekom, en as die beskuldigde skuldig bevind word, vra bedoelde landdros hom of hy enigets aan te voer het waarom vonnis weens die misdryf waaraan hy skuldig bevind is of beken het dat hy skuldig is, hom nie onmiddellik opgelê sal word nie.

(2) As die beskuldigde in antwoord op bedoelde vraag verklaar dat hy verlang dat 'n getuie wat vantevore ondervra is, teruggeroep word of dat iemand wat nie ondervra is nie, as 'n getuie opgeroep word, of as die beskuldigde 'n ander rede aanvoer waarom vonnis hom nie onmiddellik opgelê moet word nie, oorweeg die hof alles wat die beskuldigde ter stawing van sy aansoek om verdere getuenis of sy beswaar teen die onmiddellike oplegging van vonnis aanvoer en lê die hof vonnis op of stel die oplegging daarvan uit, na gelang van wat hy die meeste in ooreenstemming met werklike en wesenlike geregtigheid ag.

(3) As die hof dit in so 'n geval goedvind om onmiddellik vonnis op te lê, word 'n aantekening van die aansoek of beswaar deur die beskuldigde en van die redes vir die afwysing daarvan, op die notule aangebring.

164. (1) As 'n saak deur die Prokureur-generaal vir verhoor terugverwys word, moet die beskuldigde, wanneer hy voor die hof gebring word, behoudens die bepalings van artikel *eenhonderd vyf-en-sestig* aangesê word om te pleit, en word die saak, behalwe soos hieronder bepaal, op die wyse voortgesit wat regtens ten opsigte van strafake wat nie terugverwys is nie, voorgeskryf word.

(2) Wanneer die beampete wat by die verhoor van so 'n saak voorsit, die landdros is voor wie die voorlopige ondersoek gehou is, is dit nie nodig dat hy 'n getuie wat sy getuenis in teenwoordigheid van bedoelde landdros en van die beskuldigde by die voorlopige ondersoek afgelê het, herroep nie, maar is dit voldoende om die getuenis van so 'n getuie as getuenis uit te lees: Met dien verstande dat, met toestemming van die beskuldigde of sy verteenwoordiger, die landdros van die uitlees van sodanige getuenis kan afsien.

(3) As dit vir die hof blyk dat dit in belang van dieregsbedeling mag wees om 'n getuie wat by die voorlopige ondersoek in die teenwoordigheid van die voorsittende beampete en van die beskuldigde ondervra is, weer vir verdere ondervraging te dagvaar, word so 'n getuie dienooreenkomsdig gedagvaar en ondervra.

(4) Behalwe soos in hoofstuk XIII of in 'n ander wet spesiaal voorgeskryf, word geen getuenis van 'n getuie wat nie vantevore in die teenwoordigheid van sowel die voorsittende landdros as bedoelde beskuldigde ondervra is nie, by die daaropvolgende verhoor uitgelees of gebruik nie, maar word so 'n getuie, as hy 'n noodsaklike getuie is, weer gedagvaar en op dieselfde wyse ondervra asof hy nie tevore in die saak ondervra was nie: Met dien verstande dat as die getuenis dié is van 'n getuie wat vantevore by 'n voorlopige ondersoek in die afwesigheid van die beskuldigde ondervra is, en die landdros wat by daar die voorlopige ondersoek voorgesit het die landdros is wat by die daaropvolgende verhoor voorsit, die beskuldigde kan toestem, behoudens die reg om daardie getuie onder kruisverhoor te neem, dat sodanige getuenis by bedoelde verhoor uitgelees of gebruik word.

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

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

(2) If the accused makes such a demand, the court shall record it and inform the attorney-general thereof, who shall thereupon deal with the case under the powers conferred upon him by sub-section (1) of section *eighty-one* other than the powers conferred by paragraphs (d), (e) and (f) thereof.

CHAPTER XI

POSSIBLE VERDICTS ON PARTICULAR CHARGES.

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

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

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

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

168. (1) If upon the trial of any person on a charge for robbery it appears upon the evidence that the accused did not commit the offence of robbery but that he did commit an assault with intent to rob, or an assault with intent to do grievous bodily harm, or a common assault or theft forming part of the offence of robbery charged, or that he did commit an offence under section *six* of the General Law Amendment Ordinance, 1956 (Ordinance 12 of 1956), the accused may be found guilty of an assault with intent to rob, or of an assault with intent to do grievous bodily harm, or of a common assault or of theft or of a contravention of the said section *six*, as the case may be.

(2) If on the trial of any person upon any charge in respect of robbery the evidence, though not sufficient to substantiate the charge of robbery, is sufficient to show that the accused was guilty of receiving stolen goods knowing them to have been stolen, or that the accused acquired or received into his possession stolen goods in contravention of sub-section (1) of section *seven* of the General Law Amendment Ordinance, 1956 (Ordinance 12 of 1956), he may be found guilty of receiving stolen goods knowing them to have been stolen; or of a contravention of the said sub-section (1) of section *seven*, as the case may be; and upon any such finding the accused shall be liable to the same punishment as if

(5) In iedere geval waarin die Prokureur-generaal, ingevolge die bevoegdhede by artikel *een-en-tachtig* aan hom verleen, 'n saak vir verhoor terugverwys het, is die beskuldigde geregtig om ten tyde van die verhoor al die getuienis (of 'n afskrif daarvan) wat afgeneem is en die verklaring wat deur hom afgelê is by die voorlopige ondersoek gratis in te sien.

165. (1) Die beskuldigde is geregtig om, in 'n saak wat deur die Prokureur-generaal vir verhoor terugverwys is, te eis, wanneer hy aangesê word om te pleit, dat sy saak voor 'n hoër hof watregsbevoegdheid het, verhoor word.

(2) As die beskuldigde aldus eis, teken die hof dit aan en verwittig hy die Prokureur-generaal daarvan wat daarop met die saak handel ingevolge die bevoegdhede by subartikel (1) van artikel *een-en-tachtig* aan hom verleen, behalwe die bevoegdhede by paragrafe (d), (e) en (f) daarvan verleen.

HOOFTUK XI.

MOONTLIKE UITSpraak OP BEPAALDE AANKLAGTES

166. (1) As dit by die verhoor van iemand wat weens 'n misdryf aangekla word, uit die getuienis blyk dat die beskuldigde nie die ten laste gelegde misdryf voleindig het nie, maar dat hy skuldig is slegs aan 'n poging om daardie misdryf te pleeg, kan hy aan 'n poging om daardie misdryf te pleeg, skuldig bevind word, of aan 'n poging om 'n ander misdryf te pleeg waarvan hy kragtens enige van die bepalings van hierdie ordonnansie op die aanklag skuldig bevind sou kon word.

(2) Iemand wat weens 'n misdryf aangekla word, kan as 'n medepligtige na die daad ten opsigte van daardie misdryf skuldig bevind word, as die feite dit bewys, en kan by skuldigbevinding, by ontstentenis van 'n uitdruklik by wet bepaalde straf, volgens goeddunke van die hof wat hom skuldig bevind, gestraf word: Met dien verstande dat so 'n straf in geen geval swaarder mag wees as die straf waarmee die hoofortreder kragtens enige wetsbepaling strafbaar sou wees nie.

(3) Niemand wat verhoor is op 'n aanklag dat hy 'n misdryf gepleeg het, word daarna weens 'n poging om die misdryf te pleeg waarvoor hy aldus verhoor is, vervolgie.

167. As 'n beskuldigde verhoor word op 'n aanklag waarin die pleging van 'n misdryf waarvan valse voorstellings met betrekking tot die aard of gehalte van 'n sekere artikel of stof 'n bestanddeel uitmaak, ten laste gelê word, en as die beskuldigde deur die handeling waarin bedoelde voorstellings gemaak is, 'n ander misdaad sou gepleeg het as sy voorstellings waar was, kan hy, as hy van eersbedoelde misdryf vrygespreek word, aan daardie ander misdryf of aan 'n poging om daardie ander misdryf te pleeg, skuldig bevind word asof hy daarvan aangekla was.

168. (1) As dit by die verhoor van iemand op 'n aanklag van roof uit die getuienis blyk dat die beskuldigde nie die misdryf van roof gepleeg het nie, maar dat hy 'n aanranding met die doel om te roof of 'n aanranding met die doel om ernstig te beseer of 'n gewone aanranding of diefstal wat deel uitmaak van die ten laste gelegde misdryf van roof of 'n misdryf ingevolge artikel *six* van die Algemene Regswysigingsordonnansie 1956 (Ordonnansie 12 van 1956) gepleeg het, kan die beskuldigde aan aanranding met die doel om te roof of aan aanranding met die doel om ernstig te beseer of aan gewone aanranding of aan diefstal of weens 'n oortreding van bedoelde artikel *six* na gelang, skuldig bevind word.

(2) As die getuienis by die verhoor van iemand op 'n aanklag van roof nie voldoende is om die aanklag van roof te bewys nie, maar voldoende is om te bewys dat die beskuldigde skuldig is aan die ontvang van gesteelde goed wetende dat dit gesteel is, of dat die beskuldigde instry met subartikel (1) van artikel *sewe* van die Algemene Regswysigingsordonnansie 1956 (Ordonnansie 12 van 1956) gesteelde goed verkry of in sy besit ontvang het kan hy skuldig bevind word aan die ontvang van gesteelde goed wetende dat dit gesteel is, of aan 'n oortreding van bedoelde subartikel (1) van artikel *sewe*, na gelang, eie so 'n skuldigbevinding is die beskuldigde aan dieselfde straf onderhewig asof hy skuldig bevind was aan dieselfde

convicted of the like offence on a charge specially framed for the offence of receiving stolen goods knowing them to have been stolen.

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

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

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

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

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

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

(5) Any European male charged with the statutory offence of having illicit carnal intercourse with a non-European female and any non-European male charged with the statutory offence of having illicit carnal intercourse with a European female, and any non-European female charged with the statutory offence of permitting any European male to have illicit carnal intercourse with her and any European female charged with the statutory offence of permitting any non-European male to have illicit carnal intercourse with her, may be found guilty of the statutory offence of conspiring with the person concerned to have illicit carnal intercourse, if such be the facts proved.

(6) Any person charged with the statutory offence of unlawful carnal connection with another person or with the statutory offence of committing an immoral or

misdryf op 'n aanklag wat hom die misdryf van die ontvanging van gesteelde goed wetende dat dit gesteel is, uitdruklik ten laste gelê het.

169. (1) Iemand wat weens aanranding met die doel om moord te pleeg, aangekla word, kan aan aanranding met die doel om ernstig te beseer, of aan gewone aanranding skuldig bevind word, as die feite dit bewys.

(2) Iemand wat weens aanranding met die doel om ernstig te beseer, of weens aanranding met 'n ander bepaalde doel in die aanklag vermeld, aangekla word, kan aan gewone aanranding skuldig bevind word as die feite dit bewys.

170. (1) Iemand wat weens verkragting aangekla word, kan skuldig bevind word aan aanranding met die doel om te verkrug; of aan onsedelike aanranding; of aan aanranding met die doel om ernstig te beseer; of aan aanranding; of aan die wetteregtelike misdryf van onwettige vleeslike gemeenskap of die pleging van 'n immorele of onsedelike daad met 'n meisie onder 'n bepaalde ouderdom; of aan die wetteregtelike misdryf van onwettige vleeslike gemeenskap met 'n vroulike idioot of stompsinnige of 'n poging daar toe onder omstandighede wat geen verkragting of poging tot verkragting uitmaak nie, of aan die pleging van 'n immorele of onsedelike daad met so 'n vrouspersoon of 'n poging daar toe; of, as die aldus aangeklaagde persoon 'n nie-blanke persoon is, aan die wetteregtelike misdryf van onwettige vleeslike gemeenskap met 'n blanke vrouspersoon; of, as die aldus aangeklaagde persoon 'n blanke persoon is, aan die wetteregtelike misdryf van onwettige vleeslike gemeenskap met 'n nie-blanke vrouspersoon, as die feite dit bewys.

(2) Iemand wat weens aanranding met die doel om te verkrug of weens 'n poging tot verkragting aangekla word, kan skuldig bevind word aan onsedelike aanranding; of aanranding met die doel om ernstig te beseer; of aanranding; of aan 'n wetteregtelike misdryf in subartikel (1) bedoel behalwe 'n daad van onwettige vleeslike gemeenskap, as die feite dit bewys.

(3) Iemand wat weens onsedelike aanranding aangekla word, kan skuldig bevind word aan aanranding; of aan die wetteregtelike misdryf van die pleging van 'n immorele of onsedelike daad met 'n meisie onder 'n bepaalde ouderdom; of aan die wetteregtelike misdryf van 'n poging om onwettige vleeslike gemeenskap te hê met 'n vroulike idioot of stompsinnige onder omstandighede wat geen poging tot verkragting uitmaak nie, of aan die pleging van 'n immorele of onsedelike daad met so 'n vrouspersoon of 'n poging daar toe, as die feite dit bewys.

(4) Iemand wat weens die wetteregtelike misdryf van onwettige vleeslike gemeenskap met 'n meisie onder 'n bepaalde ouderdom of met die wetteregtelike misdryf van onwettige vleeslike gemeenskap of poging daar toe met 'n vroulike idioot of stompsinnige onder omstandighede wat geen verkragting of poging daar toe uitmaak nie, kan skuldig bevind word aan die wetteregtelike misdryf van die pleging van 'n immorele of onsedelike daad met so 'n meisie of vrouspersoon, of poging daar toe, na gelang, of aan die wetteregtelike misdryf van daardie meisie of vrouspersoon, na gelang, tot die pleging van 'n immorele of onsedelike daad aan of uit te lok of aan die wetteregtelike misdryf van sameswering met daardie meisie of vrouspersoon, na gelang, om onwettige vleeslike gemeenskap te hou, as die feite dit bewys.

(5) 'n Blanke manspersoon wat weens die wetteregtelike misdryf van onwettige vleeslike gemeenskap met 'n nie-blanke vrouspersoon en 'n nie-blanke manspersoon wat weens die onwetteregtelike misdryf van onwettige vleeslike gemeenskap met 'n blanke vrouspersoon en 'n nie-blanke vrouspersoon wat weens die wetteregtelike misdryf van enige nie-blanke manspersoon toe te laat om met haar onwettige vleeslike gemeenskap te hou, en 'n blanke vrouspersoon wat weens die wetteregtelike misdryf van enige nie-blanke manspersoon toe te laat om met haar onwettige vleeslike gemeenskap te hou, aangekla word, kan skuldig bevind word aan die wetteregtelike misdryf van sameswering met die betrokke persoon om onwettige vleeslike gemeenskap te hou as die feite dit bewys.

(6) Iemand wat weens die wetteregtelike misdryf van onwettige vleeslike gemeenskap met 'n ander persoon of weens die wetteregtelike misdryf van die pleging van 'n

indecent act with another person may be found guilty of indecent assault or assault, if such be the facts proved.

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

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

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

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

(4) Any person charged with murder or culpable homicide in regard to whom it is not proved that he committed the crime of murder or culpable homicide, may be convicted of public violence if it is proved that in fact such offence was committed.

(5) If at the trial of any person on a charge alleging that he killed or attempted to kill or assaulted any other person, it has not been proved that he committed the offence charged, but that he pointed at the person against whom the offence is alleged to have been committed, a firearm or an airgun or air pistol, in contravention of any law, the accused may be convicted of having contravened that law.

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

173. Any person charged with housebreaking with intent to commit an offence specified in the charge may be found guilty of housebreaking with intent to commit some offence other than that specified or some offence unknown if an intent to commit the specified offence is not proved but an intent to commit such other offence or such offence unknown is sufficiently proved.

174. Any person charged with theft may be found guilty of receiving stolen goods knowing them to have been stolen, or of a contravention of section six, or subsection (1) of section seven or sub-section (1) of section eight of the General Law Amendment Ordinance, 1956 (Ordinance 12 of 1956), if such be the facts proved.

175. Any person charged with receiving stolen goods knowing them to have been stolen, may be found guilty of theft, or of a contravention of sub-section (1) of section seven of the General Law Amendment Ordinance 1956 (Ordinance 12 of 1956) if such be the facts proved.

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

immorele of onsedelike daad met 'n ander persoon aangekla word, kan skuldig bevind word aan onsedelike aanranding of aanranding as die feite dit bewys.

(7) Iemand wat weens sodomie of aanranding met die doel om sodomie te pleeg, aangekla word, kan skuldig bevind word aan onsedelike aanranding of aanranding as die feit dit bewys.

171. (1) Iemand wat weens moord aangekla word en met betrekking tot wie dit bewys word dat hy die dood van die oorledene wederregtelik veroorsaak het, maar sonder opset, kan aan strafbare manslag skuldig bevind word.

(2) Iemand wat weens moord of strafbare manslag aangekla word en met betrekking tot wie dit nie bewys word dat hy die dood van die oorledene veroorsaak het nie, kan, as dit bewys word dat hy skuldig is aan aanranding op die oorledene, skuldig bevind word, as hy van moord aangekla word, aan aanranding met die doel om moord te pleeg of aan aanranding met die doel om ernstige beseer, of aan gewone aanranding, en, as hy weens strafbare manslag aangekla word, aan aanranding met die doel om ernstige beseer of gewone aanranding.

(3) Iemand wat weens moord of strafbare manslag aangekla word en met betrekking tot wie dit nie bewys word dat hy die dood van die persoon van wie se doodslag hy aangekla word, wederregtelik veroorsaak het nie, kan aan roof of aanranding met opset van roof of bedoelde persoon skuldig bevind word as dit bewys word dat bedoelde misdryf inderdaad gepleeg is.

(4) Iemand wat weens moord of strafbare manslag aangekla word en met betrekking tot wie dit nie bewys word dat hy die misdaad van moord of strafbare manslag gepleeg het nie, kan aan openbare geweld skuldig bevind word as dit bewys word dat daardie misdryf inderdaad gepleeg is.

(5) As dit by die verhoor van iemand op 'n aanklageraam waarin dit hom ten laste gelê word dat hy 'n ander persoon gedood het of gepoog het om hom te dood of hom aangerand het, nie bewys word dat hy die ten laste gelegde misdryf gepleeg het nie, maar dat hy instryd met 'n wapen of 'n vuurwapen of 'n windbuks of 'n windpistol gerig het op die persoon teen wie die misdryf volgens bewering gepleeg is, kan die beskuldigde aan 'n oortreding van bedoelde wet skuldig bevind word.

172. As dit by die verhoor van 'n beskuldigde op 'n aanklageraam van moord of strafbare manslag uit die getuenis blyk dat die beskuldigde nie die misdaad van moord of strafbare manslag gepleeg het nie, kan hy skuldig bevind word aan blootstelling van 'n kind of aan die wegdoening van die lyk van 'n kind met die doel om die feit van sy geboorte te verberg, as dit uit die getuenis blyk dat hy so 'n misdryf gepleeg het.

173. Iemand wat aangekla word weens huisbraak met die doel om 'n in die aanklageraam vermelde misdryf te pleeg kan skuldig bevind word aan huisbraak met die doel om 'n ander misdryf as die vermelde misdryf of 'n onbekende misdryf te pleeg, as 'n bedoeling om die vermelde misdryf te pleeg nie bewys word nie maar 'n bedoeling om so 'n ander misdryf of so 'n onbekende misdryf te pleeg, voldoende bewys word.

174. Iemand wat weens diefstal aangekla word, kan skuldig bevind word aan die ontvanging van gesteelde goed wetende dat dit gesteel is of aan 'n oortreding van artikel six, of subartikel (1) van artikel seven of subartikel (1) van artikel eight van die Algemene Regswysigingsordonnansie 1956 (Ordonnansie 12 van 1956) as die feite dit bewys.

175. Iemand wat weens die ontvanging van gesteelde goed wetende dat dit gesteel is, aangekla word, kan skuldig bevind word aan diefstal of aan 'n oortreding van subartikel (1) van artikel seven van die Algemene Regswysigingsordonnansie 1956 (Ordonnansie 12 van 1956) as die feite dit bewys.

176. (1) Wanneer aanklageraam van diefstal van goed en van die ontvanging van dieselfde goed of 'n gedeelte daarvan wetende dat dit gesteel is, in dieselfde aanklageraam saamgevoerd word, kan die beskuldigde, ooreenkomsdig die getuenis, oewens die diefstal van die goed of weens die ontvanging daarvan of 'n gedeelte daarvan, wetende dat dit gesteel is skuldig bevind word.

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

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

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

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

- (a) forged or uttered, offered, disposed of, or put off any forged instrument knowing it to be forged; or
- (b) obtained anything by means of false pretences; or
- (c) obtained anything by means of a fraudulent trick or device or any other fraudulent means; or
- (d) induced, by means of any such trick or device or fraudulent means, the payment or delivery of any money or thing,

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

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

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

A person who has been tried on a charge of having committed such an offence shall not thereafter be prosecuted for the offence so proved by the evidence.

CHAPTER XII

WITNESSES.

SECURING ATTENDANCE OF WITNESSES AT CRIMINAL PROCEEDINGS.

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

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

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

the prescribed officer of the court shall subpoena such witnesses.

(2) As dit op 'n aanklag waarin beweer word dat twee of meer persone gesamentlik 'n misdryf gepleeg het waarvan die ontvang van goed 'n bestanddeel uitmaak, bewys word dat een of meer van hulle afsonderlik 'n gedeelte of gedeeltes van die goed ontvang het onder omstandighede wat dit 'n misdryf maak, kan bedoelde een of meer van die aangeklaagde persone skuldig bevind word aan die misdryf of misdrywe aldus deur die getuenis bewys.

(3) As dit in 'n aanklag beweer word dat so 'n misdryf deur twee of meer persone gepleeg is, kan almal of enige van bedoelde persone ooreenkomsdig die getuenis skuldig bevind word weens diefstal van die goed of weens die ontvang daarvan of 'n gedeelte daarvan wetende dat dit gesteel is, of kan een of meer van hulle, ooreenkomsdig die getuenis, weens diefstal van die goed, en die ander van hulle weens die ontvang daarvan of 'n gedeelte daarvan wetende dat dit gesteel is, skuldig bevind word.

177. As dit op 'n aanklag van diefstal blyk dat die goed wat volgens daarin beweer word op 'n bepaalde tyd gesteel is, op verskillende tye gesteel is, kan die beskuldigde weens iedere sodanige ontvreemding skuldig bevind word asof iedere sodanige ontvreemding afsonderlik ten laste gelê was.

178. By die verhoor van iemand weens 'n misdryf waarin die beskuldigde enige van die volgende bewerings ten laste gelê word, naamlik dat hy —

- (a) 'n vervalste stuk vervals of uitgegee, aangebied, van die hand gesit of afgesit het, wetende dat dit vervals is; of
- (b) iets deur middel van valse voorwendsels verkry het; of
- (c) iets deur middel van 'n bedrieglike kunsgreep of lis of ander bedrieglike middels verkry het; of
- (d) die betaling of aflewering van geld of enige saak deur middel van so 'n kunsgreep of lis of sodanige bedrieglike middels, bewerkstellig het,

of dat hy gepoog het om so 'n daad te pleeg of die pleging daarvan te bewerkstellig, is dit nie nodig om 'n bedoeling aan die kant van die beskuldigde om 'n bepaalde persoon te bedrieg te bewys nie, maar is dit voldoende om te bewys dat die beskuldigde die ten laste gelegde daad gepleeg het met die doel om te bedrieg.

179. As in enige ander geval nie tevore hierin vermeld nie, die pleging van die misdryf wat die beskuldigde ten laste gelê word soos in die wet wat die misdryf skep, bepaal word, of soos in die aanklag uiteengesit word, die pleging van 'n ander misdryf insluit, kan die beskuldigde aan 'n ander misdryf aldus ingesluit wat bewys word, skuldig bevind word, hoewel die hele misdryf wat ten laste gelê word, nie bewys word nie.

180. (1) As dit by die verhoor van 'n persoon op aanklag van 'n misdryf bewys word dat hy skuldig is aan 'n ander misdryf van so 'n aard dat hy op 'n aanklag waarin daardie ander misdryf hom ten laste gelê word, aan die misdryf wat hom werklik ten laste gelê word, skuldig bevind sou kon geword het, kan hy aan die misdryf wat hom aldus ten laste gelê word, skuldig bevind word.

(2) Iemand wat verhoor is op 'n aanklag dat hy so 'n misdryf gepleeg het, word nie daarna weens die misdryf aldus deur die getuenis bewys, vervolg nie.

HOOFSTUK XII.

GETUIES

VERKRYGING VAN AANWESIGHEID VAN GETUIES BY STRAFSAKE

181. (1) Of die aanklaer of die beskuldigde kan die aanwesigheid van iemand om by 'n strafsaak getuenis af te lê of boeke, stukke of dokumente voor te lê, afdwing deur by die deur die hofreëls voorgeskrewe ampskantoor geregtelike prosesstukke vir daardie doel te verkry.

(2) Wanneer die beskuldigde verlang dat getuies gedagvaar word en die voorgeskrewe hofbeampte oortuig —

- (a) dat hy nie in staat is om die vereiste koste en geld te betaal nie; en
 - (b) dat sodanige getuies noodsaaklik en van wesenlike belang vir sy verdediging is,
- dagvaar die voorgeskrewe hofbeampte daardie getuies.

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

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

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

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

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

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

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

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

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

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

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

(5) If a person who has entered into any recognizance for his appearance to give evidence at any criminal proceedings or for his appearance at an enquiry referred

(3) In 'n geval waar die voorgeskrewe hofbeampte nie aldus oortuig is nie, moet hy op versoek van die beskuldigte die aansoek verwys na die regter of beampte wat by die hof voorsit, wat so 'n aansoek kan toestaan of weier of sy beslissing daaromtrent kan uitstel totdat hy die ander getuenis in die saak, of 'n deel daarvan, aangehoor het.

(4) By die toepassing van hierdie hoofstuk beteken „voorgeskrewe hofbeampte“ die griffier, assistent-griffier, klerk van die hof of 'n deur die hofreëls voorgeskrewe beampte.

182. Die bestelling van getuiedagvaardings in strafake moet op die deur die hofreëls bepaalde wyse geskied.

183. (1) Iemand wat deur 'n lid van 'n by wet ingestelde polisiemag, wat die rang van sersant of 'n hoër rang beklee of die bevelvoerende beampte van 'n polisiepos is, skriftelik in kennis gestel word dat hy as getuie by 'n strafsaak nodig sal wees, moet tot tyd en wyl bedoelde strafsaak finaal afgehandel is, of totdat hy amptelik in kennis gestel word dat hy nie meer as 'n getuie nodig is nie, die bevelvoerende beampte van die polisiepos wat die naaste aan sy gewone woonplek geleë is, te alle tye op hoogte van sy volle woonadres of 'n ander adres waar hy gedurende bedoelde tydperk geredelik gevind kan word.

(2) Iemand wat in gebreke bly om die bepalings van subartikel (1) na te kom, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens vyftig rand of met gevangenisstraf vir 'n tydperk van hoogstens een maand.

184. Elke getuie wat behoorlik gedagvaar is om by 'n strafsaak aanwesig te wees en getuenis af te lê moet, tensy hy deur die hof verskoon word, gedurende die hele verhoor van die saak aanwesig wees en bly.

185. Die hof kan op enige stadium iemand as getuiedagvaar of laat dagvaar of iemand wat aanwesig is, ondervra hoewel hy nie as getuie gedagvaar is nie, of iemand wat alreeds ondervra is, weer oproep en herondervra; en die hof moet iemand dagvaar of laat dagvaar en ondervra of weer oproep en herondervra as sy getuenis vir die hof as noodsaaklik vir die regverdigte beregting van die saak voorkom.

186. (1) As iemand wat gedagvaar is om as getuie by 'n strafsaak aanwesig te wees, sonder redelike verskoning versuim om die dagvaarding na te kom en dit uit die relaas van bestelling of uit getuenis onder eed afgelê, blyk dat die dagvaarding bestel is aan die persoon aan wie dit gerig is of dat hy bestelling ontwyk, of as iemand wat ter nakoming van 'n dagvaarding aanwesig was, versuim om aanwesig te bly, kan die hof voor wie bedoelde strafsaak dien 'n lasbrief uitrek waarin gelas word dat hy in hegtenis geneem en op 'n in die lasbrief vermelde tyd en plek, of so spoedig moontlik daarna, voor die hof of 'n landdros gebring word.

(2) Wanneer die betrokke persoon ingevolge bedoelde lasbrief in hegtenis geneem is, kan hy uit hoofde daarvan by die hof wat dit uitgereik het of in 'n gevangenis of oopsluitplek of ander plek van bewaring of in die bewaring van die persoon wat toesig oor hom het, aangehou word ten einde sy aanwesigheid as getuie by die strafsaak te verseker: Met dien verstande dat die hof hom op borgtog met of sonder borge vir sy verskyning om getuenis af te lê soos vereis word, en vir sy verskyning by die in subartikel (3) bedoelde ondersoek, kan vrylaat.

(3) Die hof kan op summiere wyse ondersoek instel na bedoelde persoon se versuim om die getuiedagvaarding na te kom of om aanwesig te bly, en tensy bewys word dat bedoelde persoon 'n redelike verskoning vir sodanige versuim het, kan die hof hom 'n vonnis van 'n boete van hoogstens vyftig rand of gevangenisstraf vir 'n tydperk van hoogstens een maand ople.

(4) 'n Vonnis ingevolge subartikel (3) deur die hof afgelê, word uitgevoer en is onderhewig aan appèl asof dit 'n vonnis was wat in 'n strafsaak deur daardie hof afgelê is.

(5) As iemand wat 'n borgtog aangegaan het vir sy verskyning om by 'n strafsaak getuenis af te lê of vir sy verskyning by 'n in subartikel (3) bedoelde ondersoek,

to in sub-section (3) fails so to appear, he may, apart from the forfeiture of his recognizance, be dealt with as if he had failed to obey a subpoena to attend any criminal proceedings.

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

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

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

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

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

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

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

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

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

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

(2) If a person referred to in sub-section (1) is arrested, any magistrate or any judge as aforesaid may, if satisfied that the ends of justice would otherwise be defeated, commit him to a prison until the time at which he is required to give evidence, unless in the meantime

versuim om aldus te verskyn, kan daar, bo en behalwe die verbeuring van sy borggeld, met hom gehandel word asof hy versuim het om 'n dagvaarding om by 'n strafsaak aanwesig te wees, na te kom.

187. (1) Wanneer iemand wat op ter nakoming van 'n getuiedagvaarding of uit hoofde van 'n lasbrief verskyn, of wat aanwesig is en mondeling deur die hof aangesê word om in 'n strafsaak getuienis af te lê, weier om ingesweer te word of nadat hy ingesweer is, weier om op die vrae aan hom gestel, te antwoord, of weier of versuim om 'n dokument of voorwerp waarvan die voorlegging deur hom vereis word, voor te lê, sonder 'n voldoende verskoning vir sodanige weierung of versuim, kan die hof die saak vir 'n tydperk van hoogstens agt dae verdaag en intussen die persoon wat aldus weier of versuim by lasbrief na 'n gevangenis verwys tensy hy eerder toestem om te doen wat van hom vereis word.

(2) As 'n in subartikel (1) bedoelde persoon by die hervatte verhoor van die saak weer weier om te doen wat aldus van hom vereis word, kan die hof die saak weer verdaag en hom vir dieselfde tydperk verwys, en aldus weer van tyd tot tyd, totdat so iemand toestem om te doen wat van hom vereis word.

(3) Teen 'n verwysingsbevel deur 'n landdros ingevolge subartikel (1) of (2) by 'n voorlopige ondersoek uitgereik, kan daar geappelleer word by die hoë hof by wie geappelleer kan word in die geval van 'n skuldig bevinding by 'n summiere verhoor deur die landdroshof van die distrik waarin die voorlopige ondersoek gehou word, en die hoë hof kan by so 'n appèl sodanige bevel uitreik soos hy billik ag.

(4) Geen bepaling van hierdie artikel verhinder die hof om in 'n saak uitspraak te gee of om in die geval van 'n voorlopige ondersoek die beskuldigde ter strafzitting te verwys of om andersins die saak ooreenkomsdig ander voldoende getuienis wat afgeneem is, intussen af te handel nie.

(5) Niemand is verplig om 'n dokument of voorwerp wat nie in die getuiedagvaarding aangedui of andersins voldoende beskrywe word nie, voor te lê nie tensy hy dit werklik in die hof het.

188. (1) 'n Hof kan in enige strafsaak van 'n getuie eis dat hy of alleen of tesame met een of meer toereikende borge tot voldoening van die hof, 'n borgakte aangaan op die voorwaarde dat die getuie te eniger tyd binne twaalf maande vanaf die datum daarvan, by bestelling van 'n getuiedagvaarding op 'n vaste plek wat deur die getuie gekies moet word, sal verskyn en getuienis aflê by die verhoor van die beskuldigde of van die persoon ten aansien van wie die voorlopige ondersoek gehou is.

(2) Elke borgakte aldus aangegaan moet die naam en familiennaam van die persoon wat dit aangaan, sy nering of beroep, as hy een het, sy woonplek en die naam en nommer, as daar een is, van die straat waarin daardie woonplek is, en of hy eienaar of huurder daarvan of 'n looseerdeer daar is, aandui.

(3) Alle sodanige borgaktes kan op dieselfde wyse ten uitvoer gelê word as wat 'n verbeurdverklaarde borgakte deur die hof voor wie die hoofparty daarby moes verskyn, wetlik ten uitvoer gelê kan word.

(4) 'n Getuie wat weier om 'n borgakte soos vermeld aan te gaan, kan deur die hof by lasbrief verwys word na die gevangenis van die plek waar die verhoor moet plaasvind, om daar aangehou te word tot na afloop van die verhoor, of totdat die getuie so 'n borgakte soos voormeld aangaan voor 'n landdros watregsbevoegdheid het op die plek waar die gevangenis geleë is: Met dien verstande dat, as die beskuldigde later ontslaan word, 'n landdros watregsbevoegdheid besit, moet gelas dat daardie getuie ontslaan word.

189. (1) Wanneer iemand deur borgtog verplig is om getuienis in 'n strafsaak af te lê of waarskynlik getuienis van wesenlike belang sal kan aflê, kan 'n landdros of 'n regter van die hoë hof voor wie die misdryf beregbaar is op grond van skriftelike inligting onder eed dat daardie persoon op die punt staan om te vlug of gevlug het, na goeddunke 'n lasbrief vir die inhegtenisneming van daardie persoon uitreik.

(2) As 'n in subartikel (1) bedoelde persoon in hegtenis geneem word, kan 'n landdros of regter soos vermeld, by oortuiging dat die regsbedeling andersins ver-

he produces sufficient sureties; but any person so arrested shall be entitled on demand to receive a copy of the information upon which the warrant for his arrest was issued.

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

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

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

(3) Whenever the attendance of any prisoner confined in a prison is required as a witness on behalf of a private prosecutor or an accused person, other than an accused person to whose defence the evidence of such witness is deemed material and who has not sufficient means to make the deposit, there shall be deposited with the member of the Prisons Service in charge of such prison or other officer having the custody and control of the prisoner so confined such sum as may be necessary to cover the expenses to be occasioned by the conveyance of the prisoner so confined and his necessary escort to and from the court and his maintenance during such period as the prisoner so confined and his escort are likely by reason of the attendance to be detained outside the prison, and no person shall be required or allowed to obey any such summons unless such a sum has previously been deposited.

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

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

- (a) the necessary expenses to be incurred by the person subpoenaed, in going to and returning from the court by whom the subpoena was issued and in connection with his detention at the place whereat, and for the purpose for which his attendance is required, shall be tendered to him with the subpoena;
- (b) if the subpoena is not sued out by the State a sum sufficient to cover the expense of serving the subpoena shall be lodged with the registrar or clerk of the court by the person suing out the subpoena.

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

ydel sal word, hom na 'n gevangenis verwys totdat hy getuenis moet aflê, tensy hy intussen voldoende borge verstrek; maar iemand aldus in hegtenis geneem, is op aanvraag geregtig op 'n afskrif van die inligting op grond waarvan die lasbrief vir sy inhegtenisneming uitgereik is.

190. Die bevoegdhede om 'n getuie vir aanhouding te verwys, word nie deur 'n landdros ingevolge subartikel (4) van artikel *eenhonderd agt-en-tagtig* of subartikel (2) van artikel *eenhonderd negen-en-tagtig* uitgeoefen nie tensy aansoek om sodanige verwysing in opdrag van die Prokureur-generaal gedoen word.

191. (1) Wanneer 'n gevangene wat in 'n gevangenis in die Gebied aangehou word, getuenis in 'n strafsaak moet aflê, kan die hof waar sy aanwesigheid vereis word of 'n regter van 'n hoër hof watregsbevoegdheid met betrekking tot die saak het, voor of tydens die sittings van die hof waar die aanwesigheid van so 'n gevangene vereis word, of die landdros wat die voorlopige ondersoek hou, na gelang, 'n bevel rig aan die lid van die Gevangenisdiens in bevel van sodanige gevangenis of ander persoon wat toesig het oor so 'n gevangene, om so 'n gevangene oor te lewer aan die persoon wat in die bevel aangewys word om hom oor te neem; en die aldus aangewese persoon moet die gevangene op die in die bevel bepaalde tyd neem na die plek waar daardie gevangene aanwesig moet wees om daar enige verdere bevel wat bedoelde hof goedvind, te ontvang en uit te voer.

(2) 'n Regter van 'n hoër hof kan te eniger tyd gelas dat iemand wat in 'n gevangenis in die Gebied aangehou word, voor 'n hof waarby hy in 'n strafsaak voorstel, gebring word.

(3) Wanneer die aanwesigheid as getuie van 'n gevangene wat in 'n gevangenis aangehou word, vereis word ten behoeve van 'n private aanklaer of 'n ander beskuldigde as 'n beskuldigde vir wie se verdediging die getuenis van daardie getuie van wesenlike belang geag word en wat nie oor voldoende middelle beskik om die deposito te stort nie, moet daar by die lid van die Gevangenisdiens in bevel van sodanige gevangenis of ander beampete wat toesig en beheer het oor die gevangene aldus aangehou, die bedrag gestort word wat nodig is om die onkoste te dek van die vervoer van die gevangene aldus aangehou en sy nodige geleide na en van die hof en sy onderhoud gedurende die tydperk wat die gevangene aldus aangehou en sy geleide omrede die aanwesigheid voormeld buitekant die gevangenis waarskynlik opgehou sal word, en niemand is verplig of bevoeg om so 'n bevel na te kom nie tensy sodanige bedrag eers gestort word.

(4) Die in subartikel (3) bedoelde onkoste word bepaal ooreenkomsdig 'n deur die Administrateur voorgeskrewe skaal.

192. (1) Wanneer 'n dagvaarding om getuenis in 'n strafsaak af te lê deur 'n hof uitgereik is en dit blyk dat die persoon wie se aanwesigheid daardeur vereis word in 'n distrik in die Gebied buite die regssgebied van daardie hof woon of tydelik vertoeft, word die dagvaarding aan die bevoegde beampete binne daardie distrik oorhandig en so spoedig moontlik deur hom aan bedoelde persoon bestel: Met dien verstande dat —

- (a) vergoeding van die nodige onkoste wat deur die gedagvaarde persoon aangegaan staan te word by die gaan na en terugkeer van die hof deur wie die dagvaarding uitgereik is en in verband met sy verblyf by die plek waar en vir die doel waarvoor sy aanwesigheid vereis word, aan hom by bestelling van die dagvaarding aangebied moet word;
- (b) as die dagvaarding nie deur die Staat uitgeneem word nie, 'n bedrag wat toereikend is om die onkoste verbonde aan die bestelling van die dagvaarding te dek, by die griffier of klerk van die hof deur die persoon wat die dagvaarding uitneem, gestort moet word.

(2) As iemand aan wie 'n dagvaarding soos voormeld bestel is en aan wie vergoeding van bedoelde onkoste aangebied is, sonder wettige verskoning versuim om op die in die dagvaarding vermelde tyd en plek aanwesig te wees, kan 'n landdros van bedoelde distrik 'n lasbrief uitreik vir die inhegtenisneming van daardie persoon, met wie daar gehandel kan word asof hy sonder wettige verskoning versuim het om aanwesig te wees nadat daar aan hom 'n dagvaarding bestel is om by 'n soortgelyke hof in die

court in the area wherein he resides or is for the time being.

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

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

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

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

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

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

OATHS AND AFFIRMATIONS

195. (1) No person other than a person described in section *one hundred and ninety-six* or *one hundred and ninety-seven* shall be examined as a witness otherwise than upon oath.

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

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

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

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

197. Any person who, from ignorance arising from youth, defective education, or other cause, is found not to understand the nature, or to recognize the religious

gebied waarin hy woon of tydelik vertoef, aanwesig te wees.

(3) Die bevoegde beampete se relaas wat aantoon dat bestelling van die dagvaarding behoorlik geskied het, tesame met 'n sertifikaat, onderteken deur die griffier of klerk van die hof, ten effekte dat die persoon wie se aanwesigheid deur die dagvaarding vereis was, versuim het om aanwesig te wees toe daar op hom geroep is, en geen wettige verskoning vir die nie-aanwesigheid bewys het nie, word geag voldoende bewys van die nie-aanwesigheid te wees ten einde met bedoelde persoon ingevolge subartikel (2) te handel.

(4) Die uitdrukking „bevoegde beampete” in hierdie artikel, sluit in 'n balju, onderbalju, geregsbode, ondergeregsbode of ander beampete aan wie by wet of hofreël die plig opgedra word om dagvaardings aan getuies in straf sake te bestel.

193. (1) Iemand wat 'n strafsaak as getuie vir die Staat bygewoon het, is geregtig op die toelae wat by regulasie ingevolge subartikel (3) voorgeskryf word: Met dien verstande dat die beampete wat by so 'n saak voorsit, kan gelas, as hy dit goedvind, dat geen sodanige toelae, of net 'n deel daarvan, aan so 'n getuie betaal word.

(2) Behoudens 'n ingevolge subartikel (3) uitgevaardigde regulasie, kan die beampete wat by 'n strafsaak voor- sit, gelas, as hy dit goedvind, dat aan iemand wat daardie saak as getuie vir die beskuldigde bygewoon het, die toelae wat by bedoelde regulasie voorgeskrywe word, of so 'n kleiner toelae soos daardie beampete bepaal, betaal word.

(3) Die Administrateur kan by regulasie 'n tarief van toelaes voorskryf wat uit staatsgeld aan getuies in straf sake betaal kan word en kan by regulasie verskillende tariewe vir getuies voorskrywe ooreenkomsdig hul onderskeie roepings, beroep of lewenstand, asook ooreenkomsdig die afstande wat deur hulle afgelê moet word om die plek van die verhoor, voorlopige ondersoek of ander strafregtelike geding te bereik, en kan voorts by regulasie die omstandighede waaronder sodanige toelaes aan 'n getuie vir die beskuldigde betaal kan word, voorskrywe.

194. Geen vooruitbetaling of aanbieding van vergoeding van onkoste is nodig in die geval van iemand van wie dit vereis word om by 'n voorlopige ondersoek getuenis af te lê en wat hom binne vyf myl van die perseel waar daardie voorlopige ondersoek gehou word, bevind nie.

EEDAFLEGGING EN BEVESTIGING VAN GETUIENIS

195. (1) Niemand anders behalwe 'n persoon wat in artikel *eenhonderd ses-en-negentig* of *eenhonderd seuen-en-negentig* beskrywe word, word andersins as onder eed as getuie ondervra nie.

(2) Die eed wat iemand as getuie opgelê moet word, word opgelê in die vorm wat aan hom die betekenis van die eed die duidelikste aandui, en wat hy sover dit sy gewete betref as bindend beskou.

196. (1) In 'n geval waar iemand wat verplig is of kan word om 'n eed af te lê, daarteen beswaar maak, kan daardie persoon 'n bevestiging in die volgende bewoording doen: „Ek bevestig en verklaar opreg dat” (voeg hier in wat bevestig of verklaar moet word). So 'n bevestiging of verklaaring het dieselfde regskrag en gevolge asof die persoon so 'n eed afgelê het.

(2) Iemand wat regtens gemagtig, verplig of bevoeg is om 'n eed af te neem of op te lê, moet in plaas daarvan 'n bevestiging of verklaaring soos voormeld, aanvaar.

(3) Dieselfde strawwe en regsonbevoegdhede wat onderskeidelik geld by en verbonde is aan 'n vase of korrupte aflegging of ondertekening van 'n eed wat ooreenkomsdig artikel *eenhonderd vyf-en-negentig* opgelê is, en 'n versuim en weiering in verband daarmee, is op dieselfde wyse van toepassing op, en is op dieselfde wyse verbonde aan, onderskeidelik die vase of korrupte aflegging of ondertekening van 'n in hierdie artikel bedoelde bevestiging of verklaaring, en 'n versuim en weiering in verband daarmee.

197. Iemand wat weens onkunde voorspruitende uit sy jeugdigheid, gebreklike opvoeding of 'n ander rede bevind word nie die aard van 'n eed of bevestiging te be-

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

COMPETENCY OF WITNESSES

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

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

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

201. (1) The wife or husband of an accused is competent and compellable to give evidence for the prosecution without the consent of the accused, where the accused is prosecuted for any offence against the person of either of them or any of the children of either of them, or for any offence under Chapter III of the Children's Ordinance, 1961 (Ordinance 31 of 1961), committed in respect of any of the children of either of them or for any of the following offences:

- (a) bigamy;
- (b) incest;
- (c) abduction;
- (d) contravening any provision of section *three* or *four* of the Girl's and Mentally Defective Women's Protection Proclamation, 1921 (Proclamation 28 of 1921) or section *three* of the Immorality Proclamation, 1934 (Proclamation 19 of 1934);
- (e) perjury committed in connection with, or for the purpose of, any judicial proceedings instituted or to be instituted or contemplated by the one of them against the other or in connection with or for the purpose of any criminal proceedings in respect of any offence included in this sub-section; and
- (f) the statutory offence of making a false statement in any affidavit or solemn or attested declaration if the same be made in connection with or for the purpose of any such proceedings as are mentioned in paragraph (e).

(2) The wife or husband of an accused is competent but not compellable to give evidence for the prosecution without the consent of the accused, where such accused is prosecuted for an offence against the separate property of the wife or husband of the accused or for any offence under section *one* or *two* of the Immorality Proclamation, 1934 (Proclamation 19 of 1934).

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

gryp nie of die gebondenheid daaraan op grond van godsdiestige oortuiging te besef nie, kan toegelaat word om in 'n strafsaak getuenis af te lê sonder om dit onder eed te doen of te bevestig: Met dien verstande dat voordat so iemand getuenis aflê die regter, landdros of ander regterlike beampte voor wie hy as getuie opgeroep word, hom moet waarsku om die waarheid, die algemene waarheid en niks anders as die waarheid nie te praat, en voorts aan hom 'n waarskuwing moet rig, of laat rig, in enige vorm wat op grond van of sy eie verklaring of 'n ander inlichtingsbron blyk daarop bereken te wees om 'n indruk op sy verstand te maak en sy gewete te bind en wat nie klaarblyklik ongeskik is om aan hom gerig te word omdat dit onmenslik, immoreel of ongodsdienstig van aard is nie: Met dien verstande voorts dat so iemand wat opsetlik en valslik 'n verklaring doen wat, as dit beëdig was, die misdryf van meeneed of 'n wetteregtelike misdryf wat as meeneed strafbaar is, sou uitgemaak het, geag word daardie misdryf te gepleeg het en by skuldigbevinding strafbaar is met die straf wat regtens as straf vir daardie misdryf bevoeg word.

BEVOEGDHEID VAN GETUIES

198. Elk een aan wie die alegging van getuenis nie uitdruklik by hierdie ordonnansie ontsê word nie, is bevoeg om in verplig om in enige strafsaak getuenis af te lê.

199. Die hof voor wie 'n strafsaak dien, beslis alle vrae in verband met 'n getuie se bevoegdheid of verpligting om getuenis af te lê.

200. Niemand wat skyn of bewys word te ly aan stompsinnigheid of kranksinnigheid of verstandsverbystering voortspruitende uit dronkenskap of andersins, waardeur hy van die behoorlike gebruik van sy sinne beroof word, is, terwyl hy aldus aangetas of onbekwaam is, bevoeg om getuenis af te lê nie.

201. (1) Die eggenote of eggenoot van 'n beskuldigde is sonder toestemming van die beskuldigde bevoeg en kan verplig word om getuenis vir die vervolging af te lê, waar die beskuldigde vervolg word weens 'n misdryf teen die persoon van die een of die ander van hulle of enige van die kinders van die een of die ander van hulle of weens 'n misdryf ingevolge hoofstuk III van die Kinderordonnansie 1961 (Ordonnansie 31 van 1961) gepleeg ten opsigte van enige van die kinders van die een of die ander van hulle of weens enige van die volgende misdrywe:

- (a) bigamie;
- (b) bloedskande;
- (c) ontvoering;
- (d) oortreding van 'n bepaling van artikel *drie* of *vier* van die Meisjes en Geestelik Gekrenkte Vrouwen Bescherms Proklamaties 1921 (Proklamasie 28 van 1921) of artikel *drie* van die Proklamasie van 1934 betreffende Immoraliteit (Proklamasie 19 van 1934);
- (e) meeneed gepleeg in verband met of vir die doel van geregtelike stappe wat deur een van hulle teen die ander ingestel is of ingestel staan te word of beoog word of in verband met of vir die doel van 'n strafsaak ten opsigte van 'n misdryf in hierdie subartikel bedoel; en
- (f) die wetteregtelike misdryf van 'n valse verklaring afgelê in 'n beëdigde, plegtige of geattesteerde verklaring as dit in verband met of vir die doel van in paragraaf (e) bedoelde stappe afgelê word.

(2) Die eggenote of eggenoot van 'n beskuldigde is sonder toestemming van die beskuldigde bevoeg maar nie verplig nie om getuenis vir die vervolging af te lê waar die beskuldigde vervolg word weens 'n misdryf teen die afsonderlike eiendom van die eggenote of eggenoot van die beskuldigde of weens 'n misdryf ingevolge artikel *een* of *twoe* van die Proklamasie van 1934 betreffende Immoraliteit (Proklamasie 19 van 1934).

(3) Ondanks andersluidende bepalings in hierdie ordonnansie of 'n ander wet is elkeen wat ooreenkomsdig naturellereg of -gewoonte getroud is, nienteenaanstaande die registrasie of ander erkenning ingevolge enige wet van so 'n verbintenis as 'n geldige en bindende huwelik, by die toepassing van die regsbepalings op bewyslewering in straf sake in dieselfde posisie as 'n ongetroude persoon.

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

- (a) an accused shall not be called as a witness except upon his own application;
- (b) the wife or husband of an accused shall not be called as a witness for the defence except upon the application of the accused.

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

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

PRIVILEGES OF WITNESSES

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

- (a) he has personally or by his counsel or attorney asked questions of any witness with a view to establishing, or has himself given evidence of, his own good character, or the nature of conduct of the defence is such as to involve imputation of the character of the prosecutor or the witnesses for the prosecution; or
- (b) he has given evidence against any other person charged with the same offence; or
- (c) the proceedings against him are such as are described in section two hundred and fifty-three or two hundred and fifty-four, and the notice required by those sections has been given to him; or
- (d) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged.

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

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

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

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

207. No advocate or attorney or other legal practitioner duly qualified to practise in any court whether within the Territory or elsewhere shall be competent to give evidence against any person by whom he has been professionally employed or consulted, without the consent of that person, as to any fact, matter, or thing, as to

202. (1) Elke beskuldigde en die eggenote of eggenoot (na gelang) van elke beskuldigde is 'n bevoegde getuie vir die verdediging op elke stadium van 'n strafsaak, hetsy die beskuldigde alleen of tesame met iemand anders aangekla word: Met dien verstande dat —

- (a) 'n beskuldigde, behalwe op sy eie aansoek, nie as getuie opgeroep mag word nie;
- (b) die eggenote of eggenoot van 'n beskuldigde nie as getuie vir die verdediging opgeroep mag word nie behalwe op aansoek van die beskuldigde.

(2) Tensy die hof anders gelas, moet elke beskuldigde wat ingevolge hierdie artikel as getuie opgeroep word, sy getuienis aflê vanuit die getuiebank of ander plek waar die ander getuies hul getuienis aflê.

(3) Geen bepaling van hierdie artikel doen afbreuk aan enige reg van die beskuldigde om 'n verklaring af te lê sonder dat hy ingesweer is nie: Met dien verstande dat as hy by 'n voorlopige ondersoek getuienis ten behoeve van homself aflê, daardie getuienis by sy verhoor deur die aanklaer uitgelees en ingelewer kan word.

PRIVILEGIE VAN GETUIES

203. Aan 'n beskuldigde wat op sy eie aansoek as getuie opgeroep word, mag geen vraag gestel word waarvan die strekking is om aan te toon dat hy 'n ander misdryf as dié waarvan hy aangekla staan, gepleeg het of daarvan skuldig bevind is of daarvan aangekla is, of van swak karakter is nie, en as so 'n vraag aan hom gestel word, hoef hy nie daarop te antwoord nie, tensy —

- (a) hy self of deur sy advokaat of prokureur aan 'n getuie vrae gestel het om sy eie goeie naam te bewys of hy self getuienis daaroor afgelê het, of die aard van die verdediging of die wyse waarop dit gevoer word sodanig is dat die karakter van die aanklaer of die getuies vir die vervolging daardeur aangesetas word; of
- (b) hy getuienis teen iemand anders, weens dieselfde misdryf aangekla, afgelê het; of
- (c) die saak teen hom 'n saak is soos in artikel tweehonderd drie-en-vyftig of tweehonderd vier-en-vyftig beskrywe, en die by daardie artikels vereiste kennis aan hom gegee is; of
- (d) die bewys dat hy sodanige ander misdryf gepleeg het of daarvan skuldig bevind is, toelaatbare getuienis is om te bewys dat hy skuldig is aan die misdryf waarvan hy dan aangekla staan.

204. (1) 'n Eggenoot is nie verplig om 'n mededeling aan hom deur sy eggenote tydens die huwelik gedoen, te openbaar nie, en 'n eggenote is nie verplig om 'n mededeling aan haar deur haar eggenoot tydens die huwelik gedoen, te openbaar nie.

(2) Iemand wie se huwelik deur 'n bevoegde hof ontbind of nietig verklaar is, is nie verplig om oor eniglets wat tydens die bestaan van die huwelik of vermeende huwelik voorgeval het en waaroor hy of sy nie verplig sou kon word om getuienis af te lê as die huwelik bestaan het, getuienis af te lê nie.

205. Niemand is verplig om op 'n vraag te antwoord of getuienis af te lê nie as die vraag of getuienis sodanig is dat onder die omstandighede die eggenote of eggenote van daardie persoon, indien as getuie ondervra, wettig sou kon weier en nie verplig sou kon word om daarop te antwoord of dit af te lê nie.

206. 'n Getuie in 'n strafsaak mag nie weier om op 'n ter sake dienende vraag waarvan die beantwoording nie die strekking het om hom te inkrimineer of aan enige straf of verbeuring van watter aard ook al bloot te stel, te antwoord nie, bloot omdat of op grond daarvan dat die antwoord op daardie vraag aan die lig mag bring of die strekking mag hê om aan die lig te bring dat hy in die skuld staan of andersins aan 'n siviele eis onderhewig is.

207. Geen advokaat of prokureur of ander regsprakters wat behoorlik bevoeg is om in 'n hof, hetsy binne die Gebied of elders, te praktiseer, is bevoeg om teen iemand aan wie hy beroepsdienste gelewer het of deur wie hy uit hoofde van sy beroep geraadpleeg is, sonder so iemand se toestemming getuienis af te lê nie aangaande 'n

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

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

209. No witness in any criminal proceedings shall, except as provided by this Ordinance or any other law, be compelled to answer any question which, if he were under examination in any similar case depending in the Supreme Court of Judicature in England, he would not be compelled to answer, by reason that this answer might have a tendency to expose him to any pains, penalty, punishment or forfeiture, or to a criminal charge, or to degrade his character: Provided that anything to the contrary notwithstanding in this section contained, an accused called as a witness on his own application in accordance with section *two hundred and two* may be asked any question in cross-examination, notwithstanding that it would tend to incriminate him as to the offence charged against him.

EVIDENCE ON COMMISSION

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

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

feit, aangeleentheid of saak waaroor so 'n regspraktisyn uit hoofde van sodanige dienste of raadpleging en sonder sodanige toestemming nie bevoeg sou wees om in 'n soortgelyke saak wat voor die Hooggereghof in Engeland dien, getuienis af te lê nie: Met dien verstande dat geen sodanige regspraktisyn, vanweë sodanige dienste of raadpleging, in 'n saak onbevoeg is of regtens van verpligting vry is nie om getuienis af te lê aangaande 'n feit, aangeleentheid of saak betreffende, of in verband staande met, die pleeg van 'n misdryf waarvoor die persoon, aan wie daardie regspraktisyn sodanige dienste gelewer het of deur wie hy aldus geraadpleeg is, in daardie saak vervolg word, wanneer daardie regspraktisyn sodanige feit, aangeleentheid of saak te wete gekom het voordat hy beroepsdienste gelewer het of uit hoofde van sy beroep geraadpleeg is in verband met die verdediging van daardie persoon teen sodanige vervolging.

208. Behalwe soos in hierdie ordonnansie bepaal, word 'n getui nie verplig of toegelaat om in 'n strafsaak getuienis af te lê nie aangaande 'n feit, aangeleentheid of saak of aangaande 'n mededeling aan of deur daardie getui gedoen, waaroor, as die saak voor die Hooggereghof in Engeland gedien het, daardie getui nie verplig of toegelaat sou kon geword het om getuienis af te lê nie omdat sodanige feit, aangeleentheid of saak of mededeling op grond van openbare beleid of met die oog op die openbare belang nie openbaar gemaak behoort te word nie en teen openbaarmaking geprivilegieerd is: Met dien verstande dat iemand in 'n strafsaak getuienis kan aanvoer aangaande 'n mededeling waarvolgens 'n misdryf gepleeg heet te gewees het, as die doen van daardie mededeling *prima facie* 'n misdryf uitgemaak het, en die regter of regterlike beampie wat by daardie saak voorsit, is bevoeg om te beslis of die doen van daardie mededeling *prima facie* 'n misdryf uitgemaak het al dan nie, en so 'n beslissing is vir die doeelindes van daardie saak afdoende.

209. Geen getui in 'n strafsaak is, behoudens die bepalings van hierdie ordonnansie of 'n ander wet, verplig om op 'n vraag te antwoord waarop hy, as hy in 'n soortgelyke saak voor die Hooggereghof in Engeland ondervra was, nie verplig sou gewees het om te antwoord nie omdat sy antwoord die strekking mag hê om hom aan enige nadeel, straf of verbeuring of aan 'n strafregtelike aanklag bloot te stel, of om sy goeie naam aan te tas: Met dien verstande dat, ondanks andersluidende bepalings in hierdie artikel, daar aan 'n beskuldigde wat op sy ele aansoek ingevolge artikel *tweehonderd en twee* as getui opgeroep word, enige vraag tydens kruisverhoor gestel kan word, al sou dit die strekking hê om hom te inkrimineer ten aansien van die misdryf wat hom ten laste gelê word.

GETUIENIS BY WYSE VAN KOMMISSIE

210. (1) Wanneer dit gedurende 'n strafsaak na die mening van 'n hoér hof op aansoek blyk dat die ondervraging van 'n getui vir die regbedeling noodsaaklik is en dat die aanwesigheid van daardie getui nie verkry kan word sonder sodanige vertraging, onkoste of ongerief soos onder die omstandighede van die geval onredelik sou wees nie, kan daardie hof van sodanige aanwesigheid afsien en 'n kommissie aan 'n landdros opdra of as die getui buite die Gebied woon, aan iemand deur daardie hoér hof gemagtig om getuienis by wyse van kommissie in siviele gedinge buite die Gebied af te neem en binne die plaaslike grense van wie se regsvvoegdheid daardie getui woon: Met dien verstande dat die besondere feit of feite ten opsigte waarvan die getuienis van die getui vereis word, in so 'n aansoek vermeld moet word, en die hof deur sy opdrag die ondervraging van die getui tot daardie feite kan beperk: Met dien verstande voorts dat wanneer die aansoek ten behoeve van die Staat geskied, die hof as voorwaarde van so 'n opdrag kan gelas dat die onkoste verbonde aan die verteenwoordiging van die beskuldigde deur 'n prokureur of advokaat by die ondervraging, deur die Staat betaal moet word.

(2) Die landdros of ander persoon aan wie die kommissie opgedra word, moet na die plek gaan waar die getui is of die getui voor hom ontbied, en moet sy getuienis afneem op dieselfde wyse as in die geval van 'n gewone voorlopige ondersoek deur hom gehou, of, waai die kommissie buite die Gebied uitgevoer word, op die

side the Territory in the same manner as a commission to take evidence in civil cases is executed.

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

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

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

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

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

CHAPTER XIII.

EVIDENCE

ADMISSIBILITY OF EVIDENCE

214. (1) Wherever in any criminal proceedings the question arises whether any particular act, transaction or occurrence did or did not take place in any particular department or sub-department or branch thereof or office of the Administration or the Republic or a province thereof or in a particular court of law or in a particular bank or whether any particular functionary of the Administration or the Republic or a province thereof did or did not perform any particular act or take part in any particular transaction, a document purporting to be an affidavit made by a person who in that affidavit alleges —

- (a) that he is in the service of the Administration or the Republic or a province thereof or of the said bank, as the case may be;
- (b) that if the said act, transaction or occurrence had taken place in the said department or sub-department or branch thereof or office, court or bank, or if the said functionary had performed the said act or taken part in the said transaction it would in the ordinary course of events have come to his, the deponent's knowledge, and a record thereof, available to him, would have been kept;
- (c) that no such act, transaction or occurrence has come to his knowledge or that he has satisfied himself that no such record was kept or that no such act, transaction or occurrence took place,

shall on its mere production in those proceedings by any person, but subject to the provisions of sub-section (7), be *prima facie* proof that no such act, transaction or occurrence took place.

(2) Whenever in any criminal proceedings the question arises whether any person bearing a particular name did or did not furnish any particular officer in the service of the Administration or the Republic or a province thereof with any particular information or document, a document purporting to be an affidavit made by a person who, in that affidavit, alleges that he is the said officer and that no person bearing the said name furnished him with any such information or document, shall on its mere production in those proceedings by any person, but subject to the provisions of sub-section (7), be *prima facie* proof

selfde wyse as dié waarop 'n kommissie om getuenis in siviele sake af te neem, uitgevoer word.

211. (1) 'n Party betrokke by 'n strafsaak waarin opdrag tot 'n kommissie gegee word, kan skriftelik vraagpunte deurstuur wat die hof deur wie die kommissie opgedra word, ter sake dienend ag, en die landdros of ander persoon aan wie die kommissie opgedra word, moet die getuie ooreenkomsdig daardie vraagpunte ondervra.

(2) So 'n party kan voor sodanige landdros of ander persoon deur middel van 'n advokaat of prokureur of, as hy nie in hechtenis is nie, persoonlik, verskyn, en kan bedoelde getuie ondervra, kruisvra of herondervra, na gelang.

212. (1) Nadat 'n kommissie ingevolge artikel *tweehonderd en tien* behoorlik uitgevoer is, moet dit tesame met die getuenis van die getuie wat uit hoofde daarvan ondervra is, aan die hof wat daartoe opdrag gegee het, terugbesorg word; en die kommissie, die relaas daarvan, en die getuenis moet te alle redelike tye ter insae van die partye beskikbaar wees en kan, onderhewig aan alle gevrongde besware, as getuenis in die saak deur enige van die partye voorgelees word en maak deel uit van die notule.

(2) Getuenis aldus afgeneem is ook op 'n latere stadium van die saak voor 'n ander hof as getuenis toelaatbaar.

213. In 'n geval waar opdrag tot 'n kommissie ingevolge artikel *tweehonderd en tien* gegee word, kan die strafsaak vir 'n bepaalde tyd wat redelikerwyse voldoende vir die uitvoering en terugbesorging van die kommissie is, verdaag word.

HOOFSTUK XIII.

GETUIENIS

TOELAATBAARHEID VAN GETUIENIS

214. (1) Wanneer in 'n strafsaak die vraag ontstaan of 'n bepaalde daad, handeling of gebeurtenis in 'n bepaalde departement of subdepartement of afdeling daarvan of kantoor van die Administrasie of die Republiek of van 'n provinsie daarvan of in 'n bepaalde geregshof of in 'n bepaalde bank, plaasgevind het al dan nie, of die vraag ontstaan of 'n bepaalde funksionaris van die Administrasie of die Republiek of 'n provinsie daarvan 'n bepaalde daad verrig het of aan 'n bepaalde handeling deelgeneem het al dan nie, dan is 'n geskrif wat 'n beëdigde verklaring heet te wees van 'n persoon wat in daardie beëdigde verklaring beweer —

- (a) dat hy in diens is van die Administrasie of die Republiek of van 'n provinsie daarvan of van beoelde bank, na gelang;
- (b) dat as bedoelde daad, handeling of gebeurtenis in bedoelde departement of subdepartement of afdeling daarvan of kantoor, hof of bank plaasgevind het, of as bedoelde funksionaris bedoelde daad verrig het of aan bedoelde handeling deelgeneem het, dit in die gewone loop van sake tot sy, die verklaarde se, kennis sou gekom het en 'n aan hom beskikbare aantekening daarvan gehou sou gewees het;
- (c) dat geen sodanige daad, handeling of gebeurtenis tot sy kennis gekom het nie of dat hy homself oortuig het dat geen sodanige aantekening gehou is nie of dat geen sodanige daad, handeling of gebeurtenis plaasgevind het nie,

by blote voorlegging in bedoelde saak deur enige persoon, maar behoudens die bepalings van subartikel (7), *prima facie* bewys dat geen sodanige daad, handeling of gebeurtenis plaasgevind het nie.

(2) Wanneer die vraag in 'n strafsaak ontstaan of iemand met 'n bepaalde naam, bepaalde inligting of 'n bepaalde dokument aan 'n bepaalde beampete in die diens van die Administrasie of die Republiek of van 'n provinsie daarvan verstrek het al dan nie, is 'n geskrif wat 'n beëdigde verklaring heet te wees van 'n persoon wat in daardie beëdigde verklaring beweer dat hy bedoelde beampete is en dat niemand met bedoelde naam sulke inligting of so 'n dokument aan hom verstrek het nie, by blote voorlegging in bedoelde saak deur enige persoon, maar behoudens die bepalings van subartikel (7), *prima facie* bewys

that the said person did not furnish the said officer with any such information or document.

(3) In any criminal proceedings in which the registration of any matter or the recording of any fact or transaction under any law is relevant to the issue, such registration or recording and any matter connected therewith may, subject to the provisions of sub-section (7), be proved *prima facie* by the production of a document purporting to be an affidavit made by the person upon whom the said law confers the power or imposes the duty to effect any such registration or to record any such fact or transaction.

(4) Whenever any fact ascertained by any examination or process requiring any skill in bacteriology, biology, chemistry, physics, astronomy, geography, finger prints or palm prints is or may become relevant to the issue in any criminal proceedings, a document purporting to be an affidavit made by a person who in that affidavit alleges that he is in the service of the Administration or the Republic or a province thereof or in the service of, or attached to, the South African Institute for Medical Research or any university in the Republic or any other institution designated by the Administrator for the purposes of this section by proclamation in the *Official Gazette*, and that he has ascertained any such fact by means of any such examination or process, shall on its mere production in those proceedings by any person, but subject to the provisions of sub-section (7), be admissible to prove that fact: Provided that such affidavit shall not be so admissible in an inferior court, if objected to by an accused or his representative, where the affidavit is produced by the prosecutor, or if objected to by the prosecutor or by an accused or his representative, where the affidavit is produced by another accused or his representative, unless the objector or his representative has received, not later than three days after the day upon which the accused was summoned or otherwise notified of his trial, a notice in writing that such affidavit will be tendered in evidence at the trial, and has not within three days of the day of the receipt of such notice, given notice in writing to the person who gave such firstmentioned notice, that he will object to the production of such affidavit.

(5) Whenever the weight or value of any precious mineral or unwrought precious metal or rough or uncut diamond is relevant in any criminal proceedings a document purporting to be an affidavit made by a person who in that affidavit, alleges that he is a valuator of precious minerals or unwrought precious metals or rough or uncut diamonds in the service of the Administration or the Republic and that he has ascertained the weight and value of such precious mineral or unwrought precious metal or rough or uncut diamond, shall on its mere production by any person in those proceedings but subject to the provisions of sub-section (7), be *prima facie* proof of the weight and value of such precious mineral or unwrought precious metal or rough or uncut diamond.

(6) In any criminal proceedings in which it is relevant to prove that the details set out in any consignment note executed for the purpose of the transport of any goods by the Railway Administration are correct, such details may subject to the provisions *mutatis mutandis* of the proviso to sub-section (4) and to the provisions of sub-section (7), be proved *prima facie* by the production of a document purporting to be an affidavit made by the person who executed such consignment note, in which it is stated that the details set out in such consignment note are correct in relation to the goods described in such consignment note and delivered for transport in connection therewith.

(7) The court in which any such affidavit is adduced in evidence may in its discretion cause the person who made it, to be summoned to give oral evidence in the proceedings in question or may cause written interrogatories to be submitted to him for reply and such interrogatories and any reply thereto, purporting to be a reply from such person, shall likewise be admissible in evidence in such proceedings.

dat bedoelde persoon nie sulke inligting of so 'n dokument aan bedoelde beampete verstrek het nie.

(3) In 'n strafsaak waarin die registrasie van 'n aangeleentheid of die aantekening van 'n feit of handeling ingevolge 'n wet ter sake dienend is, kan sodanige registrasie of aantekening en enige aangeleentheid in verband daarmee, behoudens die bepalings van subartikel (7), *prima facie* bewys word deur die voorlegging van 'n geskrif wat 'n beëdigde verklaring heet te wees van die persoon aan wie bedoelde wet die bevoegdheid verleen of die plig ople om so 'n registrasie te doen of so 'n feit of handeling aan te teken.

(4) Wanneer 'n feit wat ontdek is deur 'n ondersoek of proses wat bedrevenheid in bakteriologie, biologie, skeikunde, natuurkunde, sterrekunde, aardrykskunde of vingerafdrukke of palmadrukke vereis, in 'n strafsaak ter sake dienend is of mag word, is 'n geskrif wat 'n beëdigde verklaring heet te wees van 'n persoon wat in daardie beëdigde verklaring beweer dat hy in diens is van die Administrasie of die Republiek of van 'n provinsie daarvan of in diens is van of verbonde is aan die Suid-Afrikaanse Instituut vir Mediese Navorsing of 'n universiteit in die Republiek of 'n ander inrigting deur die Administrateur vir die doeleindes van hierdie artikel by proklamasie in die *Offisiële Koerant* aangewys, en dat hy so 'n feit deur middel van so 'n ondersoek of proses ontdek het, by blote voorlegging in bedoelde saak deur enige persoon, maar behoudens die bepalings van subartikel (7), toelaatbaar as bewys van daardie feit: Met dien verstande dat so 'n beëdigde verklaring nie in 'n laer hof aldus toelaatbaar is nie as beswaar daarteen deur 'n beskuldigde of sy verteenwoordiger gemaak word, waar die beëdigde verklaring deur die vervolger voorgelê word, of as beswaar daarteen deur die vervolger of deur 'n beskuldigde of sy verteenwoordiger gemaak word waar die beëdigde verklaring deur 'n ander beskuldigde of sy verteenwoordiger voorgelê word, tensy die beswaarmaker of sy verteenwoordiger hoogstens drie dae na die dag waarop die beskuldigde gedagvaar is of anders kennis gekry het van sy verhoor, skriftelik kennis ontvang het dat so 'n beëdigde verklaring by die verhoor as getuienis aangebied sal word, en nie binne drie dae vanaf die dag van ontvangs van so 'n kennisgewing, aan die persoon wat eersbedoelde kennis gegee het, skriftelik kennis gegee het dat hy teen die voorlegging van bedoelde beëdigde verklaring beswaar sal maak nie.

(5) Wanneer die gewig of waarde van enige edele mineraal of onbewerkte edele metaal of ruwe of ongeslypte diamant in 'n strafsaak ter sake dienend is, is 'n geskrif wat 'n beëdigde verklaring heet te wees van 'n persoon wat in daardie beëdigde verklaring beweer dat hy 'n waardeerde van edele minerale of onbewerkte edele metale of ruwe of ongeslypte diamante in die diens van die Administrasie of die Republiek is en dat hy die gewig en waarde van sodanige edele mineraal of onbewerkte edele metaal of ruwe of ongeslypte diamant vasgestel het, by blote voorlegging in bedoelde saak deur enige persoon, maar behoudens die bepalings van subartikel (7), *prima facie* bewys van die gewig en waarde van daardie edele mineraal of onbewerkte edele metaal of ruwe of ongeslypte diamant.

(6) In enige strafsaak waar dit ter sake dienend is om te bewys dat die besonderhede uiteengesit in 'n vragbrief opgestel vir die vervoer van goedere deur die spoorwegadministrasie juis is, kan die besonderhede, behoudens die bepalings *mutatis mutandis* van die voorbehoudbepaling by subartikel (4) en die bepalings van subartikel (7), *prima facie* bewys word deur die voorlegging van 'n dokument wat 'n beëdigde verklaring heet te wees van die persoon wat bedoelde vragbrief opgestel het, waarin verklaar word dat die besonderhede in die vragbrief uiteengesit juis is met betrekking tot die goedere in die vragbrief beskryf en vir vervoer in verband daarmee afgelwer.

(7) Die hof waarin so 'n beëdigde verklaring as getuienis voorgelê word, kan na goedunke die persoon wat dit afgelê het, laat dagvaar om mondeline getuienis in die betrokke saak af te lê of kan skriftelik vraagpunte aan hom vir beantwoording laat voerlê, en sodanige vraagpunte en enige antwoord daarop wat 'n antwoord van bedoelde persoon heet te wees, is insgelyks as getuienis in so 'n saak toelaatbaar.

(8) Nothing in this section contained shall affect any other law under which any certificate or other document is admissible in evidence, and the provisions of this section shall be deemed to be additional to, and not in substitution for, any such law.

215. No evidence as to any fact, matter, or thing shall be admissible which is irrelevant or immaterial and cannot conduce to prove or disprove any point of fact at issue in the case which is being tried.

216. No evidence which is of the nature of hearsay evidence shall be admissible in any case in which such evidence would be inadmissible in any similar case depending in the Supreme Court of Judicature in England.

217. The declaration made by any deceased person upon the apprehension of death shall be admissible or inadmissible in evidence in every case, in which such declaration would be admissible or inadmissible in any similar case depending in the Supreme Court of Judicature in England.

218. (1) The evidence of any witness taken upon oath before any magistrate at a preparatory examination in the manner required by section *sixty-four* in the presence of any person who has been brought before such magistrate on the charge of having committed an offence, or the evidence of a witness taken in the circumstances referred to in section *sixty-six*, shall be admissible in evidence on the trial of the person for any offence charged by the attorney-general in pursuance of the preparatory examination at which the evidence was taken, or on that person's trial before an inferior court or on the remittal of that person's case by the attorney-general after considering the said preparatory examination provided it is proved on oath to the satisfaction of the court that the witness is dead, or is incapable of giving evidence, or that he is too ill to attend, or that he is kept away from the trial by means and contrivance of the accused and that the evidence offered is the evidence which was sworn before the magistrate without any alteration and provided it appears from the record or is proved to the satisfaction of the court that the accused, by himself, his counsel or attorney, had a full opportunity of cross-examining the witness.

(2) The evidence of a witness given at a former criminal trial shall, under like circumstances, be admissible on any subsequent trial of the same person upon the same charge.

(3) Where the witness cannot be found after diligent search or cannot be compelled to attend, the court may, in its discretion, allow his evidence to be read as evidence at the trial subject to the conditions hereinbefore mentioned.

219. (1) Any confession of the commission of any offence shall, if such confession is proved by competent evidence to have been made by any person charged with such offence, whether before or after his arrest and whether on a judicial examination or after committal, and whether reduced into writing or not, be admissible in evidence against such person provided such confession is proved to have been freely and voluntarily made by such person in his sound and sober senses and without having been unduly influenced thereto: Provided that if such confession is shown to have been made to a peace officer, other than a magistrate or justice, it shall not be admissible in evidence under this section unless it was confirmed and reduced to writing in the presence of a magistrate or justice: Provided further that if such confession has been made at a preparatory examination before any magistrate, such person has previously, according to law, been cautioned by the magistrate that he is not obliged, in answer to the charge against him, to make any statement which may incriminate himself, and that what he then says may be used in evidence against him.

(2) In any proceedings any confession which is, by virtue of any provision of sub-section (1), inadmissible in evidence against the person who made it, shall become admissible against him if he or his representative adduces in those proceedings any evidence, either directly or in cross-examining a witness, of any statement, verbal or in writing, made by the person who made the confession

(8) Geen bepaling van hierdie artikel maak enige inbreuk op 'n ander wet uit hoofde waarvan 'n sertifikaat of ander stuk as getuienis toelaatbaar is nie, en die bepalings van hierdie artikel word geag so 'n wet aan te vul en nie te vervang nie.

215. Geen getuienis met betrekking tot enige feit, aangeleenthed of saak is toelaatbaar wat nie ter sake of van geen wesenlike belang is nie en wat nie strek tot bewys of weerlegging van enige punt of feit wat in die saak onder verhoor in geskil is nie.

216. Geen getuienis wat in sy aard hoorské-getuienis is, is toelaatbaar in 'n saak waarin sodanige getuienis in 'n soortgelyke saak voor die Hooggereghof in Engeland ontoelaatbaar sou wees nie.

217. Die verklaring wat deur 'n oorledene met die vrees van die dood voor oë afgelê is, is as getuienis toelaatbaar of ontoelaatbaar in iedere saak waarin so 'n verklaring in 'n soortgelyke saak voor die Hooggereghof van Engeland toelaatbaar of ontoelaatbaar sou wees.

218. (1) Die getuienis wat van 'n getuie onder eed voor 'n landdros by 'n voorlopige ondersoek op die in artikel *vier-en-sestig* voorgeskrewe wyse afgeneem is in die aanwesigheid van iemand wat voor so 'n landdros gebring is op aanklag dat hy 'n misdryf gepleeg het, of die getuienis wat van 'n getuie in die in artikel *ses-en-sestig* bedoelde omstandighede afgeneem is, is a getuienis toelaatbaar by die verhoor van die persoon weens enige misdryf wat hom deur die Prokureur-generaal na aanleiding van die voorlopige ondersoek waarby die getuienis afgeneem is, ten laste gelê word, of by bedoelde persoon se verhoor voor 'n laer hof of by die terugverwysing van bedoelde persoon se saak deur die Prokureur-generaal na oorweging van bedoelde voorlopige ondersoek, mits dit onder eed tot voldoening van die hof bewys word dat die getuie oorlede is, of onbekwaam is om getuienis af te lê, of dat hy te siek is om te verskyn, of dat hy van die verhoor weggehou word deur die middels en toedoen van die beskuldigde en dat die aangebode getuienis die getuienis is wat voor die landdros onder eed afgelê is, sonder verandering, en mits dit uit die noule blyk of tot voldoening van die hof bewys word dat die beskuldigde self, sy advokaat of prokureur ten volle geleentheid gehad het om die getuie te kruisvra.

(2) Die getuienis van 'n getuie wat by 'n vorige strafverhoor afgelê is, is onder soortgelyke omstandighede by 'n latere verhoor van dieselfde persoon op dieselfde aanklag toelaatbaar.

(3) Waar die getuie nie gevind kan word nie nadat deeglik na hom gesoek is of nie verplig kan word om te verskyn nie, kan die hof, na goeddunke, toelaat dat sy getuienis as getuienis by die verhoor gelees word behoudens die voorwaardes hierbo vermeld.

219. (1) 'n Bekentenis van die pleging van 'n misdryf is, as dit deur middel van bevoegde getuienis bewys word dat so 'n bekentenis deur 'n persoon wat van bedoelde misdryf aangekla word, afgelê is, hetsy voor of na sy inhegtenisneming en hetsy by 'n geregtelike ondersoek of na verwysing en hetsy dit neergeskryf is al dan nie, teen so 'n persoon as getuienis toelaatbaar, mits dit bewys word dat so 'n bekentenis vry en bereidwillig deur so 'n persoon by sy volle verstand afgelê is en sonder dat hy op onbehoorlike wyse daartoe aangemoedig is: Met dien verstande dat as dit blyk dat so 'n bekentenis aan 'n ander vredesbeampte as 'n landdros of vrederegter gedoen is, dit nie as getuienis kragtens hierdie artikel toelaatbaar is nie tensy dit in die aanwesigheid van 'n landdros of vrederegter bevestig en neergeskryf is: Met dien verstande voorts dat as so 'n bekentenis by 'n voorlopige ondersoek voor 'n landdros afgelê is, bedoelde persoon vooraf volgens wet deur die landdros gewaarsku is dat hy nie in antwoord op die aanklag teen hom verplig is om enige verklaring te doen wat homself mag inkrimineer nie en dat wat hy dan sê as getuienis teen hom gebruik kan word.

(2) 'n Bekentenis wat ten gevolge van 'n bepaling van subartikel (1) in enige saak as getuienis ontoelaatbaar is teen die persoon wat dit afgelê het, word teen hom toelaatbaar as hy of sy verteenwoordiger in daardie saak getuienis aanvoer, hetsy regstreeks of by die kruisverhoor van 'n getuie, van 'n verklaring, hetsy mondeling of skrif-

either as part thereof or in connection therewith, if such evidence is, in the opinion of the officer presiding at such proceedings, favourable to the person who made the confession.

220. (1) Evidence may be admitted of any fact otherwise admissible in evidence, notwithstanding that such fact has been discovered and come to the knowledge of the witness who gives evidence respecting it only in consequence of information given by the person under trial in any confession or evidence which by law is not admissible in evidence against him on such trial, and notwithstanding that the fact has been discovered and come to the knowledge of the witness against the wish or will of the accused.

(2) It shall be lawful to admit evidence that anything was pointed out by the person under trial or that any fact or thing was discovered in consequence of information given by such person notwithstanding that such pointing out or information forms part of a confession or statement which by law is not admissible in evidence against him on such trial.

221. No confession made by any person shall be admissible as evidence against any other person.

222. Save as is provided in section *two hundred and three*, no evidence as to the character of the accused or as to the character of any woman on whose person any rape or assault with intent to commit a rape or indecent assault is alleged to have been committed, shall, in any case, be admissible or inadmissible if such evidence would be inadmissible or admissible in any similar case depending in the Supreme Court of Judicature in England.

223. Comparison of a disputed writing with any writing proved to the satisfaction of the court to be genuine may be made by witnesses, and such writings and the evidence of any witness with respect thereto may be submitted to the court as evidence of the genuineness or otherwise of the writing in dispute.

224. The trial and conviction or acquittal of any person may be proved by the production of a certificate signed or purporting to be signed by the registrar or clerk of the court or other officer having the custody of the records of the court where such conviction or acquittal took place, or by the deputy of such registrar, clerk or other officer, that the document produced is a copy of the charge and of the trial, conviction, and judgment or acquittal, as the case may be, omitting the formal parts thereof.

225. The statement made by an accused under section *sixty-eight* or *seventy-seven* in answer to any question put to him under the first-mentioned section shall, when he is brought before a superior court after committal by a magistrate for sentence, or when he is brought before a magistrate's court on remittal to it by the attorney-general for sentence, be admissible in evidence on its production without further proof.

226. (1) Judicial notice shall be taken of any law or government notice, or of any other matter which has been published in the *Gazette* or in the *Official Gazette*.

(2) A copy of the *Gazette*, or of the *Official Gazette*, or a copy of such law, notice or other matter purporting to be printed under the superintendence or authority of the Secretary for South West Africa, shall on its mere production, be evidence of the contents of such law, notice or other matter, as the case may be.

227. Any evidence which would be admissible in any criminal case depending in the Supreme Court of Judicature in England as evidence of the appointment of any person to any public office or of the authority of any person to act as a public officer shall be admissible in evidence in all criminal proceedings in the Territory.

228. In any criminal proceedings any document —

- (a) purporting to bear the signature of any person holding a public office; and

telik, van die persoon wat die bekentenis afgelê het, het sy as deel daarvan of in verband daarmee, en sodanige getuienis, na die mening van die persoon wat by daardie saak voorsit, gunstig is vir die persoon wat die bekentenis afgelê het.

220. (1) Getuienis wat andersins as getuienis toelaatbaar is, kan toegelaat word van enige feit, nieteenstaande dat bedoelde feit ontdek is en tot die kennis van die getuie wat getuies daaromtrent aflê, gekom het slegs as gevolg van inligting wat die persoon wat onder verhoor is, verstrek het in 'n bekentenis of getuienis wat volgens wet nie as getuies teen hom by so 'n verhoor toelaatbaar is nie en ten spyte daarvan dat die feit teen die wens of wil van die beskuldigde ontdek is en tot die kennis van die getuie gekom het.

(2) Getuienis is toelaatbaar dat enigets deur die persoon onder verhoor aangewys is of dat enige feit of saak ontdek is ten gevolge van inligting deur so 'n persoon verstrek, ten spyte daarvan dat die aanwysing of inligting deel uitmaak van 'n bekentenis of verklaring wat regtens nie by die verhoor as getuienis teen hom toelaatbaar is nie.

221. Geen bekentenis deur iemand gedoen, is as getuienis teen 'n ander toelaatbaar nie.

222. Behalwe soos in artikel *tweehonderd en drie* bepaal word, is geen getuienis oor die reputasie van die beskuldigde of oor die reputasie van 'n vrou op wie volgens beweer word verkragting of aanranding met die doel om te verkrag of onseidelike aanranding gepleeg is, in 'n saak as getuienis toelaatbaar of ontoelaatbaar nie as sodanige getuienis in 'n soortgelyke saak in die Hooggereghof in Engeland ontoelaatbaar of toelaatbaar sou wees.

223. Vergelyking van 'n betwiste geskrif met 'n geskrif wat tot voldoening van die hof bewys is eg te wees, kan deur getuienis gedoen word, en sodanige geskrifte en die getuienis van 'n getuie met betrekking daartoe kan aan die hof voorgelê word as getuienis van die egtheid of andersins van die betwiste geskrif.

224. Die verhoor en skuldigbevinding of vryspreek van 'n persoon kan bewys word deur middel van die voorlegging van 'n sertifikaat wat onderteken is of heet te wees deur die griffier of klerk van die hof of ander beampete belas met die bewaring van die prosesstukke van die hof waar so 'n skuldigbevinding of vryspreek plaasgevind het, of deur die adjunk van die bedoelde griffier, klerk of ander beampete, dat die voorgelegde geskrif 'n afskrif is van die aanklag en van die verhoor, skuldigbevinding en uitspraak of vryspreek, na gelang, met weglatting van die formele dele daarvan.

225. Die verklaring wat deur 'n beskuldigde kragtens artikel *agt-en-sestig of sewen-en-sewentig* gedoen word, in antwoord op 'n vraag aan hom kragtens eersgenoemde artikel gestel, iswanneer hy voor 'n hoë hof gebring word na 'n verwysing deur 'n landdroshof vir vonnis, of wanneer hy voor 'n landdroshof gebring word op terugverwysing daarheen deur die Prokureur-generaal vir vonnis, by voorlegging sonder verdere bewys as getuienis toelaatbaar.

226. (1) Geregtelike kennisname geskied van enige wet of goewermentskennisgewing of van enige ander aangeleenthed wat in die *Staatskoerant* of in die *Offisiële Koerant* aangekondig is.

(2) 'n Eksemplaar van die *Staatskoerant* of van die *Offisiële Koerant* of 'n eksemplaar van so 'n wet, kennisgewing of ander aangeleenthed wat onder toesig of op las van die Sekretaris van Suidwes-Afrika gedruk heet te wees, is, by blote voorlegging daarvan, bewys van die inhoud van so 'n wet, kennisgewing of ander aangeleenthed, na gelang.

227. Getuienis wat in 'n strafsaak in die Hooggereghof in Engeland toelaatbaar sou wees as bewys van die aanstelling van iemand in 'n openbare amp of van die bevoegdheid van iemand om as 'n openbare beampete op te tree, is in alle strafake in die Gebied as getuienis toelaatbaar.

228. 'n Geskrif —

- (a) waarop die handtekening heet voor te kom van iemand wat 'n openbare amp beklee; en

- (b) bearing a seal or stamp which purports to be a seal or stamp of the department, office or institution to which such person is attached,

shall on its mere production, without proof of such signature, seal or stamp, be presumed to be signed by such person, unless it is proved not to have been signed by him.

EVIDENCE OF ACCOMPLICES

229. (1) Where any person who to the knowledge of the public prosecutor has been an accomplice, either as principal or accessory, in the commission of any offence alleged in any charge, or the subject of a preparatory examination, is produced as a witness by and on behalf of the public prosecutor, and submits to be sworn as a witness, and fully answers to the satisfaction of the court or magistrate all such lawful questions as are put to him while under examination, such person shall thereby be absolutely freed and discharged from all liability to prosecution for such offence, either at the public instance, or at the instance of any private prosecutor, or, if he is produced as a witness by and on behalf of any private prosecutor who is aware of such person's complicity, from all prosecution for such offence at the instance of such private prosecutor.

(2) The said court or magistrate shall cause such discharge to be entered on the record of the proceedings: Provided that such discharge shall be of no force and effect and the entry thereof on the record of the proceedings shall be deleted if, when called as a witness at a re-opening of the preparatory examination or at the trial of any person upon a charge of having committed such offence, the person in respect of whom the discharge was made refuses to be sworn as a witness or fails to answer fully to the satisfaction of the magistrate holding the preparatory examination or of the court trying such charge, all such questions as are put to him while under examination as a witness.

(3) No accomplice produced as a witness by and on behalf of any private prosecutor shall, in any case, be compelled to answer any question whereby he may incriminate himself in respect of any offence alleged in the charge under trial, or the subject of a preparatory examination, unless there is produced to him, and put on record, a writing under the hand of the officer who by law is entitled to prosecute at the public instance in such court or at the preparatory examination, discharging such accomplice from all liability to prosecution at the instance of the public prosecutor for such offence.

230. No evidence given by an accomplice on behalf of the prosecution in any criminal proceedings in respect of any offence shall, if the said accomplice is thereafter prosecuted for such offence, be admissible in evidence against him at his trial: Provided that if such accomplice is subsequently prosecuted for perjury arising from the giving of such evidence, nothing contained in this section shall prevent the admission against him in evidence at his trial for the said perjury of the evidence so given.

SUFFICIENCY OF EVIDENCE

231. Any court may convict any accused of any offence alleged against him in the charge, on the single evidence of any competent and credible witness: Provided that no court shall —

- (a) convict any accused of perjury on the evidence of any one witness, unless in addition to and independent of the evidence of such witness, some other competent and credible evidence as to the falsity of the statement which forms the subject of the charge is given to such court; or
- (b) convict any accused of treason except upon the evidence of two witnesses where one overt act is charged, or where two or more overt acts are so charged, upon the evidence of one witness to each such overt act.

- (b) waarop 'n seël of stempel voorkom wat 'n seël of stempel van die departement, kantoor of inrigting waaraan bedoelde persoon verbonde is, heet te wees, word in enige strafsaak by blote voorlegging daarvan, sonder bewys van bedoelde handtekening, seël of stempel, vermoed deur bedoelde persoon onderteken te wees, tensy bewys word dat dit nie deur hom onderteken is nie.

GETUIENIS VAN MEDEDADERS

229. (1) Waar iemand wat na die wete van die staatsaanklaer 'n mededader was, hetsy as hoofdader of medepligtige, by die pleging van 'n misdryf wat in 'n aanklag ten laste gelê word of die onderwerp van 'n voorlopige ondersoek uitmaak, as getuie deur en ten behoeve van die staatsaanklaer opgeroep word en hom as getuie laat beëdig en tot voldoening van die hof of landdros volledig antwoord op alle vrae wat gedurende sy ondervraging wettig aan hom gestel word, is die persoon daardeur volkome vrygestel en ontheft van alle vervolging weens daardie misdryf, hetsy van staatsweé of deur 'n private aanklaer, of, as hy as getuie deur en ten behoeve van 'n private aanklaer opgeroep word wat van so iemand se medepligtigheid bewus is, van alle vervolging weens bedoelde misdryf deur bedoelde private aanklaer.

(2) Bedoelde hof of landdros laat so 'n vrystelling in die notule van die saak aangeteken: Met dien verstande dat so 'n vrystelling van nul en gener waarde is en die aangetekening daarvan uit die notule van die saak geskrap word as die persoon ten opsigte van wie die vrystelling verleen is, wanneer hy as 'n getuie by die heropening van die voorlopige ondersoek of die verhoor van iemand op 'n aanklag dat hy bedoelde misdryf gepleeg het, weier om hom as getuie te laat beëdig of versuim om tot voldoening van die landdros wat die voorlopige ondersoek hou of van die hof wat bedoelde aanklag verhoor, volledig te antwoord op alle vrae wat gedurende sy ondervraging as 'n getuie aan hom gestel word.

(3) Geen mededader wat as 'n getuie deur en ten behoeve van 'n private aanklaer opgeroep word, is in enige geval verplig om 'n vraag te beantwoord waardeur hy homself ten opsigte van 'n misdryf wat in die aanklag onder verhoor ten laste gelê word, of die onderwerp van 'n voorlopige ondersoek uitmaak, mag inkrimineer nie, tensy daar aan hom 'n geskrif onderteken deur die beampete wat regtens geregtig is om in bedoelde hof of by die voorlopige ondersoek van staatsweé te vervolg, waarby bedoelde mededader van alle vervolging deur die staatsaanklaer vir bedoelde misdryf vrygestel word, voorgelê word en dit in die notule aangeteken word.

230. Geen getuenis wat deur 'n mededader ten behoeve van die vervolging in enige strafsaak ten opsigte van 'n misdryf afgelê is, is, as daardie mededader daarna weens bedoelde misdryf vervolg word, as getuenis teen hom by sy verhoor toelaatbaar nie: Met dien verstande dat as bedoelde mededader daarna vervolg word weens meineed wat uit die aflegging van sodanige getuenis ontstaan, geen bepaling van hierdie artikel die toelating as getuenis teen hom by sy verhoor weens bedoelde meineed van die aldus afgelegde getuenis verhinder nie.

GENOEGSAAMHEID VAN GETUIENIS

231. 'n Hof kan 'n beskuldigde weens enige misdryf wat hom in die aanklag ten laste gelê word, op die enkele getuenis van 'n bevoegde en geloofwaardige getuie skuldig bevind: Met dien verstande dat geen hof —

- (a) 'n beskuldigde weens meineed op die getuenis van 'n enkele getuie skuldig bevind nie, tensy daar beweens en onafhanklik van die getuenis van so 'n getuie, ander bevoegde en geloofwaardige getuenis betreffende die valsheid van die verklaring wat die onderwerp van die aanklag uitmaak, aan bedoelde hof voorgelê word; of
- (b) 'n beskuldigde weens hoogverraad skuldig bevind nie, behalwe op die getuenis van twee getuies waar een handeling ten laste gelê word, of waar twee of meer handelinge aldus ten laste gelê word, op die getuenis van een getuie op elke sodanige handeling.

232. Any court may convict any accused of any offence alleged against him in the charge on the single evidence of any accomplice, provided the offence has, by competent evidence, other than the single and unconfirmed evidence of the accomplice, been proved to the satisfaction of such court, to have been actually committed.

233. (1) If an accused charged with any offence before any court pleads guilty to that offence or to an offence of which he might be found guilty on the charge, and the prosecutor accepts that plea, the court may —

- (a) if it is a superior court, and the accused pleads guilty to any offence other than murder, sentence him for that offence without hearing any evidence;
- (b) if it is an inferior court, sentence him for the offence to which he pleads guilty upon proof, that the offence was actually committed: Provided that if the offence to which he pleads guilty is such that the court is of opinion that it does not merit punishment of imprisonment without the option of a fine or of whipping or of a fine exceeding thirty rand, it may, if the prosecutor does not tender evidence of the commission of the offence, convict the accused of such offence upon his plea of guilty, without other proof of the commission of the offence, and thereupon impose any competent sentence other than imprisonment or any other form of detention without the option of a fine or whipping or a fine exceeding thirty rand, or it may deal with him otherwise in accordance with law.

(2) Any court may convict an accused of any offence alleged against him in the charge by reason of any confession of that offence proved to have been made by him, although the confession is not confirmed by any other evidence, provided the offence has, by competent evidence, other than such confession, been proved to have been actually committed.

234. (1) Whenever a public prosecutor causes an accused person to be summoned (otherwise than in terms of sub-section (8) of section *three hundred and thirty-seven*), to appear in an inferior court upon a charge of having committed any offence and he has reasonable grounds for believing that the court which will try the said charge will, on convicting the accused, not impose a sentence of imprisonment or whipping or a fine exceeding thirty rand, he may attach to such summons to be served therewith upon the accused, a form of declaration for signature by the accused, wherein the latter admits having committed the offence, expresses his intention of pleading guilty to the charge and agrees to be convicted of the offence charged upon his plea of guilty without the calling of any evidence in support of the charge.

(2) Such form shall contain a notice for the information of the accused that when appearing in court to answer the charge upon which he is summoned, he may, in spite of having signed the said declaration, plead not guilty to the charge and that he will thereupon be tried, upon a future date to be determined by the court, as if he had not signed such declaration, and that such declaration will, at such trial, not be admissible in evidence against him.

(3) The said form shall also contain a notice for the information of the accused, directing his attention to the provisions of section *three hundred and thirty-seven* and setting forth the purport of those provisions.

(4) The person serving such summons shall, if service is upon the accused personally, explain the aforesaid form of declaration to the accused and ascertain from him whether he will or will not sign such declaration, and if the accused signs such declaration the said person shall countersign it and transmit it forthwith to the public prosecutor who caused the summons to be issued.

(5) If the accused, on appearing in court in answer to the summons, pleads guilty to the charge, the court may deal with him in terms of the proviso to paragraph (b) of sub-section (1) of section *two hundred and thirty-*

232. 'n Hof kan 'n beskuldigde weens enige misdryf wat hom in die aanklag ten laste gelê word, op die enkele getuienis van 'n mededader skuldig bevind, mits dit deur ander bevoegde getuienis as die enkele en onbekragtigde getuienis van die mededader tot voldoening van die hof bewys word dat die misdryf werklik gepleeg is.

233. (1) As 'n beskuldigde wat weens 'n misdryf voor enige hof aangekla word, aan bedoelde misdryf of 'n misdryf waaraan hy op die aanklag skuldig bevind kan word, skuldig pleit en die aanklaer die pleit aanvaar, kan die hof —

- (a) as dit 'n hoër hof is, en die beskuldigde aan 'n ander misdryf as moord skuldig pleit, hom weens daardie misdryf vonnis sonder om getuienis te hoor; of*
- (b) as dit 'n laer hof is, hom weens die misdryf waaraan hy skuldig pleit, vonnis by bewys dat die misdryf werklik gepleeg is: Met dien verstande dat as die misdryf waaraan hy skuldig pleit sodanig is dat die hof meen dat dit nie gevangenisstraf sonder die keuse van 'n boete of lyfstraf of 'n boete van meer as dertig rand verdien nie, die hof, as die aanklaer geen getuienis met betrekking tot die pleging van die misdryf aanbied nie, die beskuldigde weens bedoelde misdryf op sy pleit van skuldig, skuldig kan bevind, sonder ander bewys van die pleging van die misdryf, en daarop enige bevoegde vonnis kan ople behalwe gevangenisstraf of 'n ander vorm van aanhouding sonder die keuse van 'n boete of lyfstraf of 'n boete van meer as dertig rand, of andersins volgens wet met hom kan handel.*

(2) 'n Hof kan 'n beskuldigde weens enige misdryf wat hom in die aanklag ten laste gelê word, skuldig bevind op grond van 'n bekentenis van daardie misdryf wat hy volgens bewys gedoen het, hoewel die bekentenis nie deur ander getuienis bekratig word nie, mits dit deur ander bevoegde getuienis as bedoelde bekentenis bewys word dat die misdryf werklik gepleeg is.

*234. (1) Wanneer 'n staatsaanklaer 'n persoon anders as ingevolge subartikel (8) van artikel *drie honderd sewen-en-dertig* laat dagvaar om in 'n laer hof te verskyn op 'n aanklag dat hy 'n misdryf gepleeg het en hy redelike gronde het om te vermoed dat die hof wat bedoelde aanklag sal verhoor, nie by skuldigbevinding van die beskuldigde gevangenisstraf of lyfstraf of 'n boete van meer as dertig rand sal ople nie, kan hy 'n deklarasievorm vir ondertekening deur die beskuldigde aan bedoelde dagvaarding heg om saam daar mee aan die beskuldigde bestel te word waarin laasgenoemde erken dat hy die misdryf gepleeg het, sy voorneme te kenne gee om op die aanklag skuldig te pleit en toestem om aan die ten laste gelegde misdryf op sy pleit van skuldig, skuldig bevind te word sonder dat getuienis ter stawing van die aanklag aangevoer word.*

(2) Bedoelde vorm bevat 'n kennisgewing ter inligting van die beskuldigde dat wanneer hy in die hof verskyn op die aanklag waarvoor hy gedagvaar is, hy, ondanks sy ondertekening van bedoelde deklarasie, onskuldig op die aanklag kan pleit en dat hy daarop verhoor sal word op 'n toekomstige datum deur die hof bepaal te word asof hy nie so 'n deklarasie onderteken het nie, en dat 'n deklarasie nie by sy verhoor as getuienis teen hom toelaatbaar sal wees nie.

*(3) Bedoelde vorm bevat ook 'n kennisgewing ter inligting van die beskuldigde waarin sy aandag op die bepalings van artikel *drie honderd sewen-en-dertig* gevestig word en wat die strekking van daardie bepalings uiteensit.*

(4) Die persoon wat bedoelde dagvaarding bestel moet, as die bestelling persoonlik aan die beskuldigde geskied, voormalie deklarasievorm aan die beskuldigde verduidelik en van hom verneem of hy bedoelde deklarasie sal onderteken al dan nie, en as die beskuldigde bedoelde deklarasie onderteken, moet bedoelde persoon dit mede-onderteken en onverwyld aan die staatsaanklaer wat die dagvaarding laat uitreik het, instuur.

*(5) As die beskuldigde by sy verskyning in die hof op die dagvaarding, op die aanklag skuldig pleit, kan die hof ingevolge die voorbehoudsbepalings by paragraaf (b) van sub-artikel (1) van artikel *tweehonderd drie-en-dertig**

tree, or it may direct that evidence be led to prove the commission of the offence charged.

(6) If the accused, on appearing in court as aforesaid, pleads not guilty or if after having pleaded guilty, the court directs that evidence be led to prove the commission of the offence, the court shall at the request of the public prosecutor or of the accused postpone the trial of the case to such date as it may fix to enable the public prosecutor, and the accused, if he so desires, to subpoena witnesses.

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

235. Any evidence which would, if credible, be deemed in any criminal case depending in the Supreme Court of Judicature in England to be sufficient proof of the appointment of any person to any public office, or of the authority of any person to act as a public officer shall, if credible, be deemed in all criminal proceedings in the Territory to be sufficient proof of such appointment or authority.

DOCUMENTARY EVIDENCE

236. Whenever any book or other document is of such a public nature as to be admissible in evidence on its mere production from the proper custody, any copy thereof or extract therefrom shall be admissible in evidence in any criminal proceedings provided it is proved to be an examined copy or extract, or provided it purports to be signed and certified as a true copy or extract by the officer to whose custody the original is entrusted; and such officer shall furnish such certified copy or extract to any person applying at a reasonable time therefor, upon payment of a reasonable sum therefor not exceeding ten cents for every hundred words.

237. Any original document in the custody or under the control of any State official by virtue of his office, shall only be produced in any criminal proceedings before any court upon the order of the attorney-general.

238. (1) Except when the original is ordered to be produced, as in section *two hundred and thirty-seven* provided, it shall be sufficient to produce a copy of or extract from a document described in that section certified as a true copy or extract by the head of the department in whose custody or under whose control such document is, which copy or extract so certified shall be admissible in evidence in any criminal proceedings, and shall be of like value and effect as the original document.

(2) (a) It shall not be necessary for any head of a State department or office to appear in person to produce any original document in his custody or under his control as such officer, but it shall be sufficient if such document is produced by a person authorized by him so to do.

(b) Certified copies or extracts may be handed into the court by the person who desires to avail himself thereof.

(3) Any officer authorized or required by this Ordinance to furnish any certified copy or extract who wilfully certifies any document as being a true copy or extract knowing that the same is not a true copy or extract, as the case may be, shall be guilty of an offence and liable upon conviction to imprisonment for a period not exceeding two years.

239. Any document (including any book, pamphlet, letter, circular letter, list, record, placard or poster) which was at any time on premises occupied by any association of persons, incorporated or unincorporated, or in the possession or under the control of any office bearer, officer or member of such association and —

(a) on the face whereof a person of a name corresponding to that of an accused person appears to be a member or office bearer of such association, shall on its mere production by the public prosecutor in any criminal proceedings be *prima facie* proof that the accused is a member or such an office bearer of such association, as the case may be;

met hom handel, of kan gelas dat getuienis aangevoer word om die pleging van die ten late gelegde misdryf te bewys.

(6) As die beskuldigde, by sy verskyning in die hof soos voormald onskuldig pleit of as, nadat hy skuldig gepleit het, die hof gelas dat getuienis aangevoer word om die pleging van die misdryf te bewys, stel die hof op versoek van die staatsaanklaer of van die beskuldigde die verhoor van die saak uit tot die datum wat die hof bepaal ten einde die staatsaanklaer, en die beskuldigde, as hy dit verlang, in staat te stel om getuies te dagvaar.

(7) As die beskuldigde onskuldig pleit, soos voormald, is die deur hom ondertekende skulderkenning nie as getuienis teen hom by sy verhoor toelaatbaar nie.

235. Getuienis wat, indien geloofwaardig, in 'n strafsaak in die Hooggereghof in Engeland as genoegsame bewys van die aanstelling van iemand in 'n openbare amp, of van die bevoegdheid van iemand om as 'n openbare beampte op te tree, geag sou word, word, indien geloofwaardig, in alle strafsake in die Gebied as genoegsame bewys van so 'n aanstelling of bevoegdheid geag.

DOKUMENTÈRE BEWYS.

236. Wanneer 'n boek of ander dokument van so 'n openbare aard is dat dit as getuienis toelaatbaar is by blote voorlegging deur die bevoegde bewaarder, is 'n afskrif daarvan of uittreksel daaruit as getuienis in enige strafsaak toelaatbaar, mits bewys word dat dit 'n nagesiene afskrif of uittreksel is, of mits dit 'n ware afskrif of uittreksel onderteken en gesertifiseer heet te wees deur die beampte aan wie se bewaring die oorspronklike toevertrou is; en so 'n beampte verstrek so 'n gesertifiseerde afskrif of uittreksel aan enigiemand wat op 'n redelike tyd daarom aansoek doen, teen betaling van 'n redelike bedrag daarvoor van hoogstens tien sent vir elke honderd woorde.

237. 'n Oorspronklike dokument in die bewaring of onder die beheer van 'n beampte van die Staat uit hoofde van sy amp word in 'n strafsaak in enige hof slegs op bevel van die Prokureur-generaal voorgelê.

238. (1) Behalwe wanneer voorlegging van die oorspronklike beveel word soos in artikel *tweehonderd sewentig* bepaal, is dit voldoende om 'n afskrif van of uittreksel uit 'n dokument omskryf in bedoelde artikel, wat as 'n ware afskrif of uittreksel gesertifiseer is deur die hoof van die departement in wie se bewaring of onder wie se beheer bedoelde dokument is, voor te lê, en so 'n afskrif of uittreksel aldus gesertifiseer, is toelaatbaar as getuienis in enige strafsaak en het dieselfde waarde en uitwerking as die oorspronklike dokument.

(2) (a) Dit is nie nodig vir 'n hoof van 'n Staatsdepartement of -kantoor om persoonlik te verskyn om 'n oorspronklike dokument in sy bewaring of onder sy beheer as sodanige beampte voor te lê nie, maar dit is voldoende as so 'n dokument voorgelê word deur 'n persoon wat deur hom gemagtig is om dit te doen.

(b) Gesertifiseerde afskrifte of uittreksels kan deur die persoon wat gebruik daarvan wil maak, by die hof ingelewer word.

(3) 'n Beampte wat ingevolge hierdie ordonnansie gemagtig of verplig is om 'n gesertifiseerde afskrif of uittreksel te verstrek en wat 'n dokument opsetlik as 'n ware afskrif of uittreksel sertifiseer wetende dat dit nie 'n ware afskrif of uittreksel is nie, na gelang, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met gevangenisstraf vir 'n tydperk van hoogstens twee jaar.

239. 'n Dokument (met inbegrip van 'n boek, pamphlet, brief, omsendbrief, lys, register, plakaat of aanplakbiljet) wat te eniger tyd op 'n perseel was wat deur 'n vereniging van persone, met of sonder regspersoonlikheid, geokkuppeer is, of in die besit of onder die beheer van 'n ampsdraer, beampte of lid van so 'n vereniging was en —

(a) waaruit dit op die oog blyk dat iemand met 'n naam wat met dié van 'n beskuldigde ooreenstem, lid of 'n ampsdraer van daardie vereniging is, is by blote voorlegging deur die staatsaanklaer in 'n strafsaak *prima facie* bewys dat die beskuldigde lid of so 'n ampsdraer, na gelang, van daardie vereniging is;

- (b) on the face whereof a person of a name corresponding to that of an accused person who is or was a member of such association, appears to be the author of such document, shall on its mere production by the public prosecutor in any criminal proceedings be *prima facie* proof that the accused is the author thereof;
- (c) which on the face thereof appears to be the minutes or a copy of or an extract from the minutes of a meeting of such association or of any committee thereof, shall on its mere production by the public prosecutor in any criminal proceedings be *prima facie* proof of the holding of such meeting and of the proceedings thereat;
- (d) which on the face thereof discloses any object of such association, shall on its mere production by the public prosecutor in any criminal proceedings be *prima facie* proof that the said object is an object of such association.

240. (1) Any document (including any newspaper, periodical, book, pamphlet, letter, circular letter, list, record, placard or poster) on the face whereof it appears that a person of a name corresponding to that of an accused person has at any particular time been outside the Territory, shall on its mere production by the public prosecutor in any criminal proceedings be *prima facie* proof that the accused was outside the Territory at such time, if such document is accompanied by a certificate purporting to have been signed by the Secretary for Foreign Affairs of the Republic to the effect that he is satisfied that such document is of foreign origin.

(2) The provisions of sub-section (1) shall apply to any criminal proceedings in respect of any offence committed before or after the commencement of this Ordinance.

SPECIAL PROVISIONS AS TO BANKERS' BOOKS

241. The entries in ledgers, day-books, cash-books and other account books of any bank, including a savings bank, shall be admissible as *prima facie* evidence of the matters, transactions and accounts therein recorded, on proof being given by the affidavit in writing of one of the directors, managers or officers of such bank, or by other evidence, that such ledgers, day-books, cash-books or other account books are or have been the ordinary books of such bank, and that the said entries have been made in the usual and ordinary course of business, and that such books are in or come immediately from the custody or control of such bank.

242. (1) Copies of all entries in any ledgers, day-books, cash-books or other account books used by any such bank may be proved in any criminal proceedings as evidence of such entries without production of the originals, by means of the affidavit of a person who has examined the same, stating the fact of the said examination and that the copies sought to be put in evidence are correct: Provided that no ledger, day-book, cash-book or other account book of any such bank, and no copies of entries therein contained, shall be adduced or received in evidence under this Ordinance, unless at least ten days' notice in writing, or such other notice as may be ordered by the court, containing a copy of the entries proposed to be adduced in evidence, has been given by the party proposing to adduce the same in evidence to the other party and that such other party is at liberty to inspect the original entries and the accounts of which such entries form a part.

(2) On the application of any party who has received such notice, the court may order that such party be at liberty to inspect and take copies of any entry in the ledgers, day-books, cash-books or other account books of any such bank relating to the matters in question in the criminal proceedings and such order may be made by such court in its discretion, either with or without summoning before it such bank or the other party, and shall be intimated to such bank at least three days before such copies are required.

- (b) waaruit dit op die oog blyk dat iemand met 'n naam wat ooreenstem met dié van 'n beskuldigde wat lid van daardie vereniging is of was, die oueur van daardie dokument is, is by blote voorlegging deur die staatsaanklaer in 'n strafsaak *prima facie* bewys dat die beskuldigde die outeur daarvan is;
- (c) waaruit dit op die oog blyk dat dit die notule of 'n afskrif van of uittreksel uit die notule van 'n vergadering van daardie vereniging of 'n komite daarvan is, is by blote voorlegging deur die staatsaanklaer in 'n strafsaak *prima facie* bewys van die hou van so 'n vergadering en van die verrigtinge daarby;
- (d) wat op die oog 'n oogmerk van daardie vereniging openbaar is, is by blote voorlegging deur die staatsaanklaer in 'n strafsaak *prima facie* bewys dat die bedoelde oogmerk 'n oogmerk van daardie vereniging is.

240. (1) 'n Dokument (met inbegrip van 'n nuusblad, tydskrif, boek, pamphlet, brief, omsendbrief, lys, register, plakaat of aanplakbiljet) waaruit dit op die oog blyk dat iemand met 'n naam wat met dié van 'n beskuldigde ooreenstem op enige bepaalde tyd buite die Gebied was, is by blote voorlegging daarvan deur die staatsaanklaer in 'n strafsaak *prima facie* bewys dat die beskuldigde op so 'n tyd buite die Gebied was as sodanig dokument vergezel gaan van 'n sertifikaat wat onderteken moet te wees deur die Sekretaris van Buitelandse Sake van die Republiek ten effekte dat hy oortuig is dat sodanig dokument van buitelandse oorsprong is.

(2) Die bepalings van subartikel (1) is van toepassing op 'n strafsaak ten opsigte van 'n misdryf wat voor of na die inwerkingtreding van hierdie ordonnansie gepleeg is.

SPECIALE BEPALINGS BETREFFENDE BANKIERSBOEKIE

241. Poste in grootboeke, dagboeke, kasboeke en ander rekeningboeke van enige bank, met inbegrip van spaarbank, is as *prima facie* bewys toelaatbaar van daangeleenthede, transaksies en rekenings daarin aangeteken, by bewys deur die skriftelike beëdigde verklaring van een van die direkteure, bestuurders of beampies van so 'n bank, of deur ander getuienis dat bedoelde grootboeke, dagboeke, kasboeke of ander rekeningboeke die gewone boeke van bedoelde bank is of was, en dat bedoelde poste in die gebruiklike en gewone loop van besigheid geboekstaaf is, en dat bedoelde boeke in bewaring of onder beheer van bedoelde bank is of onmiddellik daaruit kom.

242. (1) Afskrifte van alle poste in grootboeke, dagboeke, kasboeke of ander rekeningboeke in gebruik by so 'n bank kan in enige strafsaak, sonder voorlegging van die oorspronklike boeke, bewys word as bewys van sulke poste deur die beëdigde verklaring van iemand wat die ondersoek het en waarin die feit van so 'n ondersoek vermeld word en verklaar word dat die afskrifte wat as getuienis aangebied word, juis is: Met dien verstande dat geen grootboek, dagboek, kasboek of ander rekeningboek van so 'n bank, en geen afskrifte van daarin geboekstaafde poste, as getuienis kragtens hierdie ordonnansie aangevoer of toegelaat word nie, tensy minstens tien skriftelike kennisgewing, of sodanige ander kennisgewing soos die hof gelas, wat 'n afskrif bevat van die poste wat dit die voorneme is om as getuienis aan te voer, deur die party wat voornemens is om dit as getuienis aan te voer, aan die ander party gegee is en dat dit bedoelde ander party vrystaan om die oorspronklike poste en die rekenings waarvan sulke poste deel uitmaak, te ondersoek.

(2) Die hof kan op aansoek van 'n party wat sodanige kennisgewing ontvang het, beveel dat bedoelde party insake kan kry in en afskrifte kan maak van enige pos in die grootboeke, dagboeke, kasboeke of ander rekeningboek van so 'n bank wat betrekking het op die aangeleentheid ter sprake in die strafsaak, en so 'n bevel kan deur so 'n hof na goedgunne uitgereik word nadat of sonder dat die hof so 'n bank of die ander party voor hom gedagvaar heeft en word aan so 'n bank bekend gemaak minstens drie dae voordat sodanige afskrifte vereis word.

(3) On the application of any party who has received such notice, the court may order that the entries and copies mentioned in the notice shall not be admissible as evidence of the matters, transactions and accounts recorded in such ledgers, day-books, cash-books and other account books.

243. No bank shall be compelled to produce the ledgers, day-books, cash-books, or other account books of the bank in any criminal proceedings unless the court specially orders that such ledgers, day-books, cash-books or other account books shall be produced.

244. Nothing in sections *two hundred and forty-one* to *two hundred and forty-three* (inclusive) contained shall apply to any criminal proceedings to which any such bank whose ledgers, day-books, cash-books or other account books are required to be produced in evidence, is a party.

SPECIAL RULES OF EVIDENCE IN PARTICULAR CASES

245. On the trial of a person charged with treason, evidence shall not be admitted of any overt act not alleged in the charge, unless relevant to prove some other overt act alleged therein.

246. On the trial of a person charged with an offence of which the giving of false evidence by any person at the trial of a person charged with an offence is an element, a certificate setting out the substance and effect only, without the formal parts of the charge, and the proceedings at the trial, and purporting to be signed by the officer having the custody of the records of the court where the charge was tried or by his deputy, is sufficient evidence of the trial without proof of the signature or official character of the person who appears to have signed the certificate.

247. (1) On the trial of a person charged with bigamy, it shall be proved that a lawful and binding marriage between the accused and another person existed at the time when the offence is alleged to have been committed: Provided that it shall be presumed till the contrary is proved that the marriage between the accused and that other person was at the date of the marriage lawful and binding —

- (a) in a case where the marriage is alleged to have been solemnized in the Territory or any part of Africa included in the Republic, as soon as there is produced to the court an extract from a marriage register which is either a duplicate original, or a copy, and which purports to be certified as such by the officer or minister of religion having for the time being the custody of the register, or by a registrar of marriages;
- (b) in a case where the marriage is alleged to have been solemnized outside the Territory or any part of Africa included in the Republic, as soon as there is produced to the court a document which purports to be an extract from a marriage register kept according to law in the country where the marriage is alleged to have been solemnized, and which purports to be certified as such by an officer or person having the custody of that register, provided the signature of such officer or person to the certificate is authenticated in accordance with any law of the Republic or Territory governing the authentication of documents executed outside the Republic or Territory.

(2) On the trial of a person charged with bigamy, as soon as a marriage ceremony in the Territory or a part of Africa included within the Republic between the accused and another person has been proved, the marriage shall be deemed to have been lawful and binding as between them at the date thereof until it is shown that they were within the prohibited degrees of consanguinity or affinity, or that owing to a then subsisting marriage one of them was incapable of contracting a lawful and binding marriage with the other.

(3) On the trial of a person on a charge of bigamy, as soon as the alleged bigamous marriage, wherever solemnized, has been proved, the fact that shortly before

(3) Die hof kan op aansoek van 'n party wat so 'n kennisgewing ontvang het, beveel dat die poste en afskrifte wat in die kennisgewing genoem word, nie as bewys van die aangeleenthede, transaksies en rekeninge wat in sodanige grootboeke, dagboeke, kasboeke en ander rekeningboeke geboekstaaf is, toegelaat sal word nie.

243. Geen bank is verplig om die grootboeke, dagboeke, kasboeke of ander rekeningboeke van die bank in enige strafsaak voor te lê nie, tensy die hof spesiaal beveel dat sodanige grootboeke, dagboeke, kasboeke of ander rekeningboeke voorgelê moet word.

244. Geen bepaling van artikels *tweehonderd een-en-veertig* tot en met *tweehonderd drie-en-veertig* is van toepassing met betrekking tot 'n strafsaak waarby so 'n bank waarvan die grootboeke, dagboeke, kasboeke of ander rekeningboeke as bewys vereis word, 'n party is nie.

SPESIALE BEWYSREELS IN BESONDERE SAKE.

245. By die verhoor van 'n persoon op 'n aanklag van hoogverraad, word geen getuienis van 'n handeling wat nie in die aanklag ten laste gelê word, toegelaat nie, tensy dit ter sake dienend is tot bewys van 'n ander daarin ten laste gelegde handeling.

246. By die verhoor van iemand op 'n aanklag weens 'n misdryf waarvan die aflagging van valse getuienis deur 'n persoon by die verhoor van iemand op 'n aanklag van 'n misdryf 'n bestanddeel is, is 'n sertifikaat wat slegs die inhoud en uitwerking uiteensit, sonder die formele dele van die aanklag en die verrigtinge by die verhoor, en wat deur die beampete wat die bewaring het van die prosesstukke van die hof waar die aanklag verhoor is, of deur sy adjunk, onderteken heet te wees, genoegsame bewys van die verhoor sonder bewys van die handtekening of amptelike hoedanigheid van die persoon wat die sertifikaat volgens dit blyk onderteken het.

247. (1) By die verhoor van 'n persoon op 'n aanklag van bigamie, moet dit bewys word dat 'n wettige en bindende huwelik tussen die beskuldigde en 'n ander persoon bestaan het op die tydstip waarop die misdryf na bewering gepleeg is: Met dien verstande dat dit vermoed word, totdat die teendeel bewys word, dat die huwelik tussen die beskuldigde en daardie ander persoon ten tyde van die huwelik wettig en bindend was —

(a) in 'n geval waar die huwelik na bewering in die Gebied of in 'n deel van Afrika wat in die Republiek opgeneem is, voltrek is, sodra daar aan die hof 'n uittreksel van 'n huweliksregister voorgelê word wat of 'n duplikaat-oorspronklike of 'n afskrif is en wat as sodanig deur die beampete of godsdiensleraar wat op die ter sake dienende tydstip die register in bewaring het, of deur 'n registrator van huwelike, gesertifiseer heet te wees;

(b) in 'n geval waar die huwelik na bewering buite die Gebied of 'n deel van Afrika wat in die Republiek opgeneem is, voltrek is, sodra daar aan die hof 'n dokument voorgelê word wat 'n uittreksel uit 'n huweliksregister wat gehou word ooreenkomsdig die wet van die land waar die huwelik na bewering voltrek is, heet te wees en wat as sodanig deur 'n beampete of persoon wat bedoelde register in bewaring het, gesertifiseer heet te wees, mits die handtekening van so 'n beampete of persoon op die sertifikaat gewaarmerk is, ooreenkomsdig enige wet van die Republiek of die Gebied op die waarmerk van buite die Republiek of Gebied verlyde dokumente.

(2) Sodra dit by die verhoor van 'n persoon op 'n aanklag van bigamie bewys word dat 'n huwelikspiegtheid in die Gebied of in 'n deel van Afrika wat in die Republiek opgeneem is, tussen die beskuldigde en 'n ander persoon plaasgevind het, word die huwelik geag op die datum daarvan wettig en bindend tussen hulle te gewees het totdat dit bewys word dat hulle binne die verbode grade van bloed- en aanverwantskap was of dat ten gevolge van 'n dan bestaande huwelik een van hulle onbevoeg was om 'n wettige en bindende huwelik met die ander aan te gaan.

(3) Sodra die beweerde bigamiese huwelik, waar ook al voltrek, by die verhoor van 'n persoon op 'n aanklag van bigamie bewys is, is die feit dat die beskuldigde kort

the alleged bigamous marriage the accused had been cohabiting with the person to whom he is alleged to be lawfully married and had been treating and recognizing such person as a spouse shall, if in addition there be evidence of the performance of a marriage ceremony between the accused and such person, be *prima facie* evidence that there was a lawful and binding marriage subsisting between the accused and such person at the time of the solemnization of the alleged bigamous marriage.

248. (1) On the trial of a person charged with incest —

- (a) it shall be sufficient to prove that the woman or girl on whom or by whom the offence is alleged to have been committed, is reputed to be the lineal ascendant, descendant, or sister, step-mother, or step-daughter, of the other party to the incest;
- (b) the accused shall, until the contrary is proved, be presumed to have had knowledge, at the time of the alleged offence, of the relationship existing between him and the other party to the incest.

(2) Whenever the fact that any lawful and binding marriage was contracted is relevant to the issue at the trial of a person charged with incest, such fact may be proved *prima facie* in the manner provided in section two hundred and forty-seven for the proof of the existence of a lawful and binding marriage of a person charged with bigamy.

249. (1) On the trial of a person charged with murder or culpable homicide of a newly born child, such child shall be deemed to have been born alive if it is proved to have breathed, whether or not it has had an independent circulation, and it shall not be necessary to prove that such child was, at the time of its death, entirely separated from the body of its mother.

(2) On the trial of a person charged with the concealment of the birth of a child, it shall not be necessary to prove whether the child died before, at, or after its birth.

250. When upon the trial of any person it becomes necessary to prove that any coin produced in evidence against him is false or counterfeit, it shall be sufficient to prove that fact by the evidence of any credible witness.

251. Upon the trial of any person charged with any offence respecting currency or coin, no difference in the date or year or in any legend marked upon the lawful coin described in the charge and the date or year or legend marked upon the false coin counterfeited to resemble or pass for such lawful coin, or upon any die, plate, press, tool, or instrument, used, constructed, devised, adapted, or designed, for the purpose of counterfeiting or imitating any such lawful coin, shall be considered lawful cause or reason for acquitting any such person of such offence; and it shall in any case be sufficient to prove such general resemblance to the lawful coin as will show an intention that the counterfeit should pass for it.

252. (1) When any cards, dice, balls, counters, tables, or other instruments of gaming used in playing any unlawful game are found in or on any premises suspected to be used as a gambling house and entered under a warrant or order issued under any law, or on the person of any one found therein or thereon, it shall be *prima facie* evidence in a prosecution under any law or under the common law for keeping a gambling house, that such premises are used as a gambling house and that the persons found in or on those premises were playing therein or thereon, although no play was actually going on in the presence of the person entering the premises under the warrant or order, or in the presence of those persons by whom he is accompanied.

(2) In any prosecution under any law or under the common law for keeping a gambling house it shall be *prima facie* evidence that premises are used as a gambling house —

voor die beweerde bigamiese huwelik saamgewoon het met die persoon met wie hy na bewering wettig getroud is en bedoelde persoon as 'n eggenote behandel en erken het, as daar daarbenewens getuienis van die voltrekking van 'n huweliksplegtigheid tussen die beskuldigde en bedoelde persoon, is *prima facie* bewys dat daar ten tyd van die voltrekking van die beweerde bigamiese huwelik 'n wettige en bindende huwelik tussen die beskuldigde en bedoelde persoon bestaan het.

248. (1) By die verhoor van 'n persoon op 'n aanklag van bloedskande —

- (a) is dit voldoende om te bewys dat die vrou of meisie op wie of deur wie die misdryf na bewering gepleeg is, volgens gerug in opgaande of neerdalend linie verwant is aan, of die suster, stiefmoeder of stiefdogter is van die ander party by die bloedskande;
- (b) word dit vermoed, totdat die teendeel bewys word dat die beskuldigde ten tyde van die beweerde oortreding, bewus was van die verwantskap wat tussen hom en die ander party by die bloedskande bestaan het.

(2) Wanneer die feit dat 'n wettige en bindende huwelik voltrek is, 'n ter sake dienende feit by die verhoor van iemand op 'n aanklag van bloedskande is, kan bedoelde feit *prima facie* bewys word op die wyse wat in artikel tweehonderd sewen-en-veertig vir die bewys van die bestaan van 'n wettige en bindende huwelik van 'n persoon op 'n aanklag van bigamie bepaal word.

249. (1) By die verhoor van 'n persoon op 'n aanklag van moord of strafbare manslag op 'n pasgebore kind, word so 'n kind, as dit bewys word dat hy as een gehaal het, geag lewendig gebore te gewees het, hetsy hy 'n onafhanklike bloedsomloop gehad het al dan nie, en indien nie nodig om te bewys dat so 'n kind ten tyde van sy dood geheel en al van die liggaam van sy moeder afgeske was nie.

(2) By die verhoor van 'n persoon op 'n aanklag van die verheimiliking van die geboorte van 'n kind, is indien nie nodig om te bewys of die kind voor, by of na sy geboorte gesterf het nie.

250. Wanneer dit by die verhoor van 'n persoon nodig word om te bewys dat munt wat teen hom as getuienis voorgelê word, vals of nagemaak is, is dit voldoende om daardie feit deur middel van die getuienis van enige geloofwaardige getuie te bewys.

251. By die verhoor van 'n persoon op 'n aanklarens 'n misdryf met betrekking tot betaalmiddels of munt, word geen verskil in die datum of jaartal of in 'n opskrif op die wettige muntstuk in die aanklag om skryf en die datum of jaartal of opskrif op die valse munt wat nagemaak is om te lyk na of deur te gaan vir bedoelde wettige munt, of op 'n stempel, plaat, pers, gereedskap of instrument wat gebruik, gemaak, bedink, aangepas of ontwerp is om bedoelde wettige munt te vervals of natmaak, geag 'n wettige grond of rede te wees om die persoon van bedoelde misdryf vry te spreek nie; en is dit indien gevallen voldoende om so 'n algemene ooreenkoms met die wettige munt te bewys soos 'n bedoeling aandui dat die valse munt daarvoor moet deurgaan.

252. (1) Wanneer kaarte, dobbelstene, balle, speemunt, tafels of ander dobbeltoestelle wat by die speel van onwettige dobbelspele gebruik word, in of op 'n perseel gevind word wat na vermoede as 'n dobbelhuis gebruik word en wat uit hoofde van 'n kragtens wet uitgerekte lasbrief of bevel betree is, of op die persoon van iemand wat daarin of daarop gevind word, is dit by vervolging kragtens 'n wet of kragtens die gemene reweens die aanhou van 'n dobbelhuis, *prima facie* bewys dat bedoelde perseel as 'n dobbelhuis gebruik word en dat die persone wat daarin of daarop gevind is daaroor gedobbel het, alhoewel geen dobbelary werklik in die aanwesigheid van die persoon wat die perseel uit hoofde van die lasbrief of bevel betree het, of in die aanwesigheid van die persone wat hom vergesel het plaasgevind het nie.

(2) By 'n vervolging kragtens 'n wet of die gemeentereg weens die aanhou van 'n dobbelhuis, is dit *prima facie* bewys dat 'n perseel as 'n dobbelhuis gebruik word —

(a) if a policeman authorized to enter upon those premises is wilfully prevented from or obstructed or delayed in entering the same or any part thereof; or

(b) if those premises or any part thereof be fitted or provided with any means or contrivance for unlawful gaming or with any means or contrivance for concealing, removing, or destroying any instruments of gaming.

(3) On the trial of a person charged with an offence referred to in this section, it shall not be necessary to prove that any person found on any premises playing at any game was playing for any money, wager, or stake.

253. (1) Upon the trial of a person charged with having received stolen goods knowing them to be stolen, or for having in his possession stolen property or property obtained by means of an offence knowing the same to have been stolen or so obtained, evidence may be given at any stage of the proceedings that there was found in the possession of such person other property stolen or obtained by an offence as aforesaid within the period of twelve months preceding the date upon which such person was first charged with the offence on which he is being tried: Provided that no such evidence shall be so given against such person unless at least three days' notice in writing has been given to him that it is intended to adduce such evidence against him and that the notice specified the nature or description of such other property and the person, if known, from whom the same was stolen or obtained by means of an offence.

(2) Such evidence may be taken into consideration for the purpose of proving that such person knew the property which forms the subject of the charge against him to have been stolen or obtained by an offence as aforesaid.

(3) If at any trial referred to in sub-section (1) it is proved that the accused received from a person under the age of eighteen years stolen goods or property or anything obtained by means of an offence, he shall be presumed to have known at the time when he received those goods or that property or thing, that they or it were stolen or had been obtained by means of an offence, unless it is proved that at that time he was under the age of twenty-one years or had good reason, other than the mere statement of the person from whom he received the goods, property or thing, to believe, and that he did believe that the said person had the right to dispose of those goods or of that property or thing.

254. If upon the trial of a person charged with having received stolen goods knowing them to be stolen, or for having in his possession stolen property or property obtained by means of an offence, it is proved that the stolen property or property obtained by means of an offence has been found in his possession, and if such person has, within five years immediately preceding the date upon which such person was first charged with the offence on which he is being tried, been convicted of an offence involving fraud or dishonesty, evidence of such previous conviction may be given at any stage of the trial and may be taken into consideration for the purpose of proving that the accused knew that the property which was found in his possession was stolen or obtained by means of an offence: Provided that not less than three days' notice in writing has been given to the accused that evidence is intended to be given of such previous conviction.

255. If on the trial of a person charged with the unlawful publication of defamatory matter which is contained in a periodical, it is proved that the number or part of the periodical containing the alleged defamatory matter was published by the accused, other writings or prints purporting to be other numbers or parts of the same periodical, previously or subsequently published and containing a printed statement that they were published by or for the accused, shall be admissible in evidence on either side without further proof of their publication.

(a) as 'n polisiebeampte wat gemagtig is om daardie perseel te betree, opsetlik verhinder word om dit of 'n gedeelte daarvan te betree of by die betreding daarvan gedwarsboom of vertraag word; of
(b) as daardie perseel of 'n gedeelte daarvan toegerus is met of voorsien is van middele of toestelle vir onwettige dobbelary, of van middele of toestelle vir die verberging, verwydering of vernietiging van dobbeltoestelle.

(3) By die verhoor van 'n persoon op 'n aanklag weens 'n misdryf in hierdie artikel bedoel, is dit nie nodig om te bewys dat iemand wat op 'n perseel gevind is terwyl hy besig was om 'n dobbelspel te speel, vir geld of 'n weddenskap of wedgeld gespeel het nie.

253. (1) By die verhoor van 'n persoon op 'n aanklag dat hy gesteelde goed ontvang het wetende dat dit gesteel is, of dat hy in besit was van gesteelde goed of goed wat deur middel van 'n misdryf verkry is, wetende dat dit gesteel of aldus verkry is, kan getuienis op enige stadium van die verrigtinge aangevoer word dat daar in besit van bedoelde persoon ander goed gevind is wat binne 'n tydperk van twaalf maande voor die datum waarop bedoelde persoon vir die eerste maal aangekla is weens die misdryf waarop hy verhoor word, gesteel is of deur middel van 'n misdryf soos voormeld verkry is: Met dien verstande dat geen sodanige getuienis aldus teen so iemand aangevoer word nie, tensy minstens drie dae skriftelike kennis aan hom gegee is dat dit die bedoeling is om sodanige getuienis teen hom aan te voer en die aard van beskrywing van bedoelde ander goed en die persoon, as hy bekend is, van wie dit gesteel of deur middel van 'n misdryf verkry is, in die kennisgewing aangegee is.

(2) Sodanige getuienis kan in oorweging geneem word om te bewys dat bedoelde persoon geweet het dat die goed wat die onderwerp van die aanklag teen hom uitmaak, gesteel of deur middel van 'n misdryf soos voormeld verkry is.

(3) As dit by 'n in subartikel (1) bedoelde verhoor bewys word dat die beskuldigde gesteelde goed of eiendom of enigets wat deur middel van 'n misdryf verkry is, van 'n persoon onder die ouderdom van agtien jaar ontvang het, word dit vermoed dat hy toe hy bedoelde goed of eiendom of so iets ontvang het, geweet het dat dit gesteel of deur middel van 'n misdryf verkry was, tensy dit bewys word dat hy op daardie tydstip onder die ouderdom van een-en-twintig jaar was of ander grondige redes as die blote verklaring van die persoon van wie hy die goed of eiendom of so iets ontvang het, gehad het om aan te neem en wel aangeneem het dat bedoelde persoon die reg gehad het om oor daardie goed of eiendom of so iets te beskik.

254. As dit by die verhoor van 'n persoon op 'n aanklag dat hy gesteelde goed ontvang het wetende dat dit gesteel is, of dat hy in besit was van gesteelde goed of goed wat deur middel van 'n misdryf verkry is, bewys word dat die gesteelde goed of die goed wat deur middel van 'n misdryf verkry is, in sy besit gevind is, en as bedoelde persoon binne vyf jaar onmiddellik voor die datum waarop hy vir die eerste maal aangekla was weens die misdryf waarop hy verhoor word, skuldig bevind is weens 'n oortreding wat bedrog of oneerlikheid insluit, kan bewys van so 'n vorige skuldigbevinding in enige stadium van die verhoor gelewer word en in oorweging geneem word om te bewys dat die beskuldigde geweet het dat die goed wat in sy besit gevind is, gesteel of deur middel van 'n misdryf verkry is: Met dien verstande dat minstens drie dae skriftelike kennis aan die beskuldigde gegee is dat dit die voorname is om getuienis van so 'n vorige skuldigbevinding te lewer.

255. As dit by die verhoor van iemand op 'n aanklag van die onwettige publikasie van lasterlike beweerings wat in 'n tydskrif voorkom, bewys word dat die uitgawe of gedeelte van die tydskrif waarin die beweerde lasterlike beweerings voorkom, deur die beskuldigde gepubliseer is, is ander geskrifte of afdrukke wat ander uitgawes of gedeeltes van dieselfde tydskrif heet te wees, en wat vroeër of later gepubliseer is en 'n gedrukte verklaring bevat dat dit deur of vir die beskuldigde gepubliseer is, sonder verdere bewys van hul publikasie as getuienis aan albei kante toelaatbaar.

256. (1) Upon the trial of any person charged with theft while employed in any capacity in the public service or by the Administration, of money or any other property which belonged to the State, or which came into such person's possession by virtue of his employment, or of any person charged with theft, while a clerk, servant or agent, of money or any other property which belonged to his employer or principal or which came into his possession on account of his employer or principal, an entry in any book of account kept by the accused or kept under or subject to his charge or supervision, purporting to be an entry of the receipt of any money or other property, shall be evidence that the money or other property so purporting to have been received was so received by him.

(2) It shall not, on the trial of a person charged with an offence referred to in sub-section (1), be necessary to prove the theft by the accused of any specific sum of money or specific goods or articles if, on the examination of the books of account or entries kept or made by him or kept or made in, under, or subject to his charge or supervision, or by any other evidence, there is proof of a general deficiency, and if the court is satisfied that the accused stole the money so deficient or any part of it or the deficient goods or articles or any part thereof.

257. On the trial of a person charged with any offence relating to any seal or stamp used for the purposes of the public revenue or of the post office in any foreign country, a despatch from the officer administering the government of the country affected transmitting to the State President any stamp, mark or impression and stating it to be a genuine stamp, mark or impression of a die-plate or other instrument provided, made, or used by or under the direction of the proper authority of the country in question, for the purpose of denoting any stamp duty or postal charge, shall be admissible as evidence of the facts stated in the despatch, and the stamp, mark or impression so transmitted may be used by the court and by witnesses for the purposes of comparison.

258. Whenever upon the trial of any person charged with an offence of which a false representation is an element, it is proved that the false representation was made by such person, he shall, unless the contrary is proved, be deemed to have made such representation knowing it to be false.

MISCELLANEOUS MATTERS

259. Whenever any instrument which has been forged or fraudulently altered, is admitted in evidence, the court, judge or person who admits the instrument may, at the request of the public prosecutor or of any person against whom it is admitted in evidence, direct that it shall be impounded and kept in the custody of an officer of the court or other proper person, for such period and subject to such conditions as the court, judge or person admitting the instrument thinks fit.

260. If any false or counterfeit coin is produced at any trial for an offence relating to currency or coin, the court shall order such coin to be cut in pieces in open court or in the presence of a magistrate, and thereafter delivered to or for the lawful owner thereof if he claims it.

261. An instrument liable to stamp duty shall be admissible in evidence in any criminal proceedings, whether stamped as required by law or not.

262. (1) The accused or his representative in his presence, may in any criminal proceedings admit any fact relevant to the issue and any such admission shall be sufficient proof of that fact.

(2) An admission made by an accused or his representative in his presence at a preparatory examination which the magistrate presiding thereat has noted on the record, may be proved at the subsequent trial of the accused by the production, by any person, of the documents purporting to constitute that record.

256. (1) By die verhoor van 'n persoon op 'n aanklag van diefstal, terwyl hy in een of ander hoedanigheid in die staatsdiens of by die Administrasie in diens was, van geld of ander eiendom wat aan die Staat behoort het, of wat ten gevolge van sy diens in sy besit gekom het, of van 'n persoon op 'n aanklag van diefstal, terwyl hy 'n klerk, dienaar of agent was, van geld of ander eiendom wat aan sy werkgever of prinsipaal behoort het of wat ten bate van sy werkgever of prinsipaal in sy besit gekom het, is 'n aantekening in enige rekeningboek wat deur die beskuldigde gehou is of onder of onderworpe aan sy bewaring of toesig gehou is en wat 'n aantekening van die ontvangs van geld of ander eiendom heet te wees, getuienis dat die geld of ander eiendom wat aldus heet ontvang te gewees het, aldus deur hom ontvang is.

(2) Dit is nie by die verhoor van 'n persoon op 'n aanklag van 'n in subartikel (1) gedoelde misdryf nodig om die diefstal deur die beskuldigde van 'n bepaalde geldbedrag of bepaalde goedere of artikels te bewys nie as 'n algemene tekort deur die ondersoek van die rekeningboeke of aantekeninge wat deur hom of onder of onderworpe aan sy bewaring of toesig gehou of gedoen is, of deur ander getuienis, bewys word, en as die hof oortuig is dat die beskuldigde die bedrag van bedoelde tekort aan geld of 'n gedeelte daarvan of die tekort aan die goedere of artikels of 'n gedeelte daarvan gesteel het.

257. By die verhoor van 'n persoon op 'n aanklag van 'n misdryf met betrekking tot 'n seël of stempel wat in enige vreemde land vir die doeleindes van die openbare inkomste of van die poskantoor gebruik word, is 'n nota van die beampete belas met die administrasie van die regering van die betrokke land, waarby aan die staats-president 'n stempel, merk of afdruk deurgestuur word en waarin verklaar word dat dit 'n egte stempel, merk of afdruk is van 'n stempelplaat of ander instrument wat deur of onder toesig van die bevoegde gesag van die betrokke land verstrek, gemaak of gebruik word vir die aanduiding van enige seëlreg of posgelde, toelaatbaar as getuienis van die feite wat in die nota genoem word, en die stempel, merk of afdruk aldus deurgestuur, kan deur die hof en deur getuiies vir vergelykingsdoelendes gebruik word.

258. Wanneer by die verhoor van iemand op 'n aanklag weens 'n misdryf waarvan 'n valse voorstelling 'n bestanddeel is, dit bewys word dat die valse voorstelling deur so iemand gemaak is, word dit geag, tensy die teen-deel bewys word, dat hy die voorstelling gemaak het met die wete dat dit vals is.

DIVERSE AANGELEENTHEDE.

259. Wanneer 'n dokument wat vervals of op bedrieglike wyse verander is, as getuienis toegelaat word, kan die hof, regter of persoon wat die dokument toelaat, op versoek van die staatsaanklaer of van enige persoon teen wie dit as getuienis toegelaat word, gelas dat dit in beslag geneem word en in die bewaring gehou word van 'n beampete van die hof of ander bevoegde persoon, vir die tydperk en op die voorwaardes wat die hof, regter of persoon wat die dokument toelaat, goedvind.

260. As valse of nagemaakte munt by 'n verhoor op 'n aanklag met betrekking tot betaalmiddels of munt voorgelê word, beveel die hof dat bedoelde munt in die ope hof of in die aanwesigheid van 'n landdros in stukke gesny word en daarna aan of ten behoeve van die wetige eienaar daarvan, as hy dit opeis, gelewer word.

261. 'n Dokument wat aan seëlregte onderhewig is, is in enige strafsaak as getuienis toelaatbaar hetsy dit volgens wet geseël is al dan nie.

262. (1) Die beskuldigde of sy verteenwoordiger in sy aanwesigheid, kan in enige strafsaak enige feit wat ter sake dienend is, erken en so 'n erkenning is voldoende bewys van daardie feit.

(2) 'n Erkenning wat 'n beskuldigde of sy verteenwoordiger in sy aanwesigheid by 'n voorlopige ondersoek gemaak het en wat die landdros wat daarby voorgesit het in die notule aangeteken het, kan by die latere verhoor van die beskuldigde bewys word deur die voorlegging, deur enigiemand, van die stukke wat daardie notule heet uit te maak.

263. If an act or omission constitutes an offence only if committed by a person possessing a particular qualification or quality, or vested with a particular authority or acting in a particular capacity, a person charged with such offence upon a charge alleging that he possessed such qualification or quality or was vested with such authority or was acting in such capacity shall, at his trial, be deemed to have possessed such qualification or quality or to have been vested with such authority or to have been acting in such capacity at the time of commission of the alleged offence, unless at any time during the trial he or his representative expressly denies that allegation in the court trying the case, or the allegation is disproved: Provided that if after the prosecutor has closed his case the allegation is denied as aforesaid or evidence is led to disprove it, the prosecutor may adduce any evidence and submit any argument in support of the allegation as if he had not closed his case.

264. Any party may in any criminal proceedings impeach or support the credibility of any witness called against or on behalf of such party in any manner and by any evidence in and by which if the proceedings were depending before the Supreme Court of Judicature in England the credibility of such witness might be impeached or supported by such party and in no other manner and by no other evidence whatever: Provided that any such party who has called a witness who has given evidence in any such proceedings (whether that witness is or is not, in the opinion of the judge or judicial officer presiding at such proceedings, adverse to the party calling him) may, after the said party or the said judge or judicial officer has asked the witness whether he has or has not previously made a statement with which his evidence in the said proceedings is inconsistent, and after sufficient particulars of the alleged previous statement to designate the occasion when it was made, have been mentioned to the witness, prove that he previously made a statement with which his said evidence is inconsistent.

265. When a person is charged with any offence whereof failure to pay any tax or impost to the Republic or the Territory, or failure to furnish any information to an officer of the Republic or the Territory, is an element, he shall be deemed to have failed to pay that tax or impost or to furnish that information, unless the contrary is proved.

266. (1) Where a person carries on an occupation or business or performs an act or has in his possession or custody or owns any article or is present at any place and he would commit or have committed an offence by carrying on that occupation or business, or performing that act, or having that article in his possession or custody or owning it, or being present at that place or entering it, if he were not the holder of a licence, permit, permission or other authorization or qualification (hereinafter in this section referred to as the necessary authorization), to carry on that occupation or business or to perform that act or to have that article in his possession or custody or to own it or to be present at that place or to enter it, he shall, if charged with having committed such offence, be deemed not to have been the holder of the necessary authorization unless the contrary is proved.

(2) Any European policeman, or, where any fee payable for the necessary authorization would, if paid, accrue to the Consolidated Revenue Fund or the Railway and Harbour Fund of the Republic or the Territory Revenue Fund, then also any other person authorized thereto in writing by the head of the department or sub-department to which or to an officer in which any such fee should be paid, or by any officer in charge of any office in that department or sub-department, may demand from a person referred to in sub-section (1) the production of the necessary authorization for the occupation, business, act, possession, custody, ownership, presence or entry in question: Provided that (save in the case of a European policeman in uniform), the person demanding the necessary authori-

263. As 'n handeling of versuim 'n misdryf uitmaak slegs wanneer dit gepleeg word deur iemand wat 'n bepaalde kwalifikasie of eienskap besit of met 'n bepaalde magtiging beklee is of in 'n bepaalde hoedanigheid op tree, word 'n persoon wat weens so 'n misdryf aangekla word op 'n aanklag waarin beweer word dat hy bedoelde kwalifikasie of eienskap besit het of met bedoelde magtiging beklee was of in bedoelde hoedanigheid opgetree het, by sy verhoor geag ten tyde van die pleging van die beweerde misdryf bedoelde kwalifikasie of eienskap te besit het of met bedoelde magtiging beklee te gewees het of in bedoelde hoedanigheid op te getree het, tensy hy of sy verteenwoordiger te eniger tyd gedurende die verhoor bedoelde bewering uitdruklik in die hof wat die saak verhoor, ontken, of die bewering weerlē word: Met dien verstande dat as die bewering soos voormeld ontken word of getuenis aangevoer word om dit te weerlē nadat die aanklaer sy kant van die saak afgesluit het, die aanklaer getuenis en argumente ter stawing van die bewering kan aanvoer asof hy nie sy kant van die saak afgesluit het nie.

264. Iedere party kan in enige strafsaak die geloofwaardigheid van 'n getuie wat teen of ten behoeve van so 'n party opgeroep word, op die wyse en deur middel van die getuenis aanval of steun waarop en waardeur die geloofwaardigheid van so 'n getuie deur bedoelde partye aangeval of gesteun sou kon geword het as die saak voor die Hooggereghof in Engeland gedien het, en op geen ander wyse en deur middel van geen ander getuenis hoegegaamd nie: Met dien verstande dat so 'n party wat 'n getuie opgeroep het wat in so 'n saak getuenis afgelē het (hetby bedoelde getuie na die oordeel van die regter of regterlike beampete wat by die saak voorsit, teenoor die party wat hom oproep, vyandig gesind is al dan nie), nadat bedoelde party of bedoelde regter of regterlike beampete die getuie gevra het of hy voorheen 'n verklaring afgelē het al dan nie waarmee sy getuenis in bedoelde saak onbestaanbaar is, en nadat voldoende besonderhede van die beweerde vorige verklaring om die geleentheid waarop dit afgelē was, te bepaal, aan die getuie genoem is, kan bewys dat hy voorheen 'n verklaring afgelē het waarmee sy getuenis onbestaanbaar is.

265. Wanneer iemand aangekla word weens 'n misdryf waarvan die versuim om 'n belasting of heffing aan die Republiek of die Gebied te betaal, of die versuim om enige inligting aan 'n beampete van die Republiek of die Gebied te verstrek, 'n bestanddeel is, word geag dat hy versuim het om bedoelde belasting of heffing te betaal of bedoelde inligting te verstrek, tensy die teendeel bewys word.

266. (1) Wanneer iemand 'n beroep of besigheid uitoefen of 'n handeling verrig of 'n voorwerp in sy besit of bewaring of as eiendom het of op 'n plek aanwesig is en hy 'n misdryf sou pleeg of gepleeg het deur bedoelde beroep of besigheid uit te oefen of bedoelde handeling te verrig of bedoelde voorwerp in sy besit of bewaring of as eiendom te hê of op bedoelde plek aanwesig te wees of dit te betree, as hy nie diehouer was van 'n lisensie, permit, vergunning of ander magtiging of bevoegdheid (hieronder in hierdie artikel die nodige magtiging genoem) om bedoelde beroep of besigheid uit te oefen of bedoelde handeling te verrig of bedoelde voorwerp in sy besit of bewaring of as eiendom te hê of op bedoelde plek aanwesig te wees of dit te betree nie, word hy, as hy weens die pleging van so 'n misdryf aangekla word, geag nie diehouer van die nodige magtiging te gewees het nie tensy die teendeel bewys word.

(2) Iedere blanke polisiebeampete of, wanneer 'n geldbedrag wat vir die nodige magtiging betaalbaar is, aan die Gekonsolideerde Inkomstefonds of die Spoorweg-en Hawefonds van die Republiek of die Inkomstefonds van die Gebied sou toeval as dit betaal word, dan ook enigiemand anders skriftelik daartoe gemagtig deur die hoof van die departement of onderdepartement waaraan, of aan 'n beampete waarvan, bedoelde geldbedrag betaalbaar is, of deur 'n beampete in bevel van 'n kantoor in bedoelde departement of onderdepartement, kan van 'n in subartikel (1) bedoelde persoon die voorlegging van die nodige magtiging vorder vir die betrokke beroep, besigheid, handeling, besit, bewaring, eiendomsreg, aanwesigheid of betreding: Met dien verstande dat (behalwe in die

zation, if a European policeman, shall produce written proof that he is such, or if he is a person so authorized, shall produce his authorization in writing, when such proof or authorization is requested by the person upon whom the demand is made.

(3) If the said person is the holder of the necessary authorization and he fails without reasonable excuse to produce it forthwith to the person making the demand, or to submit it, within a reasonable time thereafter to a person and at a place specified by the person making the demand, he shall be guilty of an offence and liable on conviction to a fine not exceeding sixty rand.

267. (1) Any peace officer may take or cause to be taken the finger prints, palm prints and foot prints of any person arrested upon any charge and the medical officer of any prison or any district surgeon or (except in the case of a woman), any peace officer may take or cause to be taken such steps, including (except in the case of a peace officer), any blood test, as he may deem necessary in order to ascertain whether the body of any such person bears any mark, characteristic or distinguishing feature or shows any condition or appearance.

(2) The magistrate holding any preparatory examination or the court trying any charge may order that the finger prints, palm prints and foot prints of the accused be taken, and may take all such steps (including arrangements for a blood test), as may by such magistrate or court be deemed necessary to ascertain whether the body of the accused bears any mark, characteristic or distinguishing feature, or shows any condition or appearance or to ascertain the state of health of the accused.

(3) The court which has convicted any person on any charge or any magistrate may order that the finger prints, palm prints or foot prints of the said person be taken.

(4) A magistrate who has committed any person for trial or sentence after the conclusion of a preparatory examination may, at the request of the public prosecutor, order that the finger prints, palm prints or foot prints of the said person be taken.

(5) Any finger prints, palm prints or foot prints and the records of any steps taken under the provisions of this section shall be destroyed if the person concerned is found not guilty at his trial or his conviction is set aside by a superior court or the attorney-general declines to prosecute him in terms of paragraph (a) of sub-section (1) of section eighty-one.

268. (1) Any police officer, who is of the rank of sergeant or above such rank, or who is the commander of a police station, may cause any person arrested upon any charge to be examined by a psychiatrist, if there is reason to believe, either from the personal characteristics of the person accused or from the nature of the alleged offence, that psychopathic or psychoneurotic disability or any form of mental disorder in such person has influenced his conduct in respect of the charge under investigation.

(2) Any psychiatrist who is consulted as aforesaid may take such steps as he may deem necessary to ascertain whether the person accused is suffering from any psychopathic or psychoneurotic disability or whether his mental characteristics show a deviation from the normal and shall record his finding and the reasons therefor in writing.

(3) A copy of the psychiatrist's report shall be served upon the accused or his legal representative at least two days before the commencement of any preparatory examination or trial upon the charge and the provisions of sections three hundred and sixty-three and three hundred and sixty-four shall mutatis mutandis apply in that regard.

(4) (a) Except for the purposes of section twenty-eight of the Mental Disorders Act, 1916 (Act 38 of 1916) evidence of the result of any examination by a psychiatrist in terms of this section shall not be led —

geval van 'n blanke polisiebeampte in uniform) die persoon wat die nodige magtiging vorder, indien 'n blanke polisiebeampte, skriftelike bewys dat hy so iemand is moet lewer of, indien 'n aldus gemagtigde persoon, sy skriftelike magtiging moet toon, wanneer die persoon van wie die vordering gedaan word, sodanige bewys of magtiging versoek.

(3) As bedoelde persoon die houer van die nodige magtiging is en sonder redelike verontskuldiging versuim om dit onverwyld aan die persoon wat die vordering doen, te toon of om dit, binne 'n redelike tyd daarna voor te lê aan 'n persoon en op 'n plek wat deur die persoon wat die vordering doen, aangegee word, is hy aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens sestig rand.

267 (1) 'n Vredesbeampte kan die vingerafdrukke palmafdrukke en voetafdrukke van iemand wat op enige aanklag in hechtenis geneem is, neem of laat neem, en die geneeskundige beampte van 'n gevangenis of 'n distriksgenesheer of (behalwe in die geval van 'n vrou) 'n vredesbeampte, kan die stappe doen of laat doen, insluitende (behalwe in die geval van 'n vredesbeampte) 'n bloedonderzoek, wat hy nodig ag om vas te stel of die liggaam van so 'n persoon 'n merk, eienaardigheid of onderskeidende kenmerk dra of 'n bepaalde toestand aantoon of voorkoms het.

(2) Die landdros wat 'n voorlopige ondersoek hou of die hof wat 'n aanklag verhoor, kan gelas dat die vingerafdrukke, palmafdrukke en voetafdrukke van die beskuldigde geneem word en kan al die stappe (met inbegrip van reëlings vir 'n bloedonderzoek) doen wat bedoelde landdros of hof nodig ag om vas te stel of die liggaam van die beskuldigde enige merk, eienaardigheid of onderskeidende kenmerk dra of 'n bepaalde toestand aantoon of voorkoms het of om die gesondheidstoestand van die beskuldigde vas te stel.

(3) Die hof wat iemand op enige aanklag skuldig bevind het of 'n landdros kan gelas dat die vingerafdrukke, palmafdrukke of voetafdrukke van die bedoelde persoon geneem moet word.

(4) 'n Landdros wat iemand na beëindiging van 'n voorlopige ondersoek ter strafzitting of vir vonnis verwys het, kan op versoek van die staatsaanklaer gelas dat die vingerafdrukke, palmafdrukke of voetafdrukke van bedoelde persoon geneem moet word.

(5) Alle vingerafdrukke, palmafdrukke of voetafdrukke en die aantekenings van alle stappe wat kragtens die bepalings van hierdie artikel gedoen is, moet vernietig word as die betrokke persoon by sy verhoor onskuldig bevind word of sy skuldigbevinding deur 'n hoëhof ter syde gestel word of die Prokureur-generaal kragtens paragraaf (a) van subartikel (1) van artikel een-en-tachtig weier om hom te vervolg.

268 (1) 'n Polisiebeampte wat die rang van sersant of 'n hoë rang beklee, of bevel voer oor 'n polisiekantoor, kan enigiemand wat op een of ander aanklag in hechtenis geneem is deur 'n psigiatre laat ondersoek as daar rede is om te glo, hetsy as gevolg van die persoonlike kenmerke van die beskuldigde of van die aard van die beweerde misdryf, dat psigopatiële of psigoneurotiële ongeskiktheid of enige vorm van geestesgekrenktheid so iemand se gedrag ten aansien van die aanklag wat ondersoek word, beïnvloed het.

(2) 'n Psigiatre wat soos voormalig geraadpleeg word, kan die stappe doen wat hy nodig ag om vas te stel of die beskuldigde aan een of ander psigopatiële of psigoneurotiële ongeskiktheid ly, of om vas te stel of sy geesteskenmerke 'n afwyking van die normale vertoon, en moet sy bevinding en die redes daarvoor op skrif stel.

(3) 'n Afskrif van die psigiatre se verslag word aan die beskuldigde of sy regsverteenwoordiger bestel minstens twee dae voor die aanvang van 'n voorlopige ondersoek of verhoor op die aanklag en die bepalings van artikel driehonderd drie-en-sestig en driehonderd vier-en-sestig is in hierdie verband mutatis mutandis van toepassing.

(4) (a) Behalwe by die toepassing van artikel agt-en-twintig van die Wet op Geestesgebreken 1916 (Wet 38 van 1916), kan getuenis van die uitslag van 'n ondersoek deur 'n psigiatre ingevolge hierdie artikel nie voor gelê word nie —

- (i) save at the request of the accused or his legal representative, at any preparatory examination held in respect of the accused; or
- (ii) save as provided in paragraph (b), by the prosecutor at any trial of the accused before verdict.
- (b) Such evidence as aforesaid may be led —
 - (i) on behalf of the accused before verdict;
 - (ii) on behalf of the prosecution or the accused after verdict but before sentence is passed;
 - (iii) on behalf of the prosecution before verdict in rebuttal of any conflicting evidence that may be led on behalf of the accused.

269. (1) Whenever it is relevant, or whenever it may in the opinion of the court, become relevant to ascertain whether a finger print, palm print or foot print of the accused corresponds to any other finger print, palm print or foot print, or whether the body of the accused bears or bore any mark, characteristic or distinguishing feature or shows or showed any condition or appearance, evidence of the accused's finger prints, palm prints or foot prints or of the fact that the body of the accused bears or bore any mark, characteristic or distinguishing feature or shows or showed any condition or appearance (including the result of any blood test that may be relevant as aforesaid), shall be admissible in evidence.

(2) Such evidence shall not be rendered inadmissible by the fact that the finger print, palm print or foot print was taken or the mark, characteristic feature, condition or appearance was ascertained, otherwise than in terms of section *two hundred and sixty-seven* or against the wish or will of the accused.

270. The law as to admissibility of evidence and as to the competency, examination, and cross-examination of witnesses in force in criminal proceedings in the Supreme Court of Judicature in England, shall in any case not provided for by this Ordinance be followed by the courts of the Territory in any criminal proceedings of a like nature.

271. Nothing in this Chapter contained shall be construed as modifying the provisions of any other law whereby in any criminal proceedings referred to in such law a person is deemed a competent witness or certain specified facts and circumstances are deemed to be evidence, or a particular fact or circumstance may be proved in a manner specified therein.

CHAPTER XIV.

DISCHARGE OF ACCUSED PERSONS

272. (1) If a prosecutor has in the case of a trial in a superior court given notice of a trial and does not appear to prosecute the indictment against the accused before the close of the session of that court before which he gave notice of trial, or, in the case of a trial by an inferior court, does not appear on the court day appointed for the trial, the court may, on the application of the accused, dismiss the indictment, summons or charge, and, if the accused or any other person on his behalf has been bound by recognizance for the appearance of the accused at his trial, the court may, in addition, on the further application of the accused, discharge the recognizance.

(2) Where the indictment is at the instance of a private prosecutor the accused may move the court that the private prosecutor and his sureties be called on their recognizance and, in default of his appearance, that the recognizance be estreated, and for an order directing that the private prosecutor pay the costs incurred by the accused in preparing his defence.

(3) Nothing in this section contained shall deprive the attorney-general or the public prosecutor with his authority or on his behalf, of the right of withdrawing any charge at any time before the accused has pleaded, and framing a fresh charge for hearing before the same or any other competent court.

- (i) behalwe op versoek van die beskuldigde, of sy regsvtereenwoordiger, by 'n voorlopige ondersoek ten opsigte van die beskuldigde gehou; of
- (ii) behalwe soos in paragraaf (b) bepaal, deur die vervolger by 'n verhoor van die beskuldigde voordat uit spraak gegee is.
- (b) Sodanige getuenis soos voormeld kan voorgelê word —
 - (i) namens die beskuldigde vòòr die uitspraak;
 - (ii) namens die vervolging of die beskuldigde na die uitspraak maar voordat vonnis geveld word;
 - (iii) namens die vervolging, vòòr die uitspraak, by wyse van weerlegging van enige strydige getuenis deur die verdediging aangevoer.

269. (1) Wanneer dit ter sake dienend is of wanneer dit na die oordeel van die hof ter sake dienend mag word om vas te stel of 'n vingerafdruk, palmafdruk of voetafdruk van die beskuldigde met 'n ander vingerafdruk, palmafdruk of voetafdruk ooreenstem, of om vas te stel of die liggaam van die beskuldigde 'n merk, eienaardigheid of onderskeidende kenmerk dra of gedra het of 'n bepaalde toestand aantoon of aangetoon het of voorkoms het of gehad het, is getuenis van die beskuldigde se vingerafdrukke, palmafdrukke of voetafdrukke of van die feit dat die liggaam van die beskuldigde 'n merk, eienaardigheid of onderskeidende kenmerk dra of gedra het, of 'n bepaalde toestand aantoon of aangetoon het of voorkoms het of gehad het (met ingebrip van die uitslag van 'n bloedondersoek wat soos voormeld ter sake dienend mag wees), as getuenis toelaatbaar.

(2) Sodanige getuenis word nie ontoelaatbaar vanweë die feit dat die vingerafdruk, palmafdruk of voetafdruk, of die merk, eienaardigheid of onderskeidende kenmerk, toestand of voorkoms anders as ooreenkomsdig artikel *tweehonderd seuen-en-sestig* of teen die wil of sin van die beskuldigde geneem of vasgestel is nie.

270. Die regstreels met betrekking tot die toelaatbaarheid van getuenis en die bevoegdheid, ondervraging en kruisvragting van getuies wat in strafsake in die Hooggereghof van Engeland geld, word in iedere geval waarvoor geen voorsiening in hierdie ordonnansie gemaak word nie, deur die howe van die Gebied in strafsake van dergelyke aard gevolg.

271. Geen bepaling van hierdie hoofstuk verander enige ander wetsbepaling waarvolgens in 'n strafsaak in so 'n wetsbepaling bedoel, iemand 'n bevoegde getuie geag word of sekere aangewese feite en omstandighede as getuenis geag word of 'n bepaalde feit of omstandigheid op 'n daarin bepaalde wyse bewys kan word nie.

HOOFSTUK XIV ONTSLAG VAN BESKULDIGES.

272. (1) As 'n aanklaer in die geval van 'n verhoor voor 'n hoér hof kennis van verhoor gegee het en nie voor die einde van die sitting van daardie hof voor wie hy kennis van verhoor gegee het, verskyn om die vervolging ten aansien van die akte van beskuldiging teen die beskuldigde voort te sit nie, of, in die geval van 'n verhoor deur 'n laer hof, nie op die hofdag wat vir die verhoor bepaal is, verskyn nie, kan die hof op aansoek van die beskuldigde die akte van beskuldiging, dagvaarding of aanklag van die hand wys, en as die beskuldigde of iemand anders ten behoeve van hom deur borgakte vir die beskuldigde se verskyning by sy verhoor verbind is, kan die hof voorts, op verdere aansoek van die beskuldigde, die borgakte ophef.

(2) Wanneer 'n private aanklaer vir die akte van beskuldiging verantwoordelik is, kan die beskuldigde by die hof aansoek doen dat die private aanklaer en sy borge aangesê word om hul borgakte na te kom en as hy nie verskyn nie, dat die borggeld verbeurd verklaar word, en om 'n bevel wat die private aanklaer gelas om die koste wat deur die beskuldigde ter voorbereiding van sy verdediging aangegaan is, te betaal.

(3) Geen bepaling van hierdie artikel ontnem die Prokureur-generaal of die staatsaanklaer, handelende met sy magtiging of namens hom, die reg om 'n aanklag te eniger tyd voordat die beskuldigde gepleit het, terug te trek en 'n nuwe aanklag op te stel om deur dieselfde of 'n ander bevoegde hof bereg te word nie.

273. (1) Every superior court shall, at the close of each of its criminal sessions, discharge from custody all such accused persons as are then in custody and by law are then entitled to be discharged.

(2) Any person who is acquitted on any charge in an inferior court or against whom a charge is dismissed therein for want of prosecution shall forthwith be discharged out of custody.

274. Every member of the Prisons Service in charge of any prison within the area for which any session or circuit of any superior court is held for the trial of criminal cases, shall, under penalty of ten rand, deliver to that court at the commencement of each such session or circuit a list of the unsentenced prisoners and the witnesses detained under section *one hundred and eighty-eight* or *one hundred and eighty-nine* (if any) then within his prison and that list shall specify in the case of each prisoner and detained witness the date of his admission, the date of his commitment, the authority for his detention and in case of each prisoner, the cause of his imprisonment and in the case of a detained witness the preparatory examination at which he was committed.

275. Neither discharge from imprisonment nor the expiration of the recognizance shall be a bar to any person being brought to trial in any competent court for any offence for which he was formerly committed to prison or released on bail.

276. No person who has been released on bail and who has not been duly brought to trial or who has been discharged from custody pursuant to section *two hundred and seventy-three* shall be obliged to find further bail or shall be committed to custody either for examination or trial for the same offence in respect of which he was formerly released on bail: Provided that the attorney-general may, notwithstanding the discharge of the accused from custody pursuant to section *two hundred and seventy-three* or the expiration of his bail, at any time before the offence has become prescribed, indict the accused for trial for that offence in any competent court, and if the accused, having been duly served with such indictment and notice of trial, fails to appear at the time mentioned in such notice, the court in which he is indicted may, on the application of the attorney-general, issue a warrant for the accused's arrest and detention in prison until he can be brought to trial or until he finds bail for his appearance to stand his trial on the said indictment.

CHAPTER XV.

PREVIOUS CONVICTIONS

277. It shall not in any charge against any person for any offence be alleged that such person has been previously convicted of any offence, whether in the Territory, or elsewhere.

278. Except where otherwise expressly provided by this Ordinance, no evidence shall be admissible during the trial of any accused for any offence to prove that he has been previously convicted of any offence, whether in the Territory or elsewhere, and no accused shall, if called as a witness, be asked whether he has been so convicted.

279. Where a person indicted before a superior court for any offence, has been previously convicted of any offence, whether in the Territory or elsewhere, the prosecutor may, if the accused has under section *seventy-one* admitted that he has been so previously convicted and his admission has been subscribed by the magistrate in accordance with that section, and if he has pleaded guilty to or has been found guilty of the offence, before sentence is pronounced, tender the admission in proof of the previous conviction, and such admission shall be received by the court upon its mere production as proof of the previous conviction unless it is shown that the admission was not in fact duly made or that the signatures or marks thereto are not in fact the signatures or marks of the accused and the magistrate respectively: Provided that if

273. (1) Elke hoër hof moet, aan die einde van elke strafzitting van daardie hof, alle beskuldigdes wat dan in hegtenis is en dan regtens geregtig is om ontslaan te word, vry laat stel.

(2) Iemand wat in 'n laer hof op 'n aanklag vrygespreek word of teen wie 'n aanklag daar by gebrek aan vervolging van die hand gewys word, word onverwyd vrygestel.

274. Elke lid van die Gevangenisdiens in bevel van 'n gevangenis binne die gebied ten opsigte waarvan 'n sitting of rondgang van 'n hoër hof vir die beregting van strafsaake gehou word, moet, op straf van tien rand, by die aanvang van elke sodanige sitting of rondgang aan daardie hof 'n lys verstrek van die gevangenes wat nog nie gevonnis is nie en die getuies ingevolge artikel *een-honderd agt-en-tagtig* of *eenhonderd negen-en-tagtig* aan gehou, as daar is, wat dan binne sy gevangenis is, en daardie lys vermeld in die geval van elke gevangene en elke aangehoue getuie die datum van sy toelating, die datum van sy verwysing, die magtiging vir sy aanhouding en in die geval van elke gevangene die rede vir sy gevangesetting en in die geval van 'n aangehoue getuie, die voorlopige ondersoek waarby hy verwys is.

275. Nog ontslag uit gevangesetting nog die verstryking van die borgakte, belet dat iemand voor 'n bevoegde hof weens 'n misdryf ten opsigte waarvan hy voorheen na die gevangenis verwys is of op borgtug vrygelaat is, vervolg word.

276. Niemand wat op borgtug vrygelaat is en nie behoorlik op verhoor gestel is nie of wat uit hoofde van artikel *twee-honderd drie-en-sewintig* vrygestel is, hoef verdere borgstelling te verkry nie of mag vir ondersoek of ter strafsetting weens dieselfde misdryf ten opsigte waarvan hy voorheen op borgtug vrygelaat is, gevangeset word nie: Met dien verstande dat, ondanks die vrystelling van die beskuldigde ingevolge artikel *tweehonderd drie-en-sewintig* of die verstryking van sy borgakte, die Prokureur-generaal te eniger tyd voordat die misdryf verjaar het, die beskuldigde voor 'n bevoegde hof weens daardie misdryf kan aankla, en as die beskuldigde nadat die betrokke akte van beskuldiging en kennisgewing van verhoor behoorlik aan hom bestel is, versuim om op die in die kennisgewing vermelde tyd te verskyn, kan die hof voor wie hy aangekla word op aansoek van die Prokureur-generaal 'n lasbrief uitreik vir die beskuldigde se inhegtenisneming en aanhouding in 'n gevangenis totdat hy op verhoor gestel kan word of totdat hy borgstelling verkry vir sy verskyning by sy verhoor ten opsigte van bedoelde akte van beskuldiging.

HOOFSTUK XV.

VORIGE SKULDIGBEVINDINGS.

277. Dit word in geen aanklag teen enigiemand weens enige misdryf beweer dat so iemand voorheen, hetsy in die Gebied of elders, aan 'n misdryf skuldig bevind is nie.

278. Behoudens andersluidende uitdruklike bepalings van hierdie ordonnansie, is geen getuienis om te bewys dat hy voorheen, hetsy in die Gebied of elders, aan 'n misdryf skuldig bevind is, toelaatbaar gedurende die verhoor van 'n beskuldigde weens enige misdryf nie, en aan geen beskuldigde, as hy as getuie opgeroep word, mag die vraag gestel word of hy aldus skuldig bevind is nie.

279. Wanneer iemand wat voor 'n hoër hof weens 'n misdryf aangekla word, voorheen aan 'n misdryf skuldig bevind is, hetsy in die Gebied of elders, kan die aanklaer, as die beskuldigde ingevolge artikel *een-en-sewintig* erken het dat hy aldus voorheen skuldig bevind is en sy erkenning deur die landdros ooreenkomsdig daardie artikel onderteken is en as hy skuldig gepleit het op of skuldig bevind is aan die misdryf, die erkenning voordat vonnis opgelê word as bewys van die vorige skuldigbevinding aanbied, en sodanige erkenning word by blote voorlegging daarvan deur die hof as bewys van die vorige skuldigbevinding toegelaat tensy bewys word dat die erkenning inderdaad nie behoorlik geskied het nie of dat die handtekenings of merke daarop in werklikheid nie die handtekening of merke van die beskuldigde en die landdros onderskeidelik is nie: Met dien verstande dat

the accused made the admission under section *seventy-one* but refused to subscribe the same by signature or mark, a solemn declaration, signed by the magistrate and attached to the document signed by him under section *seventy-one*, stating that the accused did so make the admission but refused to subscribe the same shall, upon its mere production be sufficient evidence that the accused admitted the previous conviction.

280. Where a person indicted before a superior court for any offence has been previously convicted of any offence whether in the Territory or elsewhere, the prosecutor in that superior court may in any case in which the procedure prescribed by section *seventy-one* has not been followed, give not less than seventy-two hours notice to that person that, if he pleads guilty to or is found guilty of the offence for which he is indicted, proof will be given of such previous conviction.

281. (1) Whenever notice has been duly served on a person that evidence of a previous conviction will be given against him as provided by section *two hundred and eighty*, the prosecutor may, if such person pleads guilty, or after he has been found guilty, and before sentence is pronounced, offer to prove such previous conviction, and thereupon the court shall ask such person whether he admits that he is the person alleged to have been so previously convicted and whether he has been so convicted as alleged.

(2) If such person does not admit that he has been so convicted and has not admitted it at the preparatory examination in manner prescribed in section *seventy-one*, the court shall determine the truth as to the alleged previous convictions which the accused has not admitted in the manner aforesaid.

(3) If the trial is before an inferior court the prosecutor may, after the accused has pleaded guilty or has been found guilty, tender evidence of such previous convictions as he may allege in respect of the accused, and thereupon the court shall ask the accused whether he is the person so alleged to have been previously convicted and shall determine the truth as to the alleged previous convictions which the accused has not admitted.

(4) If any previous conviction is lawfully proved against the accused or if he has admitted such previous conviction, the court shall take it into consideration in awarding sentence for the offence to which he has pleaded, or of which he has been found guilty.

282. (1) Whenever an accused has been found guilty of an offence referred to in Part I of the Third Schedule, the court shall not pass sentence on the accused for such offence, whether or not any previous conviction has been proved against him, unless the prosecutor produces to the court a certificate purporting to be issued by the South African Criminal Bureau, which indicates the previous convictions recorded in the records of the said Bureau against the accused or indicates that no previous convictions have so been recorded.

(2) If the said certificate indicates any previous conviction which, if proved against the accused, would result in the compulsory imposition of a prescribed punishment on him, the court shall, notwithstanding anything to the contrary in this Chapter contained, afford the prosecutor an opportunity of proving the said previous conviction.

283. (1) The rules contained in the Fifth Schedule shall be observed by a court when taking previous convictions into account in imposing any sentence on a person convicted by it of an offence.

(2) The Administrator may by proclamation in the *Official Gazette* amend or withdraw the rules contained in the Fifth Schedule or add new rules thereto.

(3) Any proclamation issued under sub-section (2) shall be laid on the Table of the Legislative Assembly of the Territory within fourteen days after promulgation thereof if the Assembly is then in ordinary session or if the Assembly is not then in ordinary session, within fourteen days after the commencement of its next ensuing ordinary session.

as die beskuldigde die erkenning ingevolge artikel *een-en-sewenty* gedoen het maar geweier het om dit deur handtekening of merk te onderteken, 'n plegtige verklaring, deur die landros onderteken en geheg aan die stuk deur hom ingevolge artikel *een-en-sewenty* onderteken, ten effekte dat die beskuldigde wel die erkenning aldus gedoen het maar geweier het om dit te onderteken, by blote voorlegging daarvan voldoende bewys is dat die beskuldigde die vorige skuldbevinding erken het.

280. Wanneer iemand wat voor 'n hoër hof weens 'n misdryf aangekla word, voorheen aan 'n misdryf skuldig bevind is, hetsy in die Gebied of elders, kan die aanklaer in daardie hoër hof in 'n geval waar die procedure by artikel *een-en-sewenty* voorgeskryf, nie gevolg is nie, aan daardie persoon minstens twee-en-sewenty uur kennis gee dat as hy skuldig pleit op of skuldig bevind word aan die misdryf waarvan hy aangekla word, bewys van sodanige vorige skuldbevinding aangevoer sal word.

281 (1) Wanneer kennisgewing aan iemand behoorlik bestel is dat bewys van 'n vorige skuldigbevinding soos by artikel *tweehonderd en negentig* bepaal teen hom aangevoer sal word, kan die aanklaer, as daardie persoon skuldig pleit of nadat hy skuldig bevind is, en voor dat vonnis opgelê word, aanbied om so 'n vorige skuldigbevinding te bewys, en die hof moet so iemand dan vra of hy erken dat hy die persoon is wat na bewering aldus voorheen skuldig bevind is en of hy skuldig bevind is soos beweer word.

(2) As so iemand nie erken dat hy aldus skuldig bevind is nie en dit nie by die voorlopige ondersoek op die by artikel *een-en-sewenty* voorgeskrewe wyse erken het nie, moet die hof die waarheid vasstel omtrent die beweerde vorige skuldigbevindings wat die beskuldigde nie op die voormalde wyse erken het nie.

(3) As die verhoor voor 'n laer hof geskied, kan die aanklaer, nadat die beskuldigde skuldig gepleit het of skuldig bevind is, bewys aanbied van sodanige vorige skuldigbevindings soos hy die beskuldigde ten laste lê, en die hof moet die beskuldigde dan vra of hy die persoon is wat aldus na bewering voorheen skuldig bevind is en die waarheid vasstel omtrent die beweerde vorige skuldigbevindings wat die beskuldigde nie erken het nie.

(4) As 'n vorige skuldigbevinding teen die beskuldigde regtens bewys is, of as hy sodanige vorige skuldigbevinding erken het, neem die hof dit in aanmerking by die oplegging van vonnis ten opsigte van die misdryf waarop hy skuldig gepleit het of waaraan hy skuldig bevind is.

282. (1) Wanneer 'n beskuldigde aan 'n misdryf in deel 1 van die derde bylae vermeld, skuldig bevind is, lê die hof die beskuldigde nie 'n straf weens dié misdryf op nie, hetsy 'n vorige skuldigbevinding teen hom bewys is al dan nie, tensy die aanklaer aan die hof 'n sertifikaat voorlê wat deur die Suid-Afrikaanse Kriminele Euro uitgereke het te wees, en wat die vorige skuldigbevindings aantoon wat in die stukke van genoemde Euro teen die beskuldigde opgeteken is, of wat aantoon dat geen vorige skuldigbevinding aldus opgeteken is nie.

(2) As die bedoelde sertifikaat 'n vorige skuldigbevinding aantoon wat, as dit teen die beskuldigde bewys word, die verpligte oplegging van 'n voorgeskrewe straf op hom tot gevolg sou hê, verleen die hof, ondanks andersluidende bepalings van hierdie hoofstuk, die geleentheid aan die aanklaer om bedoelde vorige skuldigbevinding te bewys.

283. (1) Die reëls in die vyfde bylae vervat, moet deur 'n hof nagekom word wanneer die hof vorige skuldigbevindings in aanmerking neem by die oplegging van 'n straf op iemand deur die hof aan 'n misdryf skuldig bevind.

(2) Die Administrateur kan by proklamasie in die *Offisiële Koerant* die reëls in die vyfde bylae vervat, wysig of herroep of nuwe reëls daarby voeg.

(3) 'n Kragtens subartikel (2) uitgevaardigde proklamasie word binne veertien dae na afkondiging daarvan in die Wetgewende Vergadering van die Gebied ter tafel gelê as 'n gewone sessie van die Wetgewende Vergadering dan aan die gang is, of as 'n gewone sessie van die Wetgewende Vergadering nie dan aan die gang is nie, binne veertien dae na die aanvang van sy eersvolgende gewone sessie.

(4) If the said Legislative Assembly by resolution passed in any session during which a proclamation has been laid on the Table of the Assembly in terms of subsection (3), disapproves of any such proclamation or of any provision in any such proclamation, such proclamation or such provision thereof shall thereafter cease to be of force and effect to the extent to which it is so disapproved.

284. (1) Anything to the contrary notwithstanding in this Ordinance contained, any finger print record, photograph, or document purporting to be certified by any officer having charge of criminal records of the Territory or of any other country, colony or territory, whether or not such record, photograph or document was obtained under any law and the person concerned was unable to prevent their being obtained, shall, whenever under any provision of this Ordinance a previous conviction may be proved, be admissible in evidence in any criminal proceedings and shall be *prima facie* proof of the facts in such record, photograph or document set forth: Provided that such record, photograph or document shall be produced to the court by a policeman or member of the Prisons Service having the custody thereof.

(2) A telegram purporting to have been sent by any officer referred to in sub-section (1) or by any officer of any court, in reply to a request by the court for particulars relating to anything contained in such record, photograph or document, shall likewise be admissible in evidence in any criminal proceedings and be *prima facie* proof of the facts set forth in such telegram.

CHAPTER XVI.

INDICTMENTS, SUMMONSES AND CHARGES.

INDICTMENTS IN SUPERIOR COURTS

285. (1) Where a person charged with an offence has been committed for trial or sentence and it is intended to prosecute him before a superior court, the charge shall be in writing in a document called an indictment.

(2) Where the prosecution is at the public instance, the indictment shall be in the name of, and shall be signed by, the attorney-general, and when the prosecution is a private one, the indictment shall be in the name of the private prosecutor at whose instance it is preferred, who must be described therein with certainty and precision, and must be signed by such private prosecutor or by counsel on his behalf.

(3) Two or more persons shall not prosecute in the same indictment, except where two or more persons have been injured by the same offence.

(4) The service upon an accused of any indictment together with any notice of trial thereof, shall be made by the person and in the manner provided by rules of court.

(5) When a person under the age of eighteen years is served with an indictment and notice of trial, as aforesaid, the provisions of sub-sections (1), (2) and (4) of section fifty-seven shall *mutatis mutandis* apply.

286. As soon as the indictment in any criminal case brought in any superior court has been duly lodged with the registrar of that court, such case shall be deemed to be pending in that court.

287. Subject to the provisions of section *one hundred and twenty-four* any person charged with an offence may be indicted —

- (a) before any superior court which has, under the law governing the jurisdiction in criminal cases of superior courts, jurisdiction to try that offence; or
- (b) in the circumstances referred to in Chapter VIII, before the special criminal court constituted under that Chapter.

SUMMONSES AND CHARGES IN INFERIOR COURTS

288. Where a public prosecutor has, by virtue of his office, determined to prosecute any person in an inferior

(4) As die genoemde Wetgewende Vergadering by besluit geneem gedurende 'n sessie waarin 'n proklamasie ooreenkomsdig subartikel (33) in die Vergadering ter tafel gelê is, so 'n proklamasie of 'n bepaling van so 'n proklamasie afkeur, verval die regskrag van die proklamasie of die bepaling daarvan vir sover dit aldus afkeur word.

284. (1) Wanneer 'n vorige skuldigbevinding kragtens 'n bepaling van hierdie ordonnansie bewys kan word, dan is enige vingerafdrukregister, -foto of -stuk wat gewaarmerk heet te wees deur 'n beampete wat toesig het oor strafregtelike stukke van die Gebied of van 'n ander land, kolonie of gebied, ondanks andersluidende bepallings van hierdie ordonnansie as getuenis toelaatbaar in enige strafsaak en is dit *prima facie* bewys van die feite in sodanige register, foto of stuk uiteengesit, hetsy so 'n register, foto of stuk ingevolge 'n wetsbepaling verkry is en die betrokke persoon nie by magte was om so 'n verkrywing te belet nie, al dan nie: Met dien verstande dat so 'n register, foto of stuk deur 'n polisiebeampete of lid van die Gevangenisdiens in wie se bewaring dit is, aan die hof voorgelê moet word.

(2) 'n Telegram wat deur 'n in subartikel (1) vermelde beampete of deur 'n beampete van een of ander hof afgestuur heet te wees, in antwoord op 'n versoek deur die hof om besonderhede met betrekking tot enigets in so 'n register, foto of stuk vervat, is insgelyks in 'n strafsaak as getuenis toelaatbaar, en is *prima facie* bewys van die feite in die telegram uiteengesit.

HOOFSTUK XVI.

AKTES VAN BESKULDIGING, DAGVAARDINGS EN AANKLAGTE.

AKTES VAN BESKULDIGING IN HOERHOUW

285. (1) Wanneer iemand wat weens 'n misdryf aangekla word, ter strafsetting of vir vonnis verwys is en die voorneme is om hom voor 'n hoër hof te vervolg, word die aanklag skriftelik vervat in 'n dokument wat 'n akte van beskuldiging heet.

(2) Wanneer die vervolging van staatsweë geskied, is die akte van beskuldiging in die naam van, en word dit onderteken deur, die Prokureur-generaal, en in die geval van 'n private vervolging, is die akte van beskuldiging in die naam van die private aanklaer deur wie dit ingebring word, wat daarin met sekerheid en noukeurigheid beskrywe moet word, en word dit deur daardie private aanklaer of deur 'n advokaat namens hom onderteken.

(3) Twee of meer persone mag nie op dieselfde akte van beskuldiging vervolg nie, behalwe waar twee of meer persone deur dieselfde misdryf benadeel is.

(4) Die bestelling aan 'n beskuldigde van 'n akte van beskuldiging tesame met 'n kennisgewing van verhoor ten aansien daarvan word gedoen deur die persoon, en op die wyse, wat deur die hofreëls bepaal word.

(5) Wanneer 'n akte van beskuldiging en kennisgewing van verhoor soos voormeld aan iemand onder die ouderdom van agtien jaar bestel word, is die bepalings van subartikels (1), (2) en (4) van artikel *sewen-en-vyftig* *mutatis mutandis* van toepassing.

286. Sodra die akte van beskuldiging ten opsigte van 'n strafsaak voor 'n hoër hof by die griffier van daardie hof behoorlik ingedien is, word daardie saak geag in daardie hof aanhangig te wees.

287. Behoudens die bepalings van artikel *eenhonderd vier-en-twintig* kan iemand aan wie 'n misdryf ten laste gelê word, aangekla word —

- (a) voor 'n hoër hof wat ingevolge die wetsbepalings betreffende dieregsbevoegdheid van hoër howe in strafsaake,regsbevoegdheid het om daardie misdryf te bereg; of
- (b) onder die omstandighede in hoofstuk VIII bedoel, voor die spesiale strafhof ingevolge daardie hoofstuk saamgestel.

DAGVAARDINGS EN AANKLAGTE IN LAER HOWE

288. Wanneer 'n staatsaanklaer ampshalwe besluit het om iemand voor 'n laer hof weens 'n misdryf wat

court for any offence within the jurisdiction of that court, he shall forthwith lodge with the clerk of the court a statement in writing of the charge against that person, describing him by his Christian names, surname, place of abode and occupation or status and setting forth shortly and distinctly the nature of the offence and the time when and place at which it was committed.

289. (1) The clerk of the inferior court shall, upon the lodging of any charge, at the request of the prosecutor, issue and deliver to the messenger of the court a summons to the person charged to appear to answer the charge, together with so many copies of the said summons as there are persons to be summoned.

(2) Except where otherwise specially provided by any law, the service upon an accused of any summons or other process in a criminal case in an inferior court shall be made by the prescribed officer, either by delivering it to the accused personally or, if he cannot conveniently be found, by leaving it for him at his place of business or usual or last known place of abode with some inmate thereof. The service of the summons may be proved by the evidence on oath of the person effecting the service or by his affidavit or by due return of service under his hand.

(3) If, upon the day appointed for the appearance of any person to answer any charge, he fails to appear and the court is satisfied upon the return of the person required to serve the summons that he was duly summoned, or if it appears from evidence given under oath that he is evading service of the summons, or if it appears from such evidence that he attended but failed to remain in attendance, the court in which the said criminal proceedings are conducted, may issue a warrant, directing that he be arrested and brought, at a time and place stated in the warrant, or as soon thereafter as possible, before the court or any magistrate.

(4) When the person in question has been arrested under the said warrant, he may be detained thereunder before the court which issued it or in any prison or lock-up or other place of detention or in the custody of the person who is in charge of him, with a view to securing his presence at his trial: Provided that the court may release him on a recognizance with or without sureties for his appearance at his trial and for his appearance at the enquiry referred to in sub-section (5).

(5) The court may in a summary manner enquire into the said person's failure to obey the summons or into his evasion of the service of the summons or his failure to remain in attendance, and unless it is proved that the said person has a reasonable excuse for such failure or evasion, the court may sentence him to pay a fine not exceeding fifty rand or to imprisonment for a period not exceeding one month.

(6) Any sentence imposed by any court under sub-section (5) shall be enforced and shall be subject to an appeal as if it were a sentence in a criminal case imposed by that court.

(7) If a person who has entered into any recognizance referred to in the proviso to sub-section (4), fails so to appear, he may apart from the forfeiture of his recognizance, be dealt with as if he had failed to obey a summons to answer any charge.

(8) When a person under the age of eighteen years is summoned as aforesaid, the provisions of sub-sections (1), (2) and (4) of section fifty-seven shall *mutatis mutandis* apply.

290. (1) If a peace officer has reasonable grounds for believing that an inferior court will on convicting any person of any offence, impose a sentence of a fine not exceeding thirty rand and hands to such person a written notice in the prescribed form stating the amount of the fine which the court will probably impose at his trial for such offence and calling upon him to appear to answer a charge of having committed such offence, such

binne dieregsbevoegdheid van daardie hof val, te vervolg, dien hy onverwyl by die klerk van die hof 'n skriftelike verklaring van die aanklag teen daardie persoon in, waarin sy voorname, familienaam, woonplek en beroep op stand vermeld word en die aard van die misdryf en die tyd en plek wanneren en waar dit gepleeg is, kortlik en duidelik uiteengesit word.

289. (1) Wanneer 'n aanklag ingedien word, moet die klerk van die laer hof op versoek van die aanklaer 'n dagvaarding, gerig aan die aangeklaagde persoon om te verskyn om op die aanklag te antwoord, tesame met soveel afskrifte van daardie dagvaarding as wat daar persone is wat gedagvaar moet word, uitreik en aan die geregsbode lever.

(2) Behoudens andersluidende uitdruklike wetsbepalings, moet die bestelling aan 'n beskuldigde van 'n dagvaarding of ander prosesstuk in 'n strafsaak in 'n laer hof deur die voorgeskrewe beampete gedoen word, of deur dit aan die beskuldigde self te oorhandig of, as hy nie maklik gevind kan word nie, deur dit vir hom by sy besigheidsplek of gewone of jongsbekende woonplek by 'n inwoner daarvan te laat. Bestelling van die dagvaarding kan bewys word deur die getuienis onder eed van die persoon wat die bestelling gedoen het of deur 'n bedygde verklaring deur hom of deur 'n behoorlike relaas van bestelling deur hom onderteken.

(3) As iemand versuim om te verskyn op die dag wat bepaal is vir sy verskyning om op 'n aanklag te antwoord, en die hof uit hoofde van die relaas van die persoon wat die dagvaarding moes bestel, oortuig is dat hy behoorlik gedagvaar is, of as dit uit getuienis onder eed afgelê blyk dat hy bestelling van die dagvaarding ontwyk, of as dit uit sodanige getuienis blyk dat hy aanwesig was maar versuim het om aanwesig te bly, kan die hof voor wie die bedoelde strafsaak dien, 'n lasbrief uitreik waarin gelas word dat hy in hechtenis geneem en op 'n in die lasbrief vermelde tyd en plek, of so spoedig moontlik daarna, voor die hof of 'n landdros gebring word.

(4) Wanneer die betrokke persoon ingevolge die bedoelde lasbrief in hechtenis geneem is, kan hy uit hoofde daarvan by die hof wat dit uitgereik het of in 'n gevangenis of opsluitplek of ander plek van bewaring of in die bewaring van die persoon wat toesig oor hom het, aangehou word ten einde sy aanwesigheid by sy verhoor te verseker: Met dien verstande dat die hof hom op borgtog met of sonder borge vir sy verskyning by sy verhoor en vir sy verskyning by die in subartikel (5) bedoelde ondersoek kan vrylaat.

(5) Die hof kan op summiere wyse ondersoek instel na bedoelde persoon se versuim om die dagvaarding na te kom of na sy ontwyking van bestelling van die dagvaarding of sy versuim om aanwesig te bly, en tensy bewys word dat die bedoelde persoon 'n redelike verskoning vir sodanige versuim of ontwyking het, kan die hof hom 'n vonnis van 'n boete van hoogstens vyftig rand of gevangenisstraf vir 'n tydperk van hoogstens een maand ople.

(6) 'n Vonnis ingevolge subartikel (5) deur 'n hof opgelê, word uitgevoer en is onderhewig aan appèl asof dit 'n vonnis was wat in 'n strafsaak deur daardie hof opgelê is.

(7) As iemand wat 'n in die voorbehoudsbepaling by subartikel (4) bedoelde borgtog aangegaan het, versuim om aldus te verskyn, kan daar bo en behalwe die verbeuring van sy borggeld met hom gehandel word asof hy versuim het om 'n dagvaarding om op 'n aanklag te antwoord, na te kom.

(8) Die bepalings van subartikels (1), (2) en (4) van artikel *sewen-en-vyftig* is *mutatis mutandis* van toepassing wanneer iemand onder die ouderdom van agtien jaar soos voormeld gedagvaar word.

290. (1) As 'n vredesbeampte redelike gronde het om te vermoed dat 'n laer hof by die veroordeling van 'n persoon weens 'n misdryf 'n vonnis van 'n boete van hoogstens dertig rand sal ople en aan daardie persoon 'n skriftelike kennisgewing in die voorgeskrewe vorm oorhandig wat die bedrag van die boete wat die hof hom by sy verhoor weens bedoelde misdryf waarskynlik sal ople, aangee en wat hom aansê om te verskyn om te antwoord op 'n aanklag dat hy daardie misdryf gepleeg het, word dit, behalwe vir die doeleindes van subartikel

person shall, except for the purpose of sub-section (2) of section *two hundred and ninety-one*, be deemed to have been duly summoned under section *two hundred and eighty-nine* to appear to answer the charge at the time and place stated in the notice.

(2) When a person under the age of eighteen years is handed a notice as aforesaid, the provisions of sub-sections (1), (2) and (4) of section *fifty-seven* shall *mutatis mutandis* apply as if the notice were a summons served by the said peace officer upon such person.

(3) The amount of the fine which shall be stated in the notice issued in terms of this section as the fine which a court on conviction will probably impose in respect of an offence, shall be fixed from time to time for a specified area by the magistrate of the district in which that area is situated and the amount so fixed shall in each case where it is stated in such notice, notwithstanding anything to the contrary contained in any law, be deemed to have been fixed or deemed to be sufficient in terms of paragraph (a) or (b) of sub-section (1) of section *three hundred and thirty-seven*.

291. (1) Notwithstanding anything in section *two hundred and eighty-nine* contained, the presence of any person to be charged with any offence before an inferior court may be obtained by means of a warning to such person.

(2) In a summary trial in any inferior court without summons, the charge shall be entered upon a form called the "charge sheet", containing the name of the accused, the name of the offence with which he is charged and the necessary particulars thereof concisely stated and at the trial the charge so drawn shall be read out to the person charged, who shall be called upon to plead thereto, and his plea shall be recorded thereon.

(3) The accused or his legal adviser may at all reasonable times inspect the charge as stated on the charge sheet.

(4) Where a person under the age of eighteen years has been arrested by a peace officer for the purpose of being brought before a court or has been warned to appear before a court on a charge of having committed an offence, the officer who arrested or warned the said person shall warn the parent or guardian of the said person or cause him to be warned, if he can be found within the area of jurisdiction of the said court, to attend the court on the day on which and at the time at which the said person is to be brought or was warned to appear before the said court, and to remain in attendance during the proceedings against the said person in that court, and thereupon the provisions of sub-sections (2) and (4) of section *fifty-seven* shall *mutatis mutandis* apply.

292. (1) Whenever any case has been remitted by the attorney-general to be dealt with by a magistrate's court, the court shall cause the accused to be brought before it as soon as possible.

(2) (a) If the accused has been released on bail, the court shall cause a notice to be served on him stating that the case has been remitted to it to be dealt with and requiring him to appear on the day appointed for the trial.

(b) A notice under paragraph (a) shall be served in the same manner as a summons, and if the accused does not appear in pursuance of the notice, his bail may be estreated and he may be arrested and brought before the court in the same manner as a person who has not appeared upon a summons.

GENERAL FOR ALL COURTS

293. (1) Any number of counts for any offence whatever may be joined in the same charge: Provided that to a count in an indictment for murder no count for any offence other than murder shall be joined.

(2) van artikel *tweehonderd een-en-negentig*, geag dat daardie persoon behoorlik ingevolge artikel *tweehonderd negen-en-tagtig* gedagvaar is om op die tyd en plek in die kennisgewing vermeld, te verskyn om op die aanklag te antwoord.

(2) Wanneer 'n kennisgewing soos voormeld aan iemand onder die ouderdom van agtien jaar oorhandig word, is die bepalings van subartikels (1), (2) en (4) van artikel *sewen-en-vyftig mutatis mutandis* van toepassing asof die kennisgewing 'n dagvaarding was wat deur bedoelde vredesbeampte aan so iemand bestel is.

(3) Die bedrag van die boete wat in die kennisgewing wat ingevolge hierdie artikel uitgereik word, aangegee moet word as die bedrag van die boete wat 'n hof by veroordeling ten opsigte van 'n misdryf waarskynlik sal ople, word vir 'n bepaalde gebied van tyd tot tyd deur die landdros van die distrik waarin daardie gebied geleë is, bepaal, en die aldus bepaalde bedrag word in iedere geval waar dit in bedoelde kennisgewing aangegee word ondanks andersluidende wetsbepalings geag bepaal of geag voldoende te wees ingevolge paragraaf (a) of (b) van subartikel (1) van artikel *driehonderd sewen-en-dertig*.

291. (1) Ondanks die bepalings van artikel *tweehonderd negen-en-tagtig* kan die aanwesigheid van iemand wat weens 'n misdryf voor 'n laer hof aangekla moet word, deur middel van 'n waarskuwing aan daardie persoon verkry word.

(2) By 'n summiere verhoor in 'n laer hof sonder dagvaarding word die aanklag op 'n vorm wat die „klagstaat“ heet, opgeteken, wat die naam van die beskuldigde, die benaming van die misdryf waarvan hy aangekla word en 'n saaklike vermelding van die vereiste besonderhede daarvan bevat, en by die verhoor word die aldus opgestelde aanklag aan die aangeklaagde persoon uitgelees wat aangesê word om ten opsigte daarvan te pleit, en sy pleit word op bedoelde klagstaat aangegeteken.

(3) Die beskuldigde of sy regadviseur kan te alle redelike tye die aanklag soos in die klagstaat opgeteken, insien.

(4) Wanneer iemand onder die ouderdom van agtien jaar deur 'n vredesbeampte in hegtenis geneem is om voor 'n hof gebring te word of gewaarsku is om voor 'n hof te verskyn weens 'n aanklag dat hy 'n misdryf gepleeg het, moet die beampte wat daardie persoon in hegtenis geneem of gewaarsku het, bedoelde persoon se ouer of voog, as hy binne die regssgebied van bedoelde hof gevind kan word, waarsku of laat waarsku om die hof by te woon op die dag en uur waarop bedoelde persoon voor die hof gebring staan te word of gewaarsku is om voor bedoelde hof te verskyn, en om aanwesig te bly gedurende die verhoor van die saak teen bedoelde persoon voor daardie hof, en die bepalings van subartikels (2) en (4) van artikel *sewen-en-vyftig* is daarop *mutatis mutandis* van toepassing.

292. (1) Wanneer 'n saak deur die Prokureur-generaal terugverwys is om deur 'n landdroshof behandel te word, moet die hof die beskuldigde so spoedig moontlik voor hom laat bring.

(2) (a) As die beskuldigde op borgtog vrygelaat is laat die hof 'n kennisgewing aan hom bestel waarin vermeld word dat die saak terugverwys is om deur die hof behandel te word en hy aangesê word om op die dag wat vir die verhoor bepaal is, te verskyn.

(b) 'n Kennisgewing ingevolge paragraaf (a) word op dieselfde wyse as 'n dagvaarding bestel, en as die beskuldigde nie ingevolge daardie kennisgewing verskyn nie, kan sy borggeld verbeurd verklaar word en kan hy in hegtenis geneem en voor die hof gebring word op diezelfde wyse as iemand wat nie ingevolge 'n dagvaarding verskyn het nie.

ALGEMENE BEPALINGS VIR ALLE HOWE

293. (1) Enige aantal aanklage weens enige misdrywe hoegenaamd kan in dieselfde aanklag saamgevoeg word: Met dien verstande dat by 'n aanklag in 'n akte van beskuldiging ten aansien van moord, geen aanklag ten aansien van 'n ander misdryf as moord gevoeg word nie.

(2) When there are more counts than one in a charge, they shall be numbered consecutively and each count may be treated as a separate charge.

(3) (a) If the court thinks it conducive to the ends of justice to do so, it may direct that the accused shall be tried upon any one or more of such counts separately.

(b) An order under paragraph (a) may be made either before or in the course of the trial.

(c) The counts in the indictment which are not then tried shall be proceeded upon in all respects as if they had appeared in a separate indictment.

(4) If it is alleged that on divers occasions during any period any person has committed against or in respect of any one person an offence of which unlawful carnal connection or any indecent act of whatever nature is an element, the charge may charge in one count that the accused committed the offence on divers occasions during that period.

294. (1) When a charge containing more counts than one, is brought against the same person and a conviction is obtained on one or more of them, the prosecutor may withdraw the remaining count or counts.

(2) A withdrawal under sub-section (1) shall have the effect of an acquittal on such charge or charges unless the conviction is set aside, in which event the court, subject to the order of the court setting aside the conviction, may, upon the application of the attorney-general, proceed with the trial of the count or counts so withdrawn.

295. If by reason of any uncertainty as to the facts which can be proved, or for any other reason it is doubtful which of several offences is constituted by the facts which can be proved, the accused may be charged with having committed all or any of those offences and any number of such charges may be tried at once, or the accused may be charged in the alternative with having committed any number of those offences.

296. (1) Subject to the succeeding provisions of this Ordinance and to any provisions of any other law relating to any particular offence, each count of a charge shall set forth the offence with which the accused is charged in such manner and with such particulars as to the time and place at which the offence is alleged to have been committed and the person, if any, against whom and the property, if any, in respect of which the offence is alleged to have been committed, as may be reasonably sufficient to inform the accused of the nature of the charge.

(2) The following provisions shall apply in relation to all criminal proceedings in any superior or inferior court:

(a) the description of any statutory offence in the words of the law creating the offence, or in similar words, shall be sufficient; and

(b) any exception, exemption, proviso, excuse or qualification whether it does or does not accompany in the same section the description of the offence in the law creating the offence, may be proved by the accused but need not be specified or negatived in the charge and, if so specified or negatived, need not be proved by the prosecution.

(3) Where any of the particulars referred to in this Ordinance are unknown to the prosecutor it shall be sufficient to state that fact in the charge.

297. It may in any charge for theft be alleged that the property alleged to have been stolen was stolen at divers times between any two certain days named in the charge, and, upon such charge, proof may be adduced of the theft of such property upon any day or days between the two certain days aforesaid.

(2) Wanneer daar meer as een hoof in 'n aanklag voorkom, moet die hoofde in volgorde genommer word en kan elke hoof as 'n afsonderlike aanklag behandel word.

(3) (a) As die hof dit vir dieregsbedeling bevorderlik ag, kan hy gelas dat die beskuldigde ten opsigte van enigeen of meer van sodanige hoofde afsonderlik in verhoor geneem word.

(b) 'n Bevel ingevolge paragraaf (a) kan of voor of in die loop van die verhoor uitgereik word.

(c) Met die hoofde in die akte van beskuldiging wat nie dan bereg word nie, moet in alle opsigte gehandel word asof hulle in 'n afsonderlike akte van beskuldiging voorgekom het.

(4) As dit beweer word dat iemand by verskeie geleenthede gedurende 'n tydperk teenoor of ten aansien van 'n bepaalde persoon 'n misdryf gepleeg het waarvan onwettige vleeslike gemeenskap of 'n onsedelike daad van watter aard ook al 'n bestanddeel is, kan dit die beskuldigde in een hoof ten laste gelê word dat hy die misdryf by verskeie geleenthede gedurende daardie tydperk gepleeg het.

294 (1) Wanneer 'n aanklag wat meer as een hoof bevat, teen dieselfde persoon ingebring word en 'n skuldigbevinding ten opsigte van een of meer van hulle plaasvind, kan die aanklaer die oorblywende aanklag of aanklakte terugtrek.

(2) 'n Terugtrekking ingevolge subartikel (1) het die uitwerking van 'n vrysspraak ten opsigte van sodanige aanklag of aanklagte tensy die skuldigbevinding tersyde gestel word, in watter geval die hof, behoudens die bevel van die hof wat die skuldigbevinding tersyde stel, op aansoek van die Prokureur-generaal met die berigting van die aanklag of aanklagte aldus ingetrek, kan voortgaan.

295. As dit vanweë onsekerheid omtrent die feite wat bewys kan word of om 'n ander rede twyfelagtig is watter een van verskeie misdrywe uitgemaak word deur die feite wat bewys kan word, kan die beskuldigde weens die pleeg van al daardie misdrywe of enigeen van hulle aangekla word, en kan enige aantal van daardie aanklagte tegelykertyd verhoor word, of kan die beskuldigde weens die pleeg van enige aantal van daardie misdrywe in die alternatief aangekla word.

296. (1) Behoudens die hieropvolgende bepalings van hierdie ordonnansie en enige ander wet wat betrekking het op 'n besondere misdryf, moet elke hoof van 'n aanklag die misdryf waarvan die beskuldigde aangekla word, uiteensit op so 'n wyse en met verstrekking van sodanige besonderhede betreffende die tyd en plek wanneer en waar die misdryf na bewering gepleeg is en die persoon (as daar is) teen wie en die goed (as daar is) ten opsigte waarvan die misdryf na bewering gepleeg is, soos redelikerwyse voldoende is om die beskuldigde omtrent die aard van die aanklag in te lig.

(2) Die volgende bepalings is van toepassing met betrekking tot alle strafsake in 'n hoér of 'n laer hof:—

(a) Die beskrywing van 'n wetteregtelike misdryf in die bewoording van die wetsbepaling wat die misdryf skep of in ooreenstemmende bewoording, is voldoende; en

(b) 'n uitsondering, vrystelling, voorbehoud, verskningsgrond of beperking, hetsy dit in dieselfde artikel tesame met die beskrywing van die misdryf in die wetsbepaling wat die misdryf skep, voorkom, al dan nie, kan deur die beskuldigde bewys word maar hoef nie in die aanklag uiteengesit of weerlē te word nie, en as dit aldus uiteengesit of weerlē word, hoef dit nie deur die vervolging bewys te word nie.

(3) Wanneer enige van die in hierdie ordonnansie bedoelde besonderhede aan die aanklaer onbekend is, is dit voldoende om in die aanklag te meld dat dit die geval is.

297. In 'n aanklag weens diefstal kan dit beweer word dat die beweerde gesteelde goed gesteel is op verskeie tye tussen twee bepaalde datums in die aanklag aangegee, en by so 'n aanklag kan daar bewys van die diefstal van daardie goed op enige datum of datums tussen die bepaalde datums aangevoer word.

298. In a charge for theft of money or for the theft of any property by a person entrusted with the custody or care thereof, the accused may be charged and proceeded against for the amount of a general deficiency, notwithstanding that such general deficiency is made up of a number of specific sums of money or of a number of specific articles or of a sum of money representing the value of any number of specific articles, the theft of which extended over a space of time.

299. It shall be sufficient in any charge in which it is necessary to make averment as to any money or any bank-note, to describe such money or bank-note simply as money, without specifying any particular coin or bank-note, and such description of the property shall be sustained by proof of any amount of coin or of any bank-note, although the particular species of coin of which such amount was composed or the particular nature of the bank-note is not proved, and, in cases of money or bank-notes obtained by false pretences or by any other unlawful act, by proof that the offender obtained any coin or any bank-note or any portion of the value thereof, although such coin or bank-note may have been delivered to him in order that some part of the value thereof should be returned to the person delivering the same or to any other person, and such part has been returned accordingly.

300. (1) It shall not be necessary in a charge for an offence which relates to the taking or administering of an oath or to the giving of false testimony, or the making of a false statement on solemn declaration or otherwise, or to the procuring of the giving of false testimony or the making of a false statement, to set forth the words of the oath or testimony or statement, but it shall be sufficient to set forth the purport thereof or so much of the purport thereof as is material; and it shall not be necessary to allege in any such charge or to establish at the trial, that the false testimony or statement was material to any issue in the proceedings in connection therewith it was given or made, or that it was to the prejudice of any person.

(2) In a charge for an offence which relates to the giving of false testimony or the procuring or the attempted procuring of the giving of false testimony, it shall not be necessary to allege the jurisdiction or to state the nature of the authority of the court or tribunal before which or the officer before whom the false testimony was given or intended or proposed to be given.

(3) If a person has made any statement on oath whether orally or in writing, and he thereafter on another oath makes another statement as aforesaid, which is in conflict with such first-mentioned statement, he shall be guilty of an offence and, may, on a charge alleging that he made the two conflicting statements, and upon proof of those two statements and without proof as to which of the said statements was false, be convicted on the evidence of one witness of such offence and punished with the penalties prescribed by law for the crime of perjury, unless it is proved that when he made each statement he believed it to be true.

301. (1) It shall not be necessary in a charge, for an offence relating to a testamentary writing to allege that the writing is the property of any person.

(2) It shall not be necessary in a charge for an offence relating to anything fixed in a square street, or open place or in a place dedicated to public use or ornament or to anything in or taken from a public place or office, to allege that the thing in respect of which the offence was committed is the property of any person.

(3) In a charge for an offence relating to a document which is the evidence of title to land or an interest in land, the document may be described as being the evidence of the title of the person or one of the persons having an interest in the land to which the document relates, while the land or any part thereof shall be described in a manner sufficient to identify it.

(4) In a charge for the theft of anything whatsoever

298. In 'n aanklag weens die diefstal van geld of weens die diefstal van goed deur iemand aan wie die bewaring of sorg daarvan toevertrou is, kan die beskuldigde aangekla en vervolg word ten aansien van die bedrag van 'n algemene tekort, nieteenstaande die feit dat sodanige algemene tekort bestaan uit 'n aantal bepaalde geldbedrae of uit 'n aantal bepaalde artikels of uit 'n geldbedrag wat die waarde verteenwoordig van 'n aantal bepaalde artikels, waarvan die diefstal oor 'n tydperk gestrek het.

299. In 'n aanklag waar daar 'n bewering omtrent geld of 'n banknoot gemaak moet word, is dit voldoende om sodanige geld of banknoot enkel as geld te beskrywe sonder om 'n besondere muntstuk of banknoot te meld en so 'n beskrywing van die goed word gestaaf deur bewys van enige bedrag van muntstukke of van enige banknoot ofskoon die besondere soort muntstukke waaruit daardie bedrag bestaan het of die besondere aard van die banknoot nie bewys word nie, en, in gevalle van geld of banknote deur valse voorwendsels of 'n ander wederregtelike daad verkry, deur bewys dat die oortreder 'n muntstuk of banknoot of enige deel van die waarde daarvan verkry het, ofskoon sodanige muntstuk of banknoot aan hom oorhandig mag gewees het met die bedoeling dat 'n deel van die waarde daarvan aan die persoon wat dit oorhandig, of aan iemand anders, terugbesorg moes word en sodanige deel dienooreenkomsdig terugbesorg is.

300. (1) In 'n aanklag weens 'n misdryf wat betrekking het op die aflê van 'n eed, of op die aflê van valse getuienis, of die aflê van 'n valse verklaring in die loop van 'n plegtige verklaring of andersins, of op die oorhaal tot die aflê van valse getuienis of 'n valse verklaring, is dit nie nodig om die eed of getuienis of verklaring woordeleks uiteen te sit nie, maar is dit voldoende om die strekking daarvan van soveel van die strekking daarvan as wat ter sake is, uiteen te sit; en dit is nie nodig om in so 'n aanklag te meld of by die verhoor te bewys dat die valse getuienis of verklaring ter sake dienend was by 'n geskilpunt in die saak in verband waarmee dit afgelê is of dat dit enigiemand benadeel het nie.

(2) In 'n aanklag weens 'n misdryf wat betrekking het op die aflê van valse getuienis of die oorhaal of geopoogde oorhaal tot die aflê van valse getuienis, is dit nie nodig om dieregsbevoegdheid van die hof of regbank of die beampte voor wie die valse getuienis afgelê is of bestem was om afgelê te word of na voorneme afgelê sou word, te beweer of die aard van sy gesag te meld nie.

(3) As iemand 'n verklaring onder eed, hetself mondeling of skriftelik, afgelê het en hy daarna weer onder eed 'n ander verklaring soos voormeld aflê wat met eersbedoelde verklaring in stryd is, is hy aan 'n misdryf skuldig en kan hy op 'n aanklag wat hom ten laste lê dat hy die twee teenstrydige verklarings afgelê het, by bewys van daardie twee verklarings en sonder dat bewys gelewer word watter van die twee verklarings vals was, aan bedoelde misdryf skuldig bevind word op die getuienis van een getuie en gestraf word met die strawe wat regtens vir die misdryf van meineed voorgeskryf word, tensy daar bewys gelewer word dat toe hy elke verklaring afgelê het, hy geglo het dat dit die waarheid was.

301. (1) Dit is nie nodig on in 'n aanklag weens 'n misdryf met betrekking tot 'n testamentêre geskrif te meld dat die geskrif die eiendom van iemand is nie.

(2) Dit is nie nodig om in 'n aanklag weens 'n misdryf met betrekking tot enigets wat in 'n plein, straat of oop plek of in 'n plek vir openbare gebruik of verfraaiing afgesonder, aangebring is of enigets binne of verwyder uit 'n openbare plek of kantoor, te meld dat die voorwerp in verband waarmee die misdryf gepleeg is, die eiendom van iemand is nie.

(3) In 'n aanklag weens 'n misdryf met betrekking tot 'n dokument wat die bewys van reg op grond of 'n belang in grond uitmaak, kan die dokument beskrywe word as die bewys van die reg van die persoon of een van die persone wat 'n belang het in die grond waarop die dokument betrekking het, terwyl die grond of 'n deel daarvan beskryf word op 'n wyse wat noukeurig genoeg is om dit uit te ken.

(4) In 'n aanklag weens die diefstal van enigets hoegenaamd wat aan die beskuldigde verhuur is, kan

eased to the accused, the thing may be described as the property of the person who actually leased it.

(5) In a charge against a person employed in the public service for an offence committed in connection with anything which came into his possession by virtue of his employment, the thing in question may be described as the property of the Administration or the Government of the Republic.

(6) In a charge for an offence committed in connection with anything in the occupation or under the management of any public officer the thing may be described as belonging to such officer without naming him.

(7) In a charge for an offence committed in connection with any property, movable or immovable, whereof any body corporate has by law the management, control, or custody, the property may be described as belonging to such body corporate.

(8) If it is uncertain to which of two or more persons any property in connection with which an offence has been connected, belonged at the time when the offence was committed, the property may in the charge for that offence, be described as being the property of one or other of those persons, naming each of them, but without specifying which of them; and it shall be sufficient at the trial to prove that at the time when the offence was committed the property belonged to one or other of those persons without proving which of them.

(9) If property alleged to have been stolen was not in the physical possession of the owner thereof at the time when the theft was committed, but was in the physical possession of another person who had the custody thereof on behalf of the owner, it shall be sufficient to allege in a charge for the theft of that property that it was in the lawful custody or under the lawful control of that other person.

(10) In a charge in which any trade mark or forged trade mark is proposed to be mentioned, it shall be sufficient, without further description and without any copy or facsimile, to state that such trade mark or forged trade mark is a trade mark or forged trade mark.

(11) In a charge for housebreaking, or for entering any house or premises, with intent to commit an offence, the charge may either state the offence which it is alleged the accused intended to commit or may aver an intent to commit an offence to the prosecutor unknown.

(12) In a charge for theft from any grave, whether in a cemetery or burial place or not, it shall not be necessary to allege that any dead body or portion thereof or anything whatever in the grave is the property of any person.

302. (1) In any case in which it is necessary in any charge to name any company, firm or partnership, it shall be sufficient to state the name of the company or the style or title of the firm or partnership, without naming any of the officers or shareholders of the company, or any of the partners in the firm or partnership, and one individual trading under the style or title of a firm may be described by such style or title.

(2) It shall be sufficient where two or more persons not partners are joint owners of property to name one of such persons adding the words "and another" or "and others", as the case may be, and to state that the property belongs to the person so named and another or others, as the case may be.

303. It shall not in any charge be necessary to set forth the manner in which, or the means or instrument by which any act is done, unless the manner, means or instrument is an essential element of the offence.

304. It shall be sufficient in an indictment for murder to allege that the accused did wrongfully, unlawfully, and maliciously, kill and murder the deceased, and it shall be sufficient in a charge for culpable homicide to allege that the accused did wrongfully and unlawfully kill the deceased.

die voorwerp beskrywe word as die eiendom van die persoon wat dit daadwerklik verhuur het.

(5) In 'n aanklag teen iemand wat in die staatsdiens werkzaam is, weens 'n misdryf gepleeg in verband met enigets wat uit hoofde van sy amp in sy besit gekom het, kan die betrokke voorwerp as die eiendom van die administrasie of die Regering van die Republiek beskrywe word.

(6) In 'n aanklag weens 'n misdryf gepleeg in verband met iets in die besit of onder die bestuur van 'n openbare beampete, kan die voorwerp beskrywe word as behorende aan sodanige beampete sonder om hom by name te noem.

(7) In 'n aanklag weens 'n misdryf gepleeg in verband met eiendom, roerend of onroerend, wat regtens onder die bestuur of beheer of in die bewaring van 'n regspersoon is, kan die eiendom beskrywe word as behorende aan daardie regspersoon.

(8) As dit nie seker is aan wie van twee of meer persone goed in verband waarmee 'n misdryf gepleeg is, behoort het toe die misdryf gepleeg is nie, kan die goed in die aanklag ten opsigte van daardie misdryf beskrywe word as die eiendom van die een of die ander van daardie persone, met opgaaf van elkeen se naam maar sonder om een in besonder aan te dui; en by die verhoor is dit voldoende om te bewys dat toe die misdryf gepleeg is, die goed aan die een of die ander van daardie persone behoort het, sonder om te bewys aan watter een in besonder.

(9) As beweerde gesteelde goed ten tyde van die pleeg van die diefstal nie in die fisiese besit van die eienaar daarvan was nie maar in die fisiese besit van iemand anders in wie se bewaring dit ten behoeve van die eienaar gehou was, is dit voldoende om in 'n aanklag ten opsigte van die diefstal van daardie goed te meld dat dit in die wettige bewaring of onder die wettige beheer van daardie ander persoon was.

(10) In 'n aanklag waarin 'n handelsmerk of vervalste handelsmerk gemeld staan te word, is dit voldoende om sonder verdere beskrywing en sonder verstreking van 'n afskrif of faksimilee, te meld dat sodanige handelsmerk of vervalste handelsmerk 'n handelsmerk of vervalste handelsmerk is.

(11) In 'n aanklag weens huisbraak of weens die betreding van 'n huis of perseel met die opset om 'n misdryf te pleeg, kan die aanklag of die misdryf wat die beskuldigde na bewering bedoel het om te pleeg of 'n opset om 'n aan die aanklaer onbekende misdryf te pleeg, meld.

(12) In 'n aanklag weens diefstal uit 'n graf, hetsy in 'n kerkhof of begraafplaas geleë al dan nie, is dit nie nodig om te meld dat 'n lyk of 'n deel daarvan of enigets hoegenaamd binne die graf die eiendom van iemand is nie.

302. (1) In 'n geval waar 'n maatskappy, firma of vennootskap in 'n aanklag vermeld moet word, is dit voldoende om die naam van die maatskappy of die naam of benaming van die firma of vennootskap te vermeld, sonder om enige van die ampsdraers of aandeelhouers van die maatskappy of enige van die vennote in die firma of vennootskap aan te gee, en 'n bepaalde persoon wat onder 'n firma-naam handel drywe, kan by daardie naam of benaming aangedui word.

(2) Wanneer twee of meer persone wat nie vennote is nie, gesamentlike eienaars van goed is, is dit voldoende om een van daardie persone by name te noem en die woorde „en 'n ander“ of „en andere“, na gelang, by te voeg, en om aan te dui dat die goed aan die aldus genoemde persoon en 'n ander of andere, na gelang, behoort.

303. Die wyse waarop of die middel of werktuig waardeur 'n handeling verrig word, hoef nie in 'n aanklag uiteengesit te word nie tensy die wyse, middel of werktuig 'n wesentlike bestanddeel van die misdryf uitmaak.

304. In 'n akte van beskulding weens moord is dit voldoende om te beweer dat die beskuldigde die oorledene wederregtelik, onwettig en kwaadwillig gedood en vermoor het en in 'n aanklag weens strafbare manslag is dit voldoende om te beweer dat die beskuldigde die oorledene wederregtelik en onwettig gedood het.

305. (1) In any charge for forging, uttering, stealing, destroying, concealing, or otherwise unlawfully dealing with, any instrument, it shall be sufficient to describe such instrument by any name or designation by which it is usually known or by the purport thereof, without setting out any copy or facsimile thereof, or otherwise describing it or stating its value.

(2) Whenever it is necessary in any other case to make any allegation in any charge in relation to any instrument, whether the same consists wholly or in part of writing, print or figures, it shall be sufficient to describe such instrument by any name or designation by which it is usually known or by the purport thereof, without setting out any copy or facsimile of the whole or any part thereof, unless the wording of the instrument is an element of the offence.

306. In a charge for an offence relating to an insolvent, it shall not be necessary to set forth any debt, act of insolvency, adjudication, or other proceeding in any court, or any order, warrant or document, made or issued out of or by the authority of any court.

307. (1) It shall be sufficient in any charge for —

- (a) forging, uttering, offering, disposing of, or putting off, any instrument whatsoever; or
- (b) theft by means of false pretences; or
- (c) obtaining anything by means of a fraudulent trick or device or any other fraudulent means; or
- (d) inducing, by means of any such trick or device or fraudulent means the payment or delivery of any money or thing; or
- (e) procuring or attempting to commit or to procure the commission of any such offence,

to allege that the accused did the act with intent to defraud, without alleging that it was the intention of the accused to defraud any particular person.

(2) In the case of any such offence it shall not be necessary to mention the owner of the property in question or to set forth the details of the trick or device.

308. (1) Any number of persons charged with committing or with procuring the commission of the same offence, although at different times, or with having, after the commission of the offence, harboured or assisted the offender, and any number of persons charged with receiving, although at different times, any property which has been obtained by means of an offence or any part of any property so obtained, may be charged with substantive offences in the same charge and may be tried together, notwithstanding that the principal offender or the person who so obtained the property is not included in the same charge or is not amenable to justice.

(2) A person who counsels or procures another to commit an offence, or who aids another person in committing an offence, or who after the commission of an offence harbours or assists the offender, may be charged in the same charge with the principal offender and may be tried with him or separately or may be charged and tried separately whether the principal offender has or has not been convicted, or is or is not amenable to justice.

309. Whenever any person in taking part or being concerned in any transaction commits an offence and any other person in taking part or being concerned in the same transaction commits a different offence, such persons may be charged with the respective offences in the same charge and may be tried thereon jointly.

CHAPTER XVII.

PUNISHMENTS

310. (1) The following sentences may subject to the provisions of this Ordinance and of any other law and of

305. (1) In 'n aanklag weens die vervalsing, uitgifte, diefstal, vernietiging of versteking van 'n dokument, of die onregmatige handeling daarmee op 'n ander wyse, is dit voldoende om daardie dokument deur 'n naam of beskrywing waaronder dit gewoonlik bekend staan, of deur aangifte van die strekking daarvan, aan te dui, sonder om 'n afskrif of faksimile daarvan te verstrek of om dit op 'n ander wyse te beskrywe of die waarde daarvan aan te gee.

(2) Wanneer daar in enige ander geval in 'n aanklag melding gemaak moet word van enige dokument, hetsy dit geheel en al of gedeeltelik uit skrif, drukskrif of syfers bestaan, is dit voldoende om so 'n dokument aan te dui deur 'n naam of beskrywing waaronder dit gewoonlik bekend staan of deur aangifte van die strekking daarvan, sonder om 'n afskrif of faksimile daarvan of van enige deel daarvan te verstrek, tensy die bewoording van die dokument deel van die misdryf uitmaak.

306. Daar hoef nie in 'n aanklag weens 'n misdryf betreffende 'n insolvente persoon melding gemaak te word van 'n skuld, insolvensledaad, uitspraak of ander verrigting in 'n hof of 'n bevel, lasbrief of dokument gegee of uitgereik deur of op gesag van 'n hof nie.

307. (1) Dit is voldoende om in 'n aanklag weens —

- (a) die vervalsing, uitgifte of aanbieding van, of die beskikking oor of afgee van, enige dokument hoegegaanmd; of
- (b) diefstal deur middel van valse voorwendsels; of
- (c) die verkryging van eniglets deur middel van 'n bedrieglike kunsgreep of lis of enige ander bedrieglike middele; of
- (d) die oorhaal van iemand, deur middel van so 'n kunsgreep of lis of bedrieglike middele, om geld of 'n voorwerp te betaal of af te gee; of
- (e) die bewerkstelling van die pleging van so 'n misdryf, of poging om so 'n misdryf te pleeg of om die pleging daarvan te bewerkstellig,

te meld dat die beskuldigte die daad verrig het met die opset om te bedrieg, sonder om te meld dat dit die beskuldigte se opset was om 'n besondere persoon te bedrieg.

(2) In die geval van so 'n misdryf hoef die eienaar van die betrokke goed of besonderhede insake die kunsgreep of lis nie vermeld te word nie.

308. (1) Enige aantal persone wat daarvan aangekla word dat hulle dieselfde misdryf gepleeg het of die pleging daarvan bewerkstellig het, ofsoek dit op verskillende tye geskied het, of dat hulle na die pleging van die misdryf die oortreder geherberg het of aan hom hulp verleen het, en enige aantal persone aangekla weens die ontvangs, ofsoek op verskillende tye, van goed, of enige deel daarvan, wat deur middel van 'n misdryf verkry is, kan van selfstandige misdrywe in dieselfde aanklag aangekla word en gesamentlik verhoor word, ondanks die feit dat die hoofoortreder of die persoon wat die goed aldus verkry het, nie by dieselfde aanklag ingesluit is of nie voor die gereg tot verantwoording geroep kan word nie.

(2) Iemand wat 'n ander persoon tot die pleeg van 'n misdryf aanraai of oorhaal, of wat aan 'n ander persoon by die pleeg van 'n misdryf hulp verleen, of wat na die pleeg van 'n misdryf die oortreder herberg of aan hom hulp verleen, kan in dieselfde aanklag as die hoofoortreder aangekla word, en kan saam met hom of afsonderlik verhoor word of kan afsonderlik aangekla en verhoor word, hetsy die hoofoortreder skuldig bevind is al dan nie of voor die gereg tot verantwoording geroep kan word al dan die.

309. Wanneer iemand terwyl hy deelneem aan of betrokke is by 'n handeling, 'n misdryf pleeg en iemand anders, terwyl hy deelneem aan of betrokke is by dieselfde handeling, 'n ander misdryf pleeg, kan sodanige persone weens die onderskeie misdryf in dieselfde aanklag aangekla word en ten aansien daarvan gesamentlik verhoor word.

HOOFTUK XVII

STRAWWE

310. (1) Die volgende strawwe kan behoudens die bepalings van hierdie ordonnansie en van enige ander

the common law be passed upon a person convicted of an offence, namely —

- (a) sentence of death;
- (b) imprisonment with or without solitary confinement and spare diet;
- (c) periodical imprisonment;
- (d) imprisonment for corrective training;
- (e) imprisonment for the prevention of crime;
- (f) declaration as an habitual criminal;
- (g) fine;
- (h) whipping;
- (i) putting the accused under recognizance with conditions.

(2) Save as is otherwise specially provided in this Ordinance, nothing therein contained shall be construed —

- (a) as authorizing any court to impose for any offence any sentence other than, or in excess of, the sentence which by law it is competent for that court to impose for that offence; or
- (b) as derogating from the authority specially conferred on any court by any law to impose any other punishment or to impose any forfeiture in addition to any other punishment.

SENTENCE OF DEATH

311. (1) Sentence of death may be passed by a superior court only and shall be passed by such a court upon a person convicted by it of murder, and may be passed by such a court upon a person convicted by it of treason or rape or robbery (including an attempt to commit robbery) if aggravating circumstances are found to have been present or any offence of housebreaking or attempted house-breaking with intent to commit an offence, if aggravating circumstances are found to have been present: Provided that where a woman is convicted of the murder of her newly born child, or where a person under eighteen years of age is convicted of murder or where the court is of opinion that there are extenuating circumstances, the court may impose any sentence other than the death sentence.

(2) The form of the sentence to be pronounced upon a person who is convicted of an offence punishable with death and sentenced to death shall be that he be returned to custody and that he be hanged by the neck until he is dead.

312. (1) When sentence of death is passed upon a woman, she may apply at any time after the passing of such sentence for an order to stay execution on the ground that she is with child of a quick child.

(2) If such an application is made, the court shall direct that one or more duly registered medical practitioners shall examine the woman in a private place, either together or successively, to ascertain whether she is with child of a quick child or not.

(3) If upon the report of any of them on oath it appears that the woman is with child of a quick child, the court shall order that the execution of the sentence be stayed until she is delivered of a child or until it is no longer possible in the course of nature that she should be so delivered.

313. (1) As soon as practicable after a sentence of death is passed the judge who passed the sentence or any other judge of the court shall issue his warrant to the sheriff or his deputy for the execution of the sentence, but such warrant shall not be executed until the Administrator has, in writing signed by himself, given notice to the sheriff or the deputy that the State President has decided not to grant a pardon to, or reprieve, the person so sentenced or otherwise exercise any power to pardon in respect of him.

(2) As soon after the receipt of such notice by the sheriff or his deputy as fitting arrangements for the carrying out of the sentence can be made in or in the precincts of a prison appointed in accordance with law for the carrying out of sentences of death, the sheriff or a deputy

wet en van die gemene reg aan iemand wat aan 'n misdryf skuldig bevind word, opgelê word, naamlik —

- (a) die doodvonnis;
- (b) gevengenisstraf met of sonder alleenopsluiting en skraal rantsoen;
- (c) periodieke gevengenisstraf;
- (d) gevengenisstraf vir korrekiewe opleiding;
- (e) gevengenisstraf ter voorkoming van misdaad;
- (f) verklaring tot gewoontemisdadiger;
- (g) boete;
- (h) lyfstraf;
- (i) die beskuldigde onder borgakte met voorwaardes stel.

(2) Behoudens andersluidende uitdruklike bepaling in hierdie ordonnansie, word geen bepaling van hierdie ordonnansie uitgelê asof dit —

- (a) aan 'n hof bevoegdheid verleen om vir 'n misdryf 'n ander of 'n hoër straf op te lê as die straf wat daardie hof regtens bevoeg is om vir daardie misdryf op te lê nie; of
- (b) afbreuk doen aan die bevoegdheid wat spesiaal aan 'n hof by wetlike voorskrif verleen word om 'n ander straf op te lê of om benewens 'n ander straf eniglets verbeurd te verklaar nie.

DOODVONNIS

311. (1) Die doodvonnis kan slegs deur 'n hoër hof opgelê word en moet deur so 'n hof aan iemand opgelê word wat deur dié hof aan moord skuldig bevind word, en kan deur so 'n hof aan iemand opgelê word wat deur dié hof skuldig bevind word weens hoogverraad of verkrating of roof (met inbegrip van 'n poging tot roof) as dit bevind word dat verswarende omstandighede aanwesig was, of 'n misdryf van huisbraak met die doel om 'n misdryf te pleeg of 'n poging daar toe, as dit bevind word dat verswarende omstandighede aanwesig was: Met dien verstande dat wanneer 'n vrou skuldig bevind word aan moord op haar pasgebore kind of wanneer iemand onder die ouderdom van agtien jaar aan moord skuldig bevind word of waar die hof meen dat daar versagtende omstandighede is, die hof 'n ander vonnis as die doodvonnis kan ople.

(2) Die formulier van die vonnis wat uitgespreek moet word oor iemand wat skuldig bevind word aan 'n misdryf wat met die dood strafbaar is en ter dood veroordeel word, is dat hy na die plek van bewaring teruggegneem word en dat hy aan die nek gehang word totdat hy dood is.

312. (1) Wanneer 'n vrou ter dood veroordeel word, kan sy te eniger tyd na die oplegging van die vonnis om 'n bevel tot opskorting van die teregstelling aansoek doen op grond daarvan dat sy swanger is van 'n lewende kind.

(2) As so 'n aansoek gedoen word, gelas die hof dat een of meer behoorlik geregistreerde geneeshere die vrou in 'n private plek ondersoek, hetsy gesamentlik of die een na die ander, om vas te stel of sy swanger is van 'n lewende kind al dan nie.

(3) As dit uit die beëdigde verslag van enige van hulle blyk dat die vrou swanger is van 'n lewende kind, gelas die hof dat die tenuitvoerlegging van die vonnis opgeskort word totdat sy geboorte gegee het aan 'n kind of totdat dit nie meer in die loop van die natuur moontlik is dat sy aldus geboorte sal gee nie.

313. (1) So gou doenlik nadat 'n doodvonnis opgelê is, reik die regter wat die vonnis opgelê het of 'n ander regter van die hof, sy lasbrief vir die tenuitvoerlegging van die vonnis aan die balju of sy adjunk uit, maar so 'n lasbrief word nie ten uitvoer gelê nie totdat die Administrator in 'n deur hom ondertekende geskrif aan die balju of sy adjunk kennis gegee het dat die Staatspresident besluit het om geen gracie aan die aldus veroordeelde persoon te verleen of hom te begenadig nie of enige bevoegdheid om te begenadig andersins ten opsigte van hom uit te oefen nie.

(2) So spoedig na die ontvangs van so 'n kennisgewing deur die balju of sy adjunk as wat gesikte reellings getref kan word vir die tenuitvoerlegging van die vonnis in of binne die grense van 'n gevengenis wat volgens wet vir die tenuitvoerlegging van doodvonnisse aan-

sheriff shall execute the judge's warrant issued to him as aforesaid in such a prison or such precincts: Provided that the sheriff or his deputy shall not execute the judge's warrant aforesaid if at any time the Administrator by written notice under his own hand to the sheriff or the deputy sheriff intimates that the State President has decided to grant a pardon or reprieve to the person so sentenced or otherwise to exercise any power to pardon with regard to him and any such notice shall be construed for all purposes as a cancellation of the judge's warrant aforesaid.

(3) The Administrator may direct, either generally or in any particular case, that any sentence of death shall be executed at a designated place appointed in accordance with law for the carrying out of sentences of death, which is situate within the area of jurisdiction of a court other than the court which passed such sentence, and thereupon the sheriff or his deputy appointed for the area wherein such place is situate shall act in accordance with the provisions of sub-sections (1) and (2).

IMPRISONMENT AND FINE

314. (1) When a person is convicted at one trial of two or more different offences or when a person under sentence or undergoing punishment for one offence is convicted of another offence, the court may sentence him to such several punishments for such offences or for such last offence, as the case may be, as the court is competent to impose.

(2) Such punishments, when consisting of imprisonment, shall commence the one after the expiration, setting aside or remission of the other, in such order as the court may direct, unless the court directs that such punishments shall run concurrently.

315. (1) In construing any provision of any law (not being an Act of Parliament of the Republic or an Ordinance passed after the commencement of this Ordinance or anything enacted by virtue of powers conferred by such an Act or Ordinance), in so far as it prescribes or confers the power to prescribe a punishment for any offence, any reference in that law to imprisonment with or without any form of labour, shall be construed as a reference to imprisonment only.

316. (1) A person liable to a sentence of imprisonment for life or for any period, may be sentenced to imprisonment for any shorter period, and a person liable to a sentence of a fine of any amount may be sentenced to a fine of any lesser amount.

(2) The provisions of sub-section (1) shall not apply to any offence for which a minimum penalty is prescribed in the law creating the offence or prescribing a penalty therefor.

(3) Notwithstanding anything to the contrary contained in any law, but subject to the provisions of sub-section (5), any court which sentences a person to a period of imprisonment without the option of a fine shall be competent to order that during that period or any portion thereof the imprisonment shall be on spare diet and in solitary confinement.

(4) Whenever a person is sentenced to imprisonment on spare diet and in solitary confinement, the ratio and the distribution of the days upon which imprisonment on spare diet and in solitary confinement shall take place in relation to the days upon which imprisonment without spare diet and solitary confinement shall take place, shall be determined in accordance with regulations framed under the law relating to prisons.

(5) Save as provided in the law relating to prisons no person shall be sentenced to imprisonment on spare diet and in solitary confinement if the period of such imprisonment alone or together with any unexpired portion of any sentence of imprisonment without the option of a fine imposed on him would exceed six months.

gewys is, lê die balju of 'n onderbalju die regter se lasbrief wat soos voormald aan hom uitgereik is, in bedoelde gevangenis of binne bedoelde grense ten uitvoer: Met dien verstande dat die balju of sy adjunk nie die voormalde lasbrief van die regter ten uitvoer lê nie as die Administrateur te eniger tyd by skriftelike kennisgewing deur hom onderteken, die balju of die onderbalju meedeel dat die Staatspresident besluit het om gracie aan die aldus veroordeelde persoon te verleen of hom te begenadig of enige bevoegdheid om te begenadig andersins met betrekking tot hom uit te oefen, en so 'n kennisgewing word vir alle doeleindes as 'n intrekking van die voormalde lasbrief van die regter beskou.

(3) Die Administrateur kan, hetsy in die algemeen of in 'n bepaalde geval, gelas dat 'n doodvonnis ten uitvoer gelê word op 'n aangewese plek wat volgens wet vir die tenuitvoerlegging van doodvonnisse aangewys is, en wat geleë is binne die regsgebied van 'n ander hof as die hof wat die vonnis opgelê het, en daarop handel die balju of sy adjunk wat aangestel is vir die gebied waarin bedoelde plek geleë is, ooreenkomsdig die bepalings van subartikels (1) en (2).

GEVANGENISSTRAF EN BOETE.

314. (1) Wanneer iemand by een verhoor van twee of meer misdrywe skuldig bevind word, of wanneer iemand wat weens 'n misdryf veroordeel is of straf ondergaan, aan 'n ander misdryf skuldig bevind word, kan die hof hom tot die verskillende strawwe vir bedoelde misdrywe of bedoelde laaste misdryf, na gelang, veroordeel, wat die hof bevoeg is om op te lê.

(2) Sodanige strawwe, waar dit uit gevangenisstraf bestaan, neem 'n aanvang die een na die verstryking, tersydestelling of kwytskelding van die ander in die volgorde wat die hof beveel, tensy die hof beveel dat bedoelde strawwe saamloop.

315. (1) By die uitleg van 'n bepaling van enige wet (behalwe 'n wet van die Parlement van die Republiek of 'n ordonnansie wat na die inwerkingtreding van hierdie ordonnansie aangeneem word of enigets wat ingevolge bevoegdhede by so 'n wet of ordonnansie verleent, verorden is) vir sover dit 'n straf vir 'n misdryf voorskryf of die bevoegdheid verleent om so 'n straf voor te skryf, word 'n verwysing in daardie wet na gevangenisstraf met of sonder een of ander vorm van arbeid, as 'n verwysing aan slegs gevangenisstraf uitgelê.

316. (1) Iemand wat met levenslange gevangenisstraf of met gevangenisstraf van enige tydperk strafbaar is, kan tot gevangenisstraf vir 'n korter tydperk veroordeel word, en iemand wat met 'n boete van enige bedrag strafbaar is, kan tot 'n boete van 'n laer bedrag veroordeel word.

(2) Die bepalings van subartikel (1) is nie van toepassing nie met betrekking tot 'n misdryf waaroor 'n minimum straf voorgeskryf word in die wetsbepaling wat die misdryf skep of 'n straf daarvoor voorskryf.

(3) Ondanks andersluidende wetsbepalings, maar behoudens die bepalings van subartikel (5), is 'n hof wat iemand tot 'n tydperk van gevangenisstraf sonder die keuse van 'n boete veroordeel, bevoeg om te beveel dat gedurende daardie tydperk of 'n gedeelte daarvan die gevangenisstraf op skraal rantsoen en met alleenopsluiting moet wees.

(4) Wanneer iemand tot gevangenisstraf op skraal rantsoen en met alleenopsluiting veroordeel word, word die verhouding en die verdeling van die dae waarop gevangenisstraf op skraal rantsoen en met alleenopsluiting plaasvind teenoor die dae waarop gevangenisstraf sonder skraal rantsoen en sonder alleenopsluiting plaasvind, bepaal ooreenkomsdig regulasies uitgevaardig kragtens die wet op gevangenis.

(5) Behoudens die bepalings van die wet op gevangenis word niemand veroordeel tot gevangenisstraf op skraal rantsoen en met alleenopsluiting nie as die tydperk van dié gevangenisstraf alleen of saam met 'n onverstreke gedeelte van gevangenisstraf sonder die keuse van 'n boete aan hom opgelê, ses maande te bowe sou gaan nie.

317. (1) The provisions of this section shall apply only in such areas as the Administrator may from time to time determine by notice in the *Official Gazette*.

(2) If a court convicts a person of any offence other than an offence specified in the Fourth Schedule or an offence in respect of which the imposition of a prescribed punishment on the person convicted thereof is compulsory, it may, in lieu of any other punishment, sentence such person to undergo in accordance with the law relating to prisons, periodical imprisonment for a period of not less than one hundred hours and not exceeding one thousand hours.

(3) The court imposing a sentence of periodical imprisonment upon any person shall cause him to be furnished with a notice in writing in the prescribed form directing that he shall on a date and at a time specified in the notice or (if prevented from doing so by circumstances beyond his control) as soon as possible thereafter, surrender himself for the purpose of undergoing such imprisonment to the officer in charge of a place so specified within an area in which this section applies, whether within or outside the area of jurisdiction of the court.

(4) A copy of the said notice shall serve as a warrant for the reception into custody of the convicted person by the said officer.

(5) Any person who —

- (a) without lawful excuse, proof whereof shall be on such person, fails to comply with a notice issued under sub-section (3); or
- (b) surrenders himself for the purpose of undergoing periodical imprisonment, while under the influence of intoxicating liquor or narcotic drugs; or
- (c) impersonates or falsely represents himself to be a person who has been directed to surrender himself for the purpose of undergoing periodical imprisonment,

shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding three months.

(6) If, before the expiration of any sentence of periodical imprisonment imposed upon any person for any offence, such person is undergoing a punishment of any other form of detention imposed by any court, any magistrate before whom such person is brought, shall set aside the unexpired portion of the sentence of periodical imprisonment and, after considering the evidence recorded in respect of such offence, may impose in lieu of such unexpired portion, any punishment within the limits of his punitive jurisdiction and of any punishment prescribed by any law as a punishment for such offence.

318. (1) Subject to the provisions of sub-sections (2) and (3), a superior court or the court of a regional division which convicts a person of one or more offences, may, if it is satisfied that the said person requires training and treatment for his reformation, impose in lieu of any other punishment for such offence or offences, a sentence of imprisonment for corrective training.

(2) Subject to the provisions of sub-section (3), a superior court or a magistrate's court which convicts a person of an offence referred to in any Group of Part I of the Third Schedule in regard to which it has jurisdiction, is authorized and required to impose in lieu of any other punishment for such offence or that offence and any other offences of which the accused is simultaneously convicted, a sentence of imprisonment for corrective training —

- (a) if he is proved to have been ordered previously, before or after the commencement of this Ordinance, either in the Territory or elsewhere, to be sent to a reform school, and to have been convicted previously, before or after the commencement of this Ordinance, either in the Territory or elsewhere, in respect of at least three charges for one or more of the offences included in such Group; or

317. (1) Die bepalings van hierdie artikel is van toepassing slegs in die gebiede wat die Administrateur van tyd tot tyd by kennisgewing in die *Offisiële Koerant* bepaal.

(2) As 'n hof iemand skuldig bevind aan 'n ander misdryf as 'n misdryf in die vierde bylae genoem of 'n misdryf ten opsigte waarvan die oplegging van 'n voorgeskrewe straf op die persoon wat daaraan skuldig bevind word, verpligtend is, kan die hof, in die plek van enige ander straf, so iemand veroordeel om ooreenkomsdig die wet op gevangenisse periodieke gevanganisstraf vir 'n tydperk van minstens eenhonderd uur en hoogstens eenduisend uur te ondergaan.

(3) Die hof wat iemand periodieke gevanganisstraf ople, moet 'n skriftelike kennisgewing in die voorgeskrewe vorm aan hom laat verstrek wat hom gelas om op 'n datum en uur in die kennisgewing vermeld of (as hy deur omstandighede buite sy beheer verhoed word om dit te doen) so spoedig moontlik daarna, hom oor te gee om daardie gevanganisstraf te ondergaan, aan die beampte in bevel van 'n aldus vermelde plek binne 'n gebied waarin hierdie artikel van toepassing is, hetsy binne of buite die regsgebied van die hof.

(4) 'n Afskrif van genoemde kennisgewing dien as 'n lasbrief vir die inbewaringneming van die veroordeelde persoon deur genoemde beampte.

(5) Iemand wat —

- (a) sonder regmatige verskoning, waarvan die bewyslas op hom rus, versuim om 'n kennisgewing kragtens subartikel (3) uitgereik, te gehoorsaam; of
- (b) hom oorgee om periodieke gevanganisstraf te ondergaan terwyl hy onder die invloed van bedwelmende drank of verdowingsmiddels is; of
- (c) hom uitgee vir, of valslik voordoen as, iemand wat gelas is om hom oor te gee om periodieke gevanganisstraf te ondergaan,

is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met gevanganisstraf vir 'n tydperk van hoogstens drie maande.

(6) As, voor die verstryking van periodieke gevanganisstraf wat 'n persoon weens 'n misdryf opgelê is, daardie persoon 'n straf van 'n ander vorm van aanhouding deur 'n hof opgelê, ondergaan, moet 'n landdros voor wie hy gebring word, die onverstreke gedeelte van die periodieke gevanganisstraf tersyde stel en kan die landdros na oorweging van die getuenis ten opsigte van bedoelde misdryf genotuleer, in die plek van daardie onverstreke gedeelte 'n straf ople wat binne die perke val van sy strafbevoegdheid en van 'n straf by 'n wet voorgeskryf as 'n straf vir daardie misdryf.

318. (1) Behoudens die bepalings van subartikels (2) en (3) kan 'n hoër hof of die hof van 'n streekafdeling wat 'n persoon aan een of meer misdrywe skuldig bevind, as die hof oortuig is dat die bedoelde persoon opleiding en behandeling vir sy verbetering nodig het, in die plek van enige ander straf vir daardie misdryf of misdrywe gevanganisstraf vir korrektiewe opleiding ople.

(2) Behoudens die bepalings van subartikel (3) is 'n hoër hof of 'n landdroshof wat 'n persoon skuldig bevind aan 'n misdryf in 'n groep van deel I van die derde bylae vermeld, ten opsigte waarvan die hofregsbevoegdheid het, gemagtig en verplig om in die plek van enige ander straf vir daardie misdryf of daardie misdryf en ander misdrywe waaraan die beskuldigte terselfdertyd skuldig bevind word, gevanganisstraf vir korrektiewe opleiding op te lê —

- (a) as dit bewys word dat dit voorheen, voor of na die inwerkingtreding van hierdie ordonnansie, hetsy in die Gebied of elders, beveel is dat hy na 'n verbeteringskool verwys word, en dat hy voorheen, voor of na die inwerkingtreding van hierdie ordonnansie, hetsy in die Gebied of elders, ten opsigte van minstens drie aanklagte weens een of meer van die misdrywe wat by daardie groep ingesluit word, skuldig bevind is; of

(b) if he is proved to have been sentenced previously, before or after the commencement of this Ordinance, either in the Territory or elsewhere, to imprisonment for periods of at least twelve months in the aggregate, as punishment (whether direct or alternative) for offences and if at least three of the charges for those offences are charges in respect of one or more of the offences included in such Group.

(3) A sentence of imprisonment for corrective training shall not be imposed —

- (a) on a person under the age of eighteen years; or
- (b) for an offence in respect of which it is compulsory to impose the death sentence or a sentence which by itself or together with any punishment warranted or required in respect of any other offence of which the accused is simultaneously convicted, would entail imprisonment for a period exceeding four years; or
- (c) if in the opinion of the court the offence warrants the imposition of the death sentence or punishment which by itself or together with any punishment warranted or required in respect of any other offence of which the accused is simultaneously convicted, would entail imprisonment for a period exceeding four years; or
- (d) if any unexpired period of imprisonment which the convicted person is undergoing exceeds two years.

(4) A person sentenced to imprisonment for corrective training shall be dealt with in accordance with the law relating to prisons.

319. (1) Subject to the provisions of sub-sections (2) and (3), a superior court which convicts a person of an offence referred to in any Group of Part I of the Third Schedule may, if the said person is proved to have been convicted previously, before or after the commencement of this Ordinance, either in the Territory or elsewhere, of an offence included in such Group, impose in lieu of any other punishment for the first-mentioned offence or that offence and any other offences of which the accused is simultaneously convicted, a sentence of imprisonment for the prevention of crime.

(2) Subject to the provisions of sub-section (3), a superior court or the court of a regional division which convicts a person of an offence referred to in any Group of Part I of the Third Schedule in regard to which it has jurisdiction, is authorized and required to impose in lieu of any other punishment for such offence or that offence and any other offences of which the accused is simultaneously convicted, a sentence of imprisonment for the prevention of crime —

- (a) if he is proved to have been sentenced previously to imprisonment for corrective training for an offence included in such Group; or
- (b) if he is proved to have been sentenced previously, before or after the commencement of this Ordinance, either in the Territory or elsewhere, to imprisonment for periods of at least thirty-six months in the aggregate, as punishment (whether direct or alternative) for offences and if at least three of the charges for those offences are charges in respect of one or more of the offences included in such Group.

(3) A sentence of imprisonment for the prevention of crime shall not be imposed —

- (a) on a person under the age of eighteen years; or
- (b) for an offence in respect of which it is compulsory to impose the death sentence or a sentence which by itself or together with any punishment warranted or required in respect of any other offence of which the accused is simultaneously convicted, would entail imprisonment for a period exceeding eight years; or

(b) as dit bewys word dat hy voorheen, voor of na die inwerkingtreding van hierdie ordonnansie, hetsy in die Gebied of elders, veroordeel is tot gevangenisstraf vir tydperke van minstens twaalf maande in die geheel, as straf (hetsy direk of alternatief) weens misdrywe en as minstens drie van die aanklagte weens daardie misdrywe aanklagte is ten opsigte van een of meer van die misdrywe wat by daardie groep ingesluit word.

(3) Gevangenisstraf vir korrekiewe opleiding word nie opgelê nie —

- (a) op iemand onder die ouderdom van agtien jaar; of
- (b) weens 'n misdryf ten opsigte waarvan dit verpligtend is om die doodvonnis op te lê of 'n straf wat op sigself of saam met 'n straf wat ten opsigte van 'n ander misdryf waaraan die beskuldigde terselfdertyd skuldig bevind word, geregtig is of vereis word, gevangenisstraf vir 'n tydperk wat vier jaar te bove gaan, sou meebring; of
- (c) as na die oordeel van die hof die misdryf die oplegging regverdig van die doodvonnis of 'n straf wat op sigself of saam met 'n straf wat ten opsigte van 'n ander misdryf waaraan die beskuldigde terselfdertyd skuldig bevind word, geregtig is of vereis word, gevangenisstraf vir 'n tydperk wat vier jaar te bove gaan, sou meebring; of
- (d) as enige onverstreke tydperk van gevangenisstraf wat die veroordeelde persoon ondergaan, twee jaar te bove gaan.

(4) Met iemand wat tot gevangenisstraf vir korrekiewe opleiding veroordeel is, word gehandel ooreenkomsdig die wet op gevangenis.

319. (1) Behoudens die bepalings van subartikels (2) en (3) kan 'n hoër hof wat 'n persoon aan 'n misdryf in 'n groep van deel I van die derde bylae vermeld, skuldig bevind, as dit bewys word dat bedoelde persoon voorheen, voor of na die inwerkingtreding van hierdie ordonnansie, hetsy in die Gebied of elders, aan 'n misdryf wat by daardie groep ingesluit word, skuldig bevind is, in die plek van enige ander straf vir eersbedoelde misdryf of daardie misdryf en ander misdrywe waaraan die beskuldigde terselfdertyd skuldig bevind word, gevangenisstraf ter voorkoming van misdaad ople.

(2) Behoudens die bepalings van subartikel (3) is 'n hoër hof of die hof van 'n streekafdeling wat 'n persoon skuldig bevind aan 'n misdryf in 'n groep van deel I van die derde bylae vermeld ten opsigte waarvan die hof regsvoxygheid het, gemagtig en verpligt om in die plek van enige ander straf vir daardie misdryf of daardie misdryf en ander misdrywe waaraan die beskuldigde terselfdertyd skuldig bevind word, gevangenisstraf ter voorkoming van misdaad op te lê —

- (a) as dit bewys word dat hy voorheen tot gevangenisstraf vir korrekiewe opleiding veroordeel is weens 'n misdryf wat by daardie groep ingesluit word; of
- (b) as dit bewys word dat hy voorheen, voor of na die inwerkingtreding van hierdie ordonnansie, hetsy in die Gebied of elders, veroordeel is tot gevangenisstraf vir tydperke van minstens ses-en-dertig maande in die geheel, as straf (hetsy direk of as alternatief) weens misdrywe en as minstens drie van die aanklagte weens daardie misdrywe aanklagte is ten opsigte van een of meer van die misdrywe wat by daardie groep ingesluit word.

(3) Gevangenisstraf ter voorkoming van misdaad word nie opgelê nie —

- (a) op iemand onder die ouderdom van agtien jaar; of
- (b) weens 'n misdryf ten opsigte waarvan dit verpligtend is om die doodvonnis op te lê of 'n straf wat op sigself of saam met 'n straf wat ten opsigte van 'n ander misdryf waaraan die beskuldigde terselfdertyd skuldig bevind word, geregtig is of vereis word, gevangenisstraf vir 'n tydperk wat agt jaar te bove gaan, sou meebring; of

(c) if in the opinion of the court the offence warrants the imposition of the death sentence or punishment which by itself or together with any punishment warranted or required in respect of any other offence of which the accused is simultaneously convicted, would entail imprisonment for a period exceeding eight years; or

(d) if any unexpired period of imprisonment which the convicted person is undergoing exceeds four years.

(4) A person sentenced to imprisonment for the prevention of crime shall be dealt with in accordance with the laws relating to prisons.

320. (1) Subject to the provisions of sub-sections (2) and (3), a superior court which convicts a person of one or more offences, may, if it is satisfied that the said person habitually commits offences, declare him an habitual criminal, in lieu of the imposition of any other punishment for the offence or offences of which he is convicted.

(2) Subject to the provisions of sub-section (3), a superior court or the court of a regional division which convicts a person of an offence referred to in any Group of Part I of the Third Schedule in regard to which it has jurisdiction, is authorized and required to declare the said person an habitual criminal in lieu of the imposition of any other punishment for such offence or that offence and any other offences of which the accused is simultaneously convicted —

(a) if he is proved to have been sentenced previously to imprisonment for the prevention of crime for an offence included in such Group; or

(b) if he is proved to have been declared an habitual criminal previously, before or after the commencement of this Ordinance, either in the Territory or elsewhere; or

(c) if he is proved to have been sentenced previously before or after the commencement of this Ordinance, either in the Territory or elsewhere, to imprisonment for periods of at least sixty months in the aggregate as punishment (whether direct or alternative) for offences and if at least three of the charges for these offences are charges in respect of one or more of the offences included in such Group.

(3) No person shall be declared an habitual criminal —

(a) if he is under the age of eighteen years; or

(b) for an offence in respect of which it is compulsory to impose the death sentence; or

(c) if in the opinion of the court the offence warrants the imposition of the death sentence or punishment which by itself or together with any punishment warranted or required in respect of any other offence of which the accused is simultaneously convicted, would entail imprisonment for a period exceeding fifteen years.

(4) A person declared an habitual criminal shall be dealt with in accordance with the law relating to prisons.

321. (1) Whenever a court convicts a person of any offence punishable by a fine (whether with or without any other direct or alternative punishment) it may, in imposing a fine upon such person, impose, as a punishment alternative to such fine, a sentence of imprisonment, of any period within the limits of its punitive jurisdiction: Provided that, the period of such alternative sentence of imprisonment shall not, either alone or together with any period of imprisonment imposed as a direct punishment, exceed the longest period of imprisonment prescribed by any law as a punishment (whether direct or alternative) for such offence.

(2) Whenever a court has imposed upon any person a fine without an alternative sentence of imprisonment and the fine is not paid in full or is not recovered in full in terms of section *three hundred and twenty-two*, the

(c) as na die mening van die hof die misdryf die oplegging regverdig van die doodvonnis of 'n straf wat op sigself of saam met 'n straf wat ten opsigte van 'n ander misdryf waaraan die beskuldigte terselfdertyd skuldig bevind word, geregverdig is of vereis word, gevangenisstraf vir 'n tydperk wat agt jaar te bowe gaan, sou meebring; of

(d) as enige onverstreke tydperk van gevangenisstraf wat die veroordeelde persoon ondergaan, vier jaar te bowe gaan.

(4) Met iemand wat tot gevangenisstraf ter voorkoming van misdaad veroordeel is, word gehandel ooreenkomsdig die wet op gevangenisse.

320. (1) Behoudens die bepalings van subartikel (2) en (3) kan 'n hoër hof wat 'n persoon aan een of meer misdrywe skuldig bevind, as die hof oortuig is dat die bedoelde persoon uit gewoonte misdrywe pleeg, hom tot gewoontemisdadiger verklaar, in plaas van die oplegging van enige ander straf vir die misdryf of misdrywe waarvan hy skuldig bevind word.

(2) Behoudens die bepalings van subartikel (3) is 'n hoër hof of die hof van 'n streekafdeling wat 'n persoon skuldig bevind aan 'n misdryf in 'n groep van deel I van die derde bylae vermeld, ten opsigte waarvan die hof regsvbeogdheid het, gemagtig en verplig om die bedoelde persoon tot gewoontemisdadiger te verklaar, in die plek van die oplegging van enige ander straf vir daardie misdryf of daardie misdryf en ander misdrywe waaraan die beskuldigde terselfdertyd skuldig bevind word —

(a) as dit bewys word dat hy voorheen tot gevangenisstraf ter voorkoming van misdaad veroordeel is weens 'n misdryf wat by daardie groep ingesluit word; of

(b) as dit bewys word dat hy voorheen, voor of na die inwerkingtreding van hierdie ordonnansie, hetsy in die Gebied of elders, tot gewoontemisdadiger verklaar is; of

(c) as dit bewys word dat hy voorheen, voor of na die inwerkingtreding van hierdie ordonnansie, hetsy in die Gebied of elders, veroordeel is tot gevangenisstraf vir tydperke van minstens sesig maande in die geheel, as straf (hetsy direk of as alternatief) weens misdrywe en as minstens drie van die aanklagte weens daardie misdrywe aanklagte is ten opsigte van een of meer van die misdrywe wat by daardie groep ingesluit word.

(3) Niemand word tot gewoontemisdadiger verklaar nie —

(a) as hy onder die ouderdom van agtien jaar is; of

(b) weens 'n misdryf ten opsigte waarvan dit verpligtend is om die doodvonnis op te lê; of

(c) as na die mening van die hof die misdryf die oplegging regverdig van die doodvonnis of 'n straf wat op sigself of saam met 'n straf wat ten opsigte van 'n ander misdryf waaraan die beskuldigte terselfdertyd skuldig bevind word, geregverdig is of vereis word, gevangenisstraf vir 'n tydperk wat vyftien jaar te bowe gaan, sou meebring.

(4) Met iemand wat tot gewoontemisdadiger verklaar is, word gehandel ooreenkomsdig die wet op gevangenisse.

321. (1) Wanneer 'n hof iemand skuldig bevind aan 'n misdryf wat met 'n boete strafbaar is (hetsy met of sonder enige ander direkte of alternatiewe straf) kan die hof, by die oplegging van 'n boete aan so iemand, gevangenisstraf vir 'n tydperk wat binne sy strafbeogdheid val, as 'n alternatiewe straf vir so 'n boete ople: Met dien verstande dat die tydperk van die alternatiewe gevangenisstraf, hetsy alleen of tesame met 'n ander tydperk van gevangenisstraf wat as direkte straf opgelê word, nie die langste tydperk van gevangenisstraf wat by 'n wet as 'n straf (hetsy direk of as alternatief) vir so 'n misdryf voorgeskryf word, te bowe mag gaan nie.

(2) Wanneer 'n hof iemand 'n boete sonder 'n alternatiewe gevangenisstraf opgelê het, en die boete nie ten volle betaal word of nie ten volle ooreenkomsdig artikel *driehonderd twee-en-twintig* ingevorder word nie,

court which passed sentence on such person (or if that court was a Circuit Local Division of the Supreme Court, then the Supreme Court) may issue a warrant directing that he be arrested and brought before the court, which may thereupon sentence him to such term of imprisonment as could have been imposed upon him as an alternative punishment in terms of sub-section (1).

322. (1) Whenever a person is sentenced to pay a fine, the court passing the sentence may, in its discretion, issue a warrant addressed to the sheriff or messenger of the court authorizing him to levy the amount by attachment and sale of any movable property belonging to such person although the sentence directs that, in default of payment of the fine, such person shall be imprisoned. The amount which may be levied shall be sufficient to cover, in addition to the fine, the costs and expenses of the warrant and of the attachment and sale thereunder.

(2) If the proceeds of sale of the movable property are insufficient to satisfy the amount of the fine and the costs and expenses aforesaid, a superior court may issue a warrant, or in the case of a sentence by any inferior court, may authorize such inferior court to issue a warrant, for the levy against the immovable property of such person of the amount unpaid.

(3) When a person is sentenced to pay a fine only or, in default of payment of the fine, to imprisonment, and the court issues a warrant under this section, it may suspend the execution of the sentence of imprisonment and may release the person upon his executing a bond with or without sureties as the court thinks fit, on condition that he appears before such court or some other court on the day appointed for the return of such warrant, such day not being more than fifteen days from the time of executing the bond; and in the event of the amount of the fine not being recovered, the sentence of imprisonment may be carried into execution forthwith or may be suspended as before for a further period or periods of not more than fifteen days, as the court may deem fit.

(4) In any case in which an order for the payment of money is made on non-recovery whereof imprisonment may be ordered, and the money is not paid forthwith, the court may require the person ordered to make such payment to enter into a bond as prescribed in sub-section (3), and in default of his doing so, may at once pass sentence of imprisonment as if the money had not been recovered.

(5) (a) When a person is sentenced to pay a fine only or in default of payment of the fine to a period of imprisonment and before the expiry of that period any part of the fine is paid or levied, the period of imprisonment shall be reduced by a number of days bearing as nearly as possible the same proportion of the number of days to which such person is sentenced as the sum so paid and levied bears to the amount of the fine.

(b) An amount which would reduce the imprisonment by a fractional part of a day shall not be received.

(6) No payment of any sum under this section need be accepted otherwise than during the ordinary office hours.

323. When any person is convicted of the unlawful publication of any defamatory matter which was published by means of printing, the prosecutor may levy the fine, if any, and costs out of any property of the accused in like manner as in civil actions.

324. The execution of any sentence of a fine or of imprisonment, shall not be suspended by the obligation imposed by any law to transmit the record of the case for review unless the person sentenced gives sufficient bail at a time or place or on conditions specified by such law to pay the fine imposed upon him or to surrender himself in order to undergo the imprisonment, as the case may be, if the proceedings in the case be approved.

kan die hof wat so iemand gevonnis het (of as daardie hof 'n rondgaande plaaslike afdeling van die Hooggeregs-hof was, dan die Hooggeregshof) 'n lasbrief uitrek waarin gelas word dat hy in hechtenis geneem en voor die hof gebring word, wat hom daarop tot die tydperk van gevangenisstraf kan veroordeel wat hom ingevolge subartikel (1) as 'n alternatiewe straf opgelê kon geword het.

322. (1) Wanneer iemand tot betaling van 'n boete veroordeel word, kan die hof wat die vonnis ople, na goeddunke 'n lasbrief uitrek wat aan die balju of geregs-bode gerig is en wat hom magtig om die bedrag te in deur beslaglegging op en verkoop van roerende goed wat aan so iemand behoort, al bepaal die vonnis dat by wanbetaling van die boete bedoelde persoon gevangenisstraf moet ondergaan. Die bedrag wat geen kan word, moet voldoende wees om benewens die boete die koste en uitgawe van die lasbrief en die beslaglegging en verkoop uit hoofde daarvan te dek.

(2) As die opbrengs van die verkoop van die roerende goed onvoldoende is om die bedrag van die boete en die voormalde koste en uitgawe te dek, kan 'n hoër hof 'n lasbrief uitrek of, in die geval van 'n vonnis deur 'n laerhof, so 'n laerhof magtig om 'n lasbrief uit te reik vir die invordering van die onbetaalde bedrag uit die onroerende goed van so iemand.

(3) Wanneer iemand tot slegs betaling van 'n boete of, by wanbetaling van die boete, tot gevangenisstraf veroordeel word, en die hof 'n lasbrief kragtens hierdie artikel uitrek, kan die hof die tenuitvoerlegging van die gevangenisstraf opgeskort en die persoon vrylaat nadat hy 'n borgakte aangegaan het met of sonder borge, na goed-dunke van die hof, op voorwaarde dat hy voor daardie hof of 'n ander hof verskyn op die dag wat vir die relaas van die lasbrief bepaal is, watter dag hoogstens vyftien dae na die datum van die verlyding van die borgakte moet wees; en in geval die bedrag van die boete nie ingevorder word nie, kan die gevangenisstraf onmiddellik ten uitvoer gelê word of soos vantevore vir 'n verdere tydperk of tydperke van hoogstens vyftien dae opgeskort word, na gelang die hof goedvind.

(4) In 'n geval waar 'n bevel vir die betaling van geld uitgereik word, by wanbetaling waarvan gevangenis-straf opgelê kan word, en die geld nie onverwyld betaal word nie, kan die hof van die persoon wat beveel is om so 'n betaling te doen, vorder dat hy 'n borgakte soos in subartikel (3) voorgeskryf, aangaan, en as hy versuim om dit te doen, kan die hof onmiddellik gevangenisstraf ople asof die geld nie ingevorder was nie.

(5) (a) Wanneer iemand tot slegs betaling van 'n boete of, by wanbetaling van die boete, tot 'n tydperk van gevangenisstraf veroordeel word, en 'n gedeelte van die boete voor verstryking van daardie tydperk betaal of ingevorder word, word die tydperk van die gevangenis-straf verkort deur 'n aantal dae wat so na as moontlik in dieselfde verhouding staan tot die aantal dae waartoe so iemand veroordeel is as wat die aldus betaalde en ingevorderde bedrag tot die bedrag van die boete staan.

(b) 'n Bedrag wat die gevangenisstraf met 'n breuk-deel van 'n dag sou verkort, word nie ontvang nie.

(6) Geen betaling van 'n bedrag ingevolge hierdie artikel hoef buite die gewone kantoorure aangeneem te word nie.

323. Wanneer iemand skuldig bevind word weens die onwettige publikasie van lasterlike aantygings wat deur middel van drukwerk gepubliseer is, kan die aanklaer die boete, as daar is, en die koste uit enige goed van die beskuldigde op dieselfde wyse as in siviele sake invorder.

324. Die tenuitvoerlegging van 'n vonnis tot 'n boete of gevangenisstraf word nie opgeskort deur die by wet be-paalde verpligting om die notule van die saak vir her-siening deur te stuur nie, tensy die veroordeelde persoon op 'n tyd of plek of op voorwaardes in so 'n wetsbepaling vermeld, voldoende borgstelling gee om, as die verrig-tinge in die saak goedgekeur word, die aan hom opgelegde boete te betaal of homself oor te gee om die gevangenis-straf te ondergaan, na gelang.

RETENTION IN REFORM SCHOOLS

325. (1) Any court in which a person under the age of eighteen years is convicted of any offence may, instead of imposing any punishment upon him for that offence (but subject to the provisions of sub-section (1) of section *three hundred and eleven*), —

- (a) order that he be placed under the supervision of a probation officer; or
- (b) order that he be placed in the custody of any suitable person designated in the order; or
- (c) deal with him both in terms of paragraphs (a) and (b); or
- (d) order that he be sent to a reform school.

(2) Any court which sentences a person under the age of eighteen years to a fine or a whipping may, in addition to imposing that punishment, deal with him in terms of paragraphs (a), (b), (c) or (d) of sub-section (1).

(3) Any court in which a person over the age of eighteen years but under the age of twenty-one years is convicted of any offence other than treason, murder or rape may, instead of imposing any punishment upon him —

- (a) order that he be placed under the supervision of a probation officer; or
- (b) order that he be sent to a reform school.

(4) A court which has ordered in terms of this section that any person be sent to a reform school or that he be placed in the custody of any suitable person designated in the order may direct that such person be kept in a place of detention or a place of safety as defined in section *one* of the Children's Ordinance, 1961 (Ordinance 31 of 1961) until such time as the order of the court can be put into effect: Provided that the court may cancel any order issued in terms of this sub-section for the retention of any person in a place of safety and may order that such person be further retained in a place of detention if it should appear that the order of court that he be sent to a reform school cannot be complied with within a period of twenty-one days.

326. (1) Any person who has been dealt with in terms of section *three hundred and twenty-five* shall remain under the supervision under which, or in the custody in which he was placed or in the reform school to which he was sent or under or in the supervision, custody or reform school to which he may lawfully be transferred —

- (a) if at the time of the making of the order of the court he was under the age of sixteen years, until he attains the age of eighteen years;
- (b) if at the said time he was over the age of sixteen years but under the age of eighteen years, until he attains the age of twenty-one years;
- (c) if at the said time he was over the age of eighteen years, until he attains the age of twenty-three years,

or, in any case, until he is discharged or released on licence in accordance with the provisions of the Children's Ordinance, 1961 (Ordinance 31 of 1961) before having attained the said age.

(2) After the expiration of the period of retention of a person in a reform school, he shall remain under the protection of the management of that reform school —

- (a) if at the time of the making of the order of the court he was under the age of sixteen years, until he attains the age of twenty-one years;
- (b) if at the said time he was over the age of sixteen years but under the age of eighteen years, until he attains the age of twenty-three years;
- (c) if at the said time he was over the age of eighteen years, until he attains the age of twenty-five years, or, in any case, until he is discharged from that protection in accordance with the provisions of the Children's

AANHOUDING IN VERBETERINGSKOLE.

325. (1) 'n Hof waarin iemand onder die ouderdom van agtien jaan aan 'n misdryf skuldig bevind word, kan, in plaas van hom 'n straf vir bedoelde misdryf op te lê (maar behoudens die bepalings van subartikel (1) van artikel *drie-honderd-en-elf*) —

- (a) beveel dat hy onder toesig van 'n proefbeampte geplaas word; of
- (b) beveel dat hy in die bewaring van 'n in die bevel aangewese gesikte persoon geplaas word; of
- (c) met hom handel volgens sowel paragraaf (a) as paragraaf (b); of
- (d) beveel dat hy na 'n verbeteringskool verwys word.

(2) 'n Hof wat iemand onder die ouderdom van agtien jaar tot 'n boete of lyfstraf veroordeel, kan, benevens daardie straf op te lê, ooreenkomsdig paragraaf (a), (b), (c) of (d) van subartikel (1) met hom handel.

(3) 'n Hof waarin iemand bo die ouderdom van agtien jaar maar onder die ouderdom van een-en-twintig jaar weens 'n ander misdryf as hoogverraad, moord of verkrating skuldig bevind word, kan, in plaas van hom 'n straf op te lê —

- (a) beveel dat hy onder toesig van 'n proefbeampte geplaas word; of
- (b) beveel dat hy na 'n verbeteringskool verwys word.

(4) 'n Hof wat ingevolge hierdie artikel beveel het dat iemand na 'n verbeteringskool verwys word of dat hy in die bewaring van 'n gesikte persoon wat in die bevel aangewys word, geplaas word, kan gelas dat so iemand in 'n plek van bewaring of veiligheidsplek soos bepaal in artikel *een* van die Kinderordonnansie 1961 (Ordonnansie 31 van 1961) geplaas word tot tyd en wyl daar aan die bevel van die hof gevolg gegee kan word: Met dien verstande dat die hof enige bevel ingevolge hierdie subartikel uitgereik vir die aanhouding van iemand in 'n veiligheidsplek kan intrek en kan gelas dat daardie persoon verder in 'n plek van bewaring gehou word as dit blyk dat daar nie binne 'n tydperk van een-en-twintig dae aan die bevel van die hof dat hy na 'n verbeteringskool verwys word, gevolg gegee kan word nie.

326. (1) Iemand met wie ingevolge artikel *drie-honderd vyf-en-twintig* gehandel is, bly onder die toesig waaronder, of in die bewaring waarin hy geplaas is, of in die verbeteringskool waarna hy verwys is of onder of in die toesig, bewaring of verbeteringskool waarna hy wettig geplaas word —

- (a) as hy ten tyde van die uitreiking van die bevel van die hof onder die ouderdom van sestien jaar was totdat hy die ouderdom van agtien jaar bereik;
- (b) as hy op bedoelde tydstip oor die ouderdom van sestien jaar maar onder die ouderdom van agtien jaar was, totdat hy die ouderdom van een-en-twintig jaar bereik;
- (c) as hy op bedoelde tydstip oor die ouderdom van agtien jaar was, totdat hy die ouderdom van drie-en-twintig jaar bereik,

of, in elke geval, totdat hy ooreenkomsdig die bepalings van die Kinderordonnansie 1961 (Ordonnansie 31 van 1961) ontslaan of met vergunning vrygelaat word voordat hy bedoelde ouderdom bereik het.

(2) Na afloop van die tydperk van aanhouding van iemand in 'n verbeteringskool bly hy onder beskerming van die bestuur van die verbeteringskool —

- (a) as hy ten tyde van die uitreiking van die bevel van die hof onder die ouderdom van sestien jaar was, totdat hy die ouderdom van een-en-twintig jaar bereik het;
- (b) as hy op bedoelde tydstip oor die ouderdom van sestien jaar maar onder die ouderdom van agtien jaar was, totdat hy die ouderdom van drie-en-twintig jaar bereik;
- (c) as hy op bedoelde tydstip oor die ouderdom van agtien jaar was, totdat hy die ouderdom van vyf-en-twintig jaar bereik,

of, in elke geval, totdat hy ooreenkomsdig die bepalings van die Kinderordonnansie 1961 (Ordonnansie 31 van

Ordinance, 1961 (Ordinance 31 of 1961) before having attained the said age.

(3) The Administrator may, if he deems it necessary, order that any person retained in a reform school whose period of retention has expired or is about to expire, return to or remain in that reform school for such further period as he may fix and may from time to time by further order extend that period: Provided that no such order or further order shall extend the period of retention of the person concerned beyond the date of expiration of his period of protection.

(4) The expressions "period of retention" and "period of protection" in this section shall bear the meanings assigned thereto in section *one* of the Children's Ordinance, 1961 (Ordinance 31 of 1961) with reference to section *three hundred and sixteen* of the Criminal Procedure and Evidence Proclamation, 1935 (Proclamation 30 of 1935).

WHIPPING

327. When any person may be sentenced by a court to a whipping, that punishment may be inflicted in addition to, or in substitution for, any other punishment to which he may otherwise be sentenced, and the number of strokes to be inflicted, not exceeding ten, shall, subject to the provisions of any other law, be in the discretion of the court which shall specify in the sentence the number of strokes which are to be inflicted.

328. Subject to the provisions of section *three hundred and twenty-nine* whipping shall only be imposed by an inferior court —

(a) in the case of a first conviction for —

- (i) assault of an aggravated or indecent nature or with intent to do grievous bodily harm or with intent to commit any other offence;
- (ii) culpable homicide, bestiality or an act of gross indecency committed by one male person with another or any attempt to commit any such offence; or
- (iii) any statutory offence for which whipping may be imposed as a punishment, unless it is expressly provided that whipping shall only be imposed as a punishment on a second or subsequent conviction;

(b) in the case of a second or subsequent conviction for an offence committed within a period of three years after the former conviction.

329. (1) Subject to the provisions of sub-section (2) and sections *three hundred and twenty-seven* and *three hundred and thirty-two* any person convicted of an offence mentioned in Part II of the Third Schedule shall be sentenced to whipping.

(2) The provisions of sub-section (1) shall not apply in relation to any person who is proved to have been sentenced previously to a whipping other than whipping referred to in section *three hundred and thirty-one* or who is dealt with under section *three hundred and eighteen*, *three hundred and nineteen*, *three hundred and twenty*, *three hundred and twenty-five* or *three hundred and thirty-one*.

(3) The Administrator may by notice in the *Official Gazette* add any offence to Part II of the Third Schedule, if a resolution authorizing him so to add such offence is passed by the Legislative Assembly of the Territory.

330. In any case in which a sentence by a superior court of whipping is wholly or partly prevented on grounds of health from being executed, the person sentenced to a whipping shall be kept in custody until that sentence is revised by the court which passed it or if that court is not sitting, by the Supreme Court, and the court may in its discretion either remit the sentence of whipping or sentence such person, in lieu of whipping or in lieu of so much of the sentence of whipping as was not executed, to imprisonment for a period not exceeding twelve months, which period of imprisonment may be in addition to any

1961) van daardie beskerming ontslaan word voordat hy bedoelde ouderdom bereik het.

(3) Die Administrateur kan as hy dit nodig ag, beveel dat 'n persoon wat in 'n verbeteringskool aangehou word en wie se tydperk van aanhouding verstryk het of op die punt staan om te verstryk, na die verbeteringskool moet terugkeer of daarin moet aanbly vir so 'n verdere tydperk soos hy bepaal en kan daardie tydperk van tyd tot tyd deur middel van 'n verdere bevel verleng: Met dien verstande dat so 'n bevel of verdere bevel nie die tydperk van aanhouding van die betrokke persoon verleng tot na die datum van die verstryking van sy tydperk van beskerming nie.

(4) Die uitdrukkings "tydperk van aanhouding" en "tydperk van beskerming" in hierdie artikel het die betekenis wat artikel *een* van die Kinderordonnansie 1961 met verwysing na artikel *drie honderd en sestien* van die Kriminele Prosedure en Bewyslewering Proklamasie 1935 (Proklamasie 30 van 1935) daaraan verleen.

LYFSTRAF.

327. Wanneer iemand deur 'n hof tot lyfstraf gevonnis kan word, kan daardie straf opgelê word benevens of ter vervanging van enige ander straf wat hom anders opgelê kan word, en die aantal houe van hoogstens tien wat toegedien moet word, berus, behoudens enige ander wetsbepalings, by die diskresie van die hof wat die aantal houe wat toegedien moet word in die vonnis bepaal.

328. Behoudens die bepalings van artikel *drie honderd negen-en-twintig* word lyfstraf deur 'n laer hof opgelê slegs —

- (a) in die geval van 'n eerste skuldigbevinding weens—
 - (i) aanranding onder verswarende omstandighede of van 'n onsedelike aard of met die opset om ernstig te beseer of met die opset om 'n ander misdryf te pleeg;
 - (ii) strafbare manslag, bestialiteit of 'n growwe onsedelike daad deur 'n manspersoon met 'n ander gepleeg of 'n poging om so 'n misdryf te pleeg; of
 - (iii) 'n wetteregtelike misdryf waarvoor lyfstraf as straf opgelê kan word, tensy dit uitdruklik bepaal word dat lyfstraf slegs as 'n straf by 'n tweede of daaropvolgende skuldigbevinding opgelê word;

(b) in die geval van 'n tweede of daaropvolgende skuldigbevinding weens 'n misdryf wat binne 'n tydperk van drie jaar na die vorige skuldigbevinding gepleeg is.

329. (1) Behoudens die bepalings van subartikel (2) en artikels *drie honderd sewen-en-twintig* en *drie honderd twee-en-dertig* moet iemand wat aan 'n misdryf in deel II van die derde bylae vermeld, skuldig bevind word tot lyfstraf veroordeel word.

(2) Die bepalings van subartikel (1) is nie van toepassing nie met betrekking tot iemand ten opsigte van wie dit bewys word dat hy voorheen veroordeel is tot ander lyfstraf as lyfstraf in artikel *drie honderd een-en-dertig* vermeld of ten opsigte van wie daar kragtens artikel *drie honderd en agtien*, *drie honderd en negentien*, *drie honderd en twintig*, *drie honderd vyf-en-twintig* of *drie honderd een-en-dertig* opgetree word.

(3) Die Administrateur kan by kennisgewing in die *Offisiële Koerant* enige misdryf by deel II van die derde bylae voeg, as 'n besluit wat hom magtig om so 'n misdryf aldus by te voeg deur die Wetgewende Vergadering van die Gebied aangeneem word.

330. In 'n geval waarin 'n vonnis deur 'n hoër hof tot lyfstraf om gesondheidsredes in die geheel of gedeeltelik nie ten uitvoer gelê kan word nie, word die persoon wat daartoe gevonnis is in bewaring gehou totdaar die vonnis deur die hof wat dit opgelê het of, as daardie hof nie in sitting is nie, deur die Hooggeregshofhersien is, en kan die hof na goeddunke die vonnis tot lyfstraf kwytskeld of bedoelde persoon, in die plek van die lyfstraf of in die plek van soveel van die lyfstraf sonnie ten uitvoer gelê is nie, tot gevangenisstraf veroordeel vir 'n tydperk van hoogstens twaalf maande, watter tydperk van gevangenisstraf benewens enige ander straf kan

other punishment to which the person may have been sentenced for the same offence.

331. (1) If a male person of not exceeding the age of twenty-one years is convicted of any offence, the court before which he is convicted may, in lieu of any other punishment and, as well in the case of a first conviction as of any subsequent conviction, sentence such person to receive in private a moderate correction of whipping not exceeding ten cuts, which correction shall be administered by such person and in such place and with such instrument as the court may appoint. The parent or guardian of such first-mentioned person shall have the right to be present.

(2) Whenever any medical practitioner certifies in writing that any person sentenced under sub-section (1) is not in a fit state to undergo the sentence or any part thereof, the person appointed by the court to execute the sentence shall submit the certificate immediately to the court which passed the sentence or to a court having like jurisdiction which may thereupon, if it is satisfied that such person is not in a fit state to undergo such sentence or any part thereof, amend such sentence as it deems fit: Provided that if such medical practitioner is not a district surgeon or a person with like authority, the court may, if the circumstances so permit, require the district surgeon or a person with like authority, to certify in writing whether or not the person concerned is in a fit state to undergo such sentence or any part thereof.

332. (1) No female and no person over the age of fifty years shall be sentenced by any court to punishment of whipping.

(2) Whipping shall not be imposed by any court, if it is proved that the existence of some psychoneurotic or psychopathic condition contributed towards the commission of the offence.

333. Subject to the provisions of section *three hundred and thirty-one*, every punishment of whipping by whatever court imposed shall be carried out privately in a prison and in accordance with the laws governing prisons.

RECOGNIZANCES

334. (1) A person convicted of an offence other than an offence punishable with death or an offence in respect of which the imposition of a prescribed punishment on the person convicted thereof, is compulsory, may, instead of or in addition to any punishment to which he is liable, be ordered by a superior court to enter into his own recognizances, with or without sureties, in such amount as the court thinks fit, that he shall keep the peace and be of good behaviour for a period fixed by the court and may be ordered by the court to be imprisoned until such recognizances, with sureties, if so directed, are entered into: Provided that the imprisonment for not entering into the recognizance shall, in no case, exceed one year.

(2) If any person is convicted of an offence involving assault or injury to any person, other than an offence in respect of which the imposition of a prescribed penalty on the person convicted thereof, is compulsory, an inferior court may, in lieu of or in addition to any other punishment, order that the convicted person shall give security to keep the peace and to refrain from committing any injury against the complainant for a period not exceeding one year, and if such person refuses or fails to give such security the court may order him to be committed to prison for a period not exceeding three months unless such security is sooner given.

(3) If the conditions upon which any recognizance or security under this section was given are not observed by the person who gave it, the court may declare the recognizance or security to be forfeited and any such declaration of forfeiture shall have the effect of a judgment in a civil action in that court.

335. (1) When a person is convicted of an offence other than an offence punishable with death or an offence in respect of which the imposition of a prescribed penalty on the person convicted thereof, is compulsory, a superior

wees waartoe die persoon vir dieselfde misdryf veroordeel mag gewees het.

331. (1) As 'n manspersoon van nie bo die ouderdom van een-en-twintig jaar nie aan 'n misdryf skuldig bevind word, kan die hof voor wie hy skuldig bevind word, so iemand vonnis om in die plek van enige ander straf en in die geval van sowel 'n eerste as 'n latere skuldigbevinding, as 'n tugmaatreël 'n matige lyfstraf van hoogstens tien houe in afsondering te ondergaan, watter lyfstraf deur die persoon en in die plek en met die instrument toegedien word wat die hof aanwys. Die ouer of voog van eersbedoelde persoon is geregtig om aanwesig te wees.

(2) Wanneer 'n geneesheer skriftelik sertificeer dat iemand ingevolge subartikel (1) gevonnis is, nie geskik is om die vonnis of enige gedeelte daarvan te ondergaan nie, lê die persoon wat deur die hof aangewys is om die vonnis ten uitvoer te lê die sertifikaat onverwyld voor aan die hof wat die vonnis opgelê het of aan 'n hof wat soortgelyke regsbevoegdheid besit, wat dan, as hy oortuig is dat so iemand nie geskik is om daardie vonnis of enige gedeelte daarvan te ondergaan nie, bedoelde vonnis na goeddunke kan wysig: Met dien verstande dat as bedoelde geneesheer nie 'n distriksgeneesheer of iemand met soortgelyke gesag is nie, die hof, as die omstandighede dit toelaat, die distriksgeneesheer of iemand met soortgelyke gesag kan gelas om skriftelik te sertificeer of die betrokke persoon geskik is om bedoelde vonnis of enige gedeelte daarvan te ondergaan al dan nie.

332. (1) Geen vrou en niemand bo die ouderdom van vyftig jaar word deur enige hof tot lyfstraf veroordeel nie.

(2) Lyfstraf word deur geen hof opgelê as dit bewys word dat die aanwesigheid van een of ander psigoneurotiese of psigopatiële toestand tot die pleging van die misdryf bygedra het nie.

333. Behoudens die bepalings van artikel *drie honderd een-en-dertig* word lyfstraf deur watter hof ook al opgelê, in afsondering in 'n gevangenis en ooreenkomsdig die wet op gevangenis, uitgevoer.

BORGAKTES.

334. (1) Iemand wat aan 'n ander misdryf skuldig bevind word as 'n misdryf wat met die dood strafbaar is of 'n misdryf ten opsigte waarvan die oplegging van 'n voorgeskrewe straf aan die persoon wat daaraan skuldig bevind word, verpligtend is, kan, in die plek van of benewens enige straf wat hom opgelê kan word, deur 'n hoër hof gelas word om 'n borgakte met of sonder borge aan te gaan, vir so 'n bedrag soos die hof goedvind, dat hy vir die tydperk wat die hof bepaal die vrede sal bewaar en hom goed sal gedra, en die hof kan gelas dat hy gevange gehou word totdat die borgakte, met borge, indien aldus beveel is, aangegaan is: Met dien verstande dat die gevangenisstraf vir die nie aangaan van die borgakte in geen geval een jaar te boven mag gaan nie.

(2) As iemand skuldig bevind word aan 'n misdryf wat 'n aanranding op of besering aan enigiemand insluit, behalwe 'n misdryf ten opsigte waarvan die oplegging van 'n voorgeskrewe straf aan die persoon wat daaraan skuldig bevind word, verpligtend is, kan 'n laer hof, in die plek van of benewens enige ander straf, beveel dat die veroordeelde persoon sekerheid moet stel om vir 'n tydperk van hoogstens een jaar die vrede te bewaar en om hom daarvan te weerhou om die klaer enige letsel aan te doen, en as so iemand weier of versul om sodanige sekerheid te stel, kan die hof sy gevangesetting in 'n gevangenis vir 'n tydperk van hoogstens drie maande gelas tensy sodanige sekerheid vroeér gestel word.

(3) As die voorwaardes waarop 'n borgakte of sekerheid kragtens hierdie artikel aangegaan of gestel is, nie deur die persoon wat dit aangegaan of gestel het, nagekom word nie, kan die hof die borgakte of sekerheid verbeurd verklaar, en so 'n verbeurdverklaring het die uitwerking van 'n vonnis in 'n siviele saak in daardie hof.

335. (1) Wanneer iemand weens 'n ander misdryf skuldig bevind word as 'n misdryf wat met die dood strafbaar is of 'n misdryf ten opsigte waarvan die oplegging van 'n voorgeskrewe straf aan die persoon wat daaraan

court may, instead of passing sentence, discharge the accused upon his entering into his own recognizances with or without sureties, in such sum as the court may think fit, on condition that he shall appear and receive judgment at some future session of the court or when called upon.

(2) If the trial was held before a circuit local division of the Supreme Court the recognizance may, in the discretion of the court, be subject to the condition that the person convicted shall appear and receive judgment at some fixed future time or when called upon before the Supreme Court.

(3) If sentence is not passed forthwith any judge of the court may, at any subsequent sitting thereof at which the person convicted is present, pass sentence upon him.

MISCELLANEOUS PROVISIONS

336. Whenever it is proved that a person convicted of any offence was under the influence of intoxicating liquor or narcotic drugs when he committed that offence the court may, in determining the appropriate sentence to be imposed upon him in respect of that offence, regard as an aggravating circumstance the fact that he was thus under the influence of intoxicating liquor or narcotic drugs.

337. (1) When a person is summoned or warned to appear in an inferior court or is arrested or is informed by a peace officer that it is intended to institute criminal proceedings against him for any offence, and an officer holding a rank or post designated by the Administrator from time to time for the purposes of this section by notice in the Official Gazette, has reasonable grounds for believing that the court which will try the said person for such offence will, on convicting such person of such offence, not impose a sentence of imprisonment or whipping or a fine exceeding thirty rand, such person may sign and deliver to such officer a document admitting that he is guilty of the said offence, and

- (a) deposit with such officer such sum of money as the latter may fix; or
- (b) furnish to such officer such security as the latter deems sufficient, for the payment of any fine which the court trying the case in question may lawfully impose therefore,

to an amount not exceeding thirty rand or the maximum of the fine with which such offence is punishable, whichever amount is the lesser, and such person shall, subject to the provisions of sub-section (8), thereupon not be required to appear in court to answer a charge of having committed the said offence.

(2) Such person may at any time before sentence is passed upon him in terms of sub-section (5) submit to any person in charge of the aforesaid document an affidavit setting forth any facts which he desires to bring to the notice of the court in mitigation of the punishment to be imposed for the said offence, and such affidavit shall be submitted together with the said document to the court which is to pass the sentence.

(3) An officer designated, as aforesaid, if he is not the public prosecutor attached to the court in which the offence in question is triable, shall, as soon as practicable after receiving a document referred to in sub-section (1), transmit it to such public prosecutor.

(4) Whenever such public prosecutor has received any such document he shall transmit it to the clerk of the said court: Provided that before doing so he may report the matter to the attorney-general and ask him for his directions thereon.

(5) After receiving such document the clerk of such court shall enter it in the criminal record book of that court and the person in question shall, subject to the provisions of sub-section (8), thereupon be deemed to have been convicted by such court of the said offence, and such court shall pass sentence upon such person in accordance with law: Provided that such court may decline to pass sentence upon him and may direct that he be prosecuted

skuldig bevind word, verpligtend is, kan 'n hoër hof, in plaas van 'n vonnis op te lê, die beskuldigde ontslaan as hy 'n borgakte met of sonder borge, vir die bedrag wat die hof goedvind, aangaan, om by 'n latere sitting van die hof, wanneer hy opgeroep word, te verskyn en gevonnis te word.

(2) As die verhoor voor 'n rondgaande plaaslike afdeling van die Hooggeregshof gedien het, kan die borgakte, na goedunke van die hof, onderworpe wees aan die voorwaarde dat die veroordeelde persoon op 'n bepaalde latere datum of wanneer hy opgeroep word, voor die Hooggeregshof moet verskyn om gevonnis te word.

(3) As vonnis nie onverwyld opgelê word nie, kan enige regter van die hof by enige latere sitting daarvan waarby die veroordeelde persoon aanwesig is, hom vonnis oplê.

DIVERSE BEPALINGS.

336. Wanneer dit bewys word dat iemand wat aan 'n misdryf skuldig bevind is, onder die invloed van bedwelmende drank of verdowingsmiddels was toe hy die misdryf gepleeg het, kan die hof by die bepaling van die gepaste vonnis wat hom opgelê moet word ten opsigte van bedoelde misdryf, die feit dat hy aldus onder die invloed van bedwelmende drank of verdowingsmiddels was, as 'n verswarende omstandigheid beskou.

337. (1) Wanneer iemand gedagvaar of gewaarsku word om voor 'n laer hof te verskyn of in hegtenis geneem word of deur 'n vredesbeampte in kennis gestel word dat dit die voorname is om 'n strafsaak teen hom weens 'n misdryf in te stel, en 'n beampte wat 'n rang of pos beklee wat deur die Administrateur van tyd tot tyd vir die doeleindes van hierdie artikel by kennisgewing in die *Offisiële Koerant* aangewys is, redelike gronde het om te vermoed dat die hof wat so iemand vir so 'n misdryf sal verhoor, nie by die skuldigbevinding van so iemand weens so 'n misdryf, gevangenisstraf of lyfstraf of 'n boete van meer as dertig rand sal oplê nie, kan so iemand 'n dokument, waarin hy erken dat hy aan bedoelde misdryf skuldig is, onderteken en aan so 'n beampte oorhandig, en

- (a) die geldbedrag wat bedoelde beampte bepaal by hom deponeer; of
- (b) aan bedoelde beampte die sekerheid stel wat laasgenoemde voldoende ag ter betaling van enige boete wat die hof wat die betrokke saak sal verhoor, wettig daarvoor kan oplê,

tot 'n bedrag van hoogstens dertig rand of die maksimum boete waarmee so 'n misdryf strafbaar is, na gelang van watter bedrag minder is, en daarop is so iemand, behoudens die bepalings van subartikel (8), nie verplig om in die hof te verskyn om die aanklag dat hy bedoelde misdryf gepleeg het, te antwoord nie.

(2) So iemand kan te eniger tyd voordat vonnis hom ingevolge subartikel (5) opgelê word, aan iemand in wie se bewaring voormalde dokument is, 'n beëdigde verklaring voorlê waarin hy die feite uiteensit wat hy tot versagting van die vonnis wat vir bedoelde misdryf opgelê staan te word, onder die aandag van die hof wil bring, en so 'n beëdigde verklaring word saam met genoemde dokument voorgelê aan die hof wat die vonnis moet ople.

(3) 'n Beampte aangewys soos voormeld, stuur, as hy nie die staatsaanklaer is wat aan die hof waarin die betrokke misdryf beregbaar is, verbonde is nie, so gou doenlik na ontvangs van 'n in subartikel (1) bedoelde dokument, dit aan bedoelde staatsaanklaer.

(4) Wanneer bedoelde staatsaanklaer so 'n dokument ontvang het, stuur hy dit aan die klerk van bedoelde hof: Met dien verstande dat voordat hy dit doen, hy die aangeleentheid by die Prokureur-generaal kan anmeld en sy opdrag daaromtrent kan vra.

(5) Na ontvangs van so 'n dokument teken die klerk van bedoelde hof dit in die kriminele sakeboek van daardie hof aan, en daarop word die betrokke persoon, behoudens die bepalings van subartikel (8), geag deur bedoelde hof weens bedoelde misdryf skuldig bevind te gewees het, en lê bedoelde hof die bedoelde persoon vonnis volgens wet op: Met dien verstande dat bedoelde hof kan weier om hom vonnis op te lê en kan gelas dat hy op die

in the ordinary course, and in that case, if the said person has been summoned or warned in terms of sub-section (1), he shall be summoned afresh to answer such charge as the public prosecutor may prefer against him.

(6) If the court imposes a fine on such person such fine shall be paid out of any sum deposited in terms of paragraph (a) of sub-section (1), or if security has been given in terms of paragraph (b) of sub-section (1) and the fine is not paid in accordance with the terms of the security, the latter, if corporeal property, may be sold by public auction and the fine paid out of the proceeds of the sale: Provided that if the whereabouts of such person are known, written notice of the intended sale and of the time and place thereof shall be given to him not less than three days before the sale takes place.

(7) If any balance remains of any such deposit or of the proceeds of any such sale, after payment of such fine, such balance shall be paid over to the person who made such deposit or gave such security, and if such deposit or such security is insufficient to pay the fine imposed, the balance remaining due shall be recovered from the person upon whom the fine was imposed in the manner provided in section *three hundred and twenty-two*.

(8) At any time before sentence has been passed upon the person in question under sub-section (5) the attorney-general may direct that no action be taken in the matter under sub-sections (5), (6) and (7), but that such person be brought to trial in the ordinary manner: Provided that in that case, if such person has been summoned or warned in terms of sub-section (1), he shall be summoned afresh to answer such charge as the attorney-general may direct.

(9) If at the conclusion of the trial referred to in sub-section (8) the person tried is sentenced to pay a fine, the provisions of sub-sections (6) and (7) shall apply.

(10) If at the conclusion of any proceedings against any person under this section, no fine is imposed upon him, the money or security deposited or given by or on behalf of such person shall be returned to the person who made the deposit or gave the security.

338. (1) Whenever a person is convicted before any court of any offence other than an offence specified in the Fourth Schedule or an offence in respect of which the imposition of a prescribed punishment on the person convicted thereof is compulsory, it may in its discretion —

- (a) postpone for a period not exceeding three years the passing of sentence and release the person convicted on one or more conditions (whether as to compensation, the rendering to the person aggrieved of some specific benefit or service in lieu of compensation for damage or pecuniary loss, submission to instruction or treatment, compulsory attendance at some specified centre for a specified purpose, good conduct or otherwise) which the court may order to be inserted in recognizances to appear at the expiration of that period; or
- (b) postpone the passing of sentence, release the person convicted and order that, within a period not exceeding three years specified by the court, he may be called upon by any magistrate to appear before him; or
- (c) pass sentence, but order the operation of the whole or any part of the sentence to be suspended for a period not exceeding three years on such conditions as aforesaid as the court may specify in the order; or
- (d) impose a fine but suspend the enforcement thereof until the expiration of such period not exceeding three years as the court may fix for payment, in instalments or otherwise of the amount of the fine, the amounts of any instalments and the dates of payment thereof being fixed by order of the court; or

gewone wyse vervolg word, en in daardie geval word bedoelde persoon, as hy ingevolge subartikel (1) gedagvaar of gewaarsku is, opnuut gedagvaar om te antwoord op die aanklag wat die staatsaanklaer teen hom mag bring.

(6) As die hof so iemand 'n boete oplê, word die boete uit die ingevolge paragraaf (a) van subartikel (1) gedeponeerde bedrag betaal, of as sekerheid ingevolge paragraaf (b) van subartikel (1) gestel is en die boete nie ooreenkomsdig die bepalings van die sekerheidstellingsbetaal word nie, kan die sekerheid, as dit liggamlike goed is, by publieke veiling verkoop word en die boete uit die opbrengs daarvan betaal word: Met dien verstande dat as die verblyfplek van so iemand bekend is, skriftelik kennis van die voorgenome verkoping en van die tyd en plek daarvan minstens drie dae voor dat die verkoping plaasvind, aan hom gegee moet word.

(7) As daar na betaling van die boete 'n oorskot oorbly van so 'n deposito of van die opbrengs van so 'n verkoping, word die oorskot aan die persoon wat bedoelde deposito gemaak het of bedoelde sekerheid gestel het, oorbetaal, en as so 'n deposito of so 'n sekerheid ontoereikend is om die opgelegde boete te betaal, word die nog verskuldigde saldo op die persoon aan wie die boete opgelê is op die in artikel *driehonderd twee-en-twintig* bepaalde wyse verhaal.

(8) Die Prokureur-generaal kan te eniger tyd voor dat die betrokke persoon kragtens subartikel (5) vonnis opgelê is, gelas dat geen stappe in die saak kragtens subartikels (5), (6) en (7) gedoen word nie, maar dat bedoelde persoon op die gewone wyse vervolg word: Met dien verstande dat in daardie geval, as bedoelde persoon ingevolge subartikel (1) gedagvaar of gewaarsku is, hy opnuut gedagvaar moet word om te antwoord op die aanklag wat die Prokureur-generaal gelas.

(9) As die verhoorde persoon by die afloop van die in subartikel (8) bedoelde verhoor tot 'n boete veroordeel word, is die bepalings van subartikels (6) en (7) van toepassing.

(10) As geen boete by die afloop van 'n saak teen iemand hom kragtens hierdie artikel opgelê word nie, word die geld of sekerheid wat deur of ten behoeve van so iemand gedeponeer of gestel is aan die persoon wat die deposito gemaak of die sekerheid gestel het, terugbetaal.

338. (1) Wanneer iemand voor 'n hof skuldig bevind word aan 'n ander misdryf as 'n in die vierde bylae genoemde misdryf of 'n misdryf ten opsigte waarvan die oplegging van 'n voorgeskrewe straf aan die persoon wat daaraan skuldig bevind word, verpligtend is, kan die hof na goedgunke —

- (a) die oplegging van die vonnis vir 'n tydperk van hoogstens drie jaar uitstel en die veroordeelde persoon vrystel op een of meer voorwaardes (hetso met betrekking tot skadeloosstelling, die verskaffing aan die benadeelde persoon van een of ander bepaalde voordeel of diens in plaas van skadeloosstelling vir skade of geldelike verlies, onderwering aan opleiding of behandeling, verpligte bywoning van een of ander bepaalde sentrum vir 'n bepaalde doel, goeie gedrag of andersins) wat op bevel van die hof opgeneem moet word in 'n borgakte om by verstryking van bedoelde tydperk te verskyn; of
- (b) die oplegging van die vonnis uitstel, die veroordeelde persoon vrystel en beveel dat hy binne 'n deur die hof bepaalde tydperk wat drie jaar nie te bove gaan nie, deur 'n landdros opgeroep kan word om voor hom te verskyn; of
- (c) vonnis oplê maar beveel dat die tenuitvoerlegging van die geheel of 'n gedeelte van die vonnis vir 'n tydperk van hoogstens drie jaar opgeskort word op sodanige voorwaardes soos voormeld soos die hof in die bevel bepaal; of
- (d) 'n boete oplê maar die tenuitvoerlegging daarvan opskort tot na afloop van so 'n tydperk van hoogstens drie jaar soos die hof vir die betaling, in paaiemende of andersins, van die bedrag van die boete bepaal, en die bedrae en die datums van betaling van die paaiemende word by bevel van die hof bepaal; of

(e) discharge the person convicted with a caution or reprimand.

(2) (a) Whenever a person is convicted of an offence specified in the Fourth Schedule or an offence in respect of which the imposition of a prescribed punishment (other than a punishment prescribed by section *three hundred and eighteen, three hundred and nineteen or three hundred and twenty*) on the person convicted thereof is compulsory, the court may in its discretion —

(i) pass sentence, but order the operation of a part of the sentence to be suspended on conditions as provided in paragraph (b) of sub-section (1); or

(ii) if the person convicted is sentenced to both whipping and imprisonment, order the whole of either the one or the other such sentence to be suspended as aforesaid.

(b) The court shall not suspend any sentence of whipping as provided in paragraph (a), except in special circumstances, and shall in the event of such suspension enter on the record its reasons therefor.

(3) (a) Any court which has sentenced a convicted person to a term of imprisonment as an alternative to a fine, may where the fine has not been paid, at any stage before the termination of the imprisonment suspend the operation of such sentence and order the release of the person convicted on conditions relating to the payment of the fine or such portion thereof as may still be due in terms of sub-section (5) of section *three hundred and twenty-two* (whether as to the entering by the accused into his own recognizances, with or without sureties, in the amount of such fine or such portion, for the payment of that amount or as to the taking up of a specified employment and payment of the fine in instalments by the accused, or his employer, or otherwise) which may be satisfactory to the court.

(b) Any court which has suspended a sentence in terms of paragraph (a) may for good cause at any time during the period of suspension cancel the order of suspension and recommit the person convicted to serve the balance of the sentence subject to the provisions of sub-section (5) aforesaid, or further suspend the operation of the sentence on one or more conditions as the court may deem fit.

(c) If the conditions upon which any recognizance under paragraph (a) has been given are not observed by the person who gave it, the court may declare the recognizance to be forfeited and such declaration of forfeiture shall have the effect of a judgment in a civil action in that court: Provided that the provisions of this paragraph shall not apply in the event of any condition upon which a recognizance has been given, not having been observed by reason of the death of the person who gave it.

(4) If at the end of the period for which the passing of sentence has been postponed under paragraph (a) of sub-section (1) the court is satisfied that the person convicted has observed all the conditions of the recognizances, the court may discharge him without passing any sentence, and such discharge shall have the effect of an acquittal, except for the purpose of Chapter XV.

(5) If the convicted person has, at the end of the period within which he may in terms of an order under paragraph (b) of sub-section (1) be called upon to appear, not been so called upon, he shall be deemed to have been discharged with a caution under paragraph (e) of sub-section (1).

(6) If the operation of a sentence or any portion of a sentence has been suspended in terms of paragraph (c) of sub-section (1) or in terms of sub-section (2) and the person convicted has observed all the conditions specified in the order throughout the period of suspension, such sentence or portion thereof shall not be enforced.

(7) (a) If the conditions of any order made or recognizance entered into under this section be not fulfilled, the person convicted may, upon the order of a magistrate be arrested without warrant, and such magistrate may then commit the person convicted to undergo the sentence

(e) die veroordeelde persoon met 'n waarskuwing of berisping ontslaan.

(2) (a) Wanneer iemand skuldig bevind word aan 'n in die vierde bylae genoemde misdryf of 'n misdryf ten opsigte waarvan die oplegging van 'n voorgeskrewe straf (behalwe 'n by artikel *driehonderd en agtien, driehonderd en negentien of driehonderd en twintig* voorgeskrewe straf) aan die persoon wat daaraan skuldig bevind word, verpligtend is, kan die hof na goeddunke —

(i) vonnis opgelê, maar beveel dat die tenuitvoerlegging van 'n gedeelte van die vonnis opgeskort word op voorwaardes soos in paragraaf (b) van sub-artikel (1) vermeld; of

(ii) as die veroordeelde persoon tot lyfstraf sowel as gevangenisstraf gevonnis word, beveel dat óf die een óf die ander sodanige vonnis geheel opgeskort word soos voormeld.

(b) Behalwe in buitengewone omstandighede, skort die hof nie lyfstraf op soos in paragraaf (a) bepaal nie, en in geval van so 'n opskorting, teken die hof sy redes daarvoor in die notule aan.

(3) (a) 'n Hof wat aan 'n veroordeelde persoon 'n tydperk van gevangenisstraf as 'n alternatiewe straf vir 'n boete opgelê het, kan, waar die boete nie betaal is nie te eniger tyd voor afloop van die gevangenisstraf, die tenuitvoerlegging van daardie vonnis opeskort en die vrystelling van die veroordeelde persoon gelas op voorwaardes aangaande die betaling van die boete of die gedeelte daarvan wat nog ooreenkomsdig subartikel (5) van artikel *driehonderd twee-en-twintig* verskuldig mag wees (hetby met betrekking tot die aangaan deur die beskuldigde van 'n borgakte met of sonder borge vir die bedrag van daardie boete of daardie gedeelte ter betaling van daardie bedrag of met betrekking tot die aanvaarding van 'n bepaalde werk en betaling van die boete in paaiente deur die beskuldigde of sy werkgever of andersins) wat die hof bevredigend vind.

(b) 'n Hof wat 'n vonnis ooreenkomsdig paragraaf (a) opgeskort het, kan te eniger tyd gedurende die tydperk van opskorting die opskortingsbevel op voldoende gronde intrek en die veroordeelde persoon weer verwys om die oorblywende gedeelte van die vonnis, behoudens die bepalings van bedoelde subartikel (5), te ondergaan, of die tenuitvoerlegging van die vonnis verder opeskort op een of meer voorwaardes soos die hof goedvind.

(c) As die voorwaardes waarop 'n borgakte ingevolge paragraaf (a) aangegaan is, nie deur die persoon wat dit aangegaan het, nagekom word nie, kan die hof die borgakte verbeurd verklaar en het die verbeurdverklaring die uitwerking van 'n vonnis in 'n siviele saak in daardie hof: Met dien verstande dat die bepalings van hierdie paragraaf nie van toepassing is nie in geval 'n voorwaarde waarop 'n borgakte aangegaan is weens die dood van die persoon wat dit aangegaan het, nie nagekom is nie.

(4) As die hof na afloop van die tydperk waarvoor die oplegging van vonnis kragtens paragraaf (a) van subartikel (1) uitgestel is, oortuig is dat die veroordeelde persoon al die voorwaardes van die borgakte nagekom het, kan die hof hom ontslaan sonder om vonnis op te lê en so 'n ontslag het, behalwe by die toepassing van hoofstuk XV, die uitwerking van 'n vryspraak.

(5) As die veroordeelde persoon aan die einde van die tydperk waarbinne hy ingevolge 'n bevel kragtens paragraaf (b) van subartikel (1) opgeroep kan word om te verskyn, nie aldus opgeroep is nie, word dit geag dat hy kragtens paragraaf (e) van subartikel (1) met 'n waarskuwing ontslaan is.

(6) As die tenuitvoerlegging van 'n vonnis of van 'n gedeelte van 'n vonnis ooreenkomsdig paragraaf (c) van subartikel (1) of ooreenkomsdig subartikel (2) opgeskort is, en die veroordeelde persoon gedurende die hele tydperk van die opskorting al die in die bevel bepaalde voorwaardes nagekom het, word bedoelde vonnis of gedeelte daarvan nie ten uitvoer gelê nie.

(7) (a) As aan die voorwaardes van 'n kragtens hierdie artikel uitgereikte bevel of aangegane borgakte nie voldoen word nie, kan die veroordeelde persoon op bevel van 'n landdros sonder lasbrief in hegtenis geneem word, en bedoelde landdros kan die veroordeelde persoon

which has been or may then be lawfully imposed, or may, in his discretion, grant the person convicted an extension of time (where this is possible) for the purpose of carrying out such conditions or may, if no sentence has been imposed and the person convicted is then under the age of twenty-one years, make in respect of him any order which can be made in terms of section *three hundred and twenty-five* upon the conviction of a person of his age.

(b) A convicted person who has been called upon to appear before a magistrate in terms of an order under paragraph (b) of sub-section (1), may be arrested without warrant upon the order of a magistrate, and the magistrate before whom he appears may pass sentence upon him in respect of the offence of which he has been convicted.

(c) When the operation of a sentence under paragraph (c) or (d) of sub-section (1) or under sub-section (2) or (3) has been suspended, any court of equivalent or higher jurisdiction may, if satisfied that the person convicted has through circumstances beyond his control been unable to perform any condition of such suspension, or for any other good and sufficient reason, grant an order further suspending the operation of the sentence subject to such conditions as might have been imposed at the time of the passing or suspension of the sentence.

(8) If a convicted person has been discharged with a caution or reprimand under paragraph (e) of sub-section (1), the discharge shall have the effect of an acquittal, except for the purpose of Chapter XV.

339. (1) Whenever a person is convicted of any offence and is sentenced to pay a fine in respect thereof, with or without an alternative period of imprisonment, the court may (without prejudice to any other powers that it possesses in regard to the payment of fines under this Ordinance) in its discretion order enforcement of the fine, whether in whole or in part, by seizure of moneys upon the person of the person convicted or, if any amount is due or to become due thereafter as wages from the employer of the person convicted, order that employer to deduct a specified amount from the wages so due, or from time to time as they become due, sufficient to pay the amount of the fine in one sum or in instalments.

(2) If the convicted person leaves the service of the employer referred to in sub-section (1) before the fine has been paid in full the court may order any new employer of the convicted person to deduct from the wages payable by him to such convicted person or which becomes payable thereafter an amount, sufficient to pay the amount of the fine still due in one sum or in instalments.

340. No person shall be sentenced by an inferior court to imprisonment for a period of less than four days, unless the sentence is that the person convicted be detained until the rising of the court.

341. (1) Whenever any person has before or after the commencement of this Ordinance, been sentenced to imprisonment without the option of a fine in respect of an offence mentioned in Part II of the Third Schedule, the Administrator may by notice in writing, addressed and delivered or tendered to such person, prohibit him from being within any area defined in such notice, during a period specified therein and commencing not less than thirty days and not exceeding six months after the release of such person from such imprisonment.

(2) The Administrator may at any time withdraw or modify any such notice or grant such person permission in writing temporarily to visit any place where he is not permitted to be in terms of such notice.

(3) Any person who is in any area wherein he is prohibited from being under this section, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding twelve months.

(4) Any police officer may remove any person from any area wherein he is prohibited from being under this

dan verwys om die vonnis wat opgelê is of dan wettig opgelê kan word, te ondergaan, of kan, na goedunke, aan die veroordeelde persoon 'n tydverlenging toestaan (waar dit moontlik is) ten einde bedoelde voorwaardes na te kom, of kan, as geen vonnis opgelê is nie en die veroordeelde persoon dan onder die ouderdom van een-en-twintig jaar is, ten opsigte van hom enige bevel uitreik wat by 'n skuldigbevinding van iemand van sy ouderdom ingevolge artikel *driehonderd vyf-en-twintig* uitgereik kan word.

(b) 'n Veroordeelde persoon wat opgeroep is om ingevolge 'n bevel kragtens paragraaf (b) van subartikel (1) voor 'n landdros te verskyn, kan op bevel van 'n landdros sonder lasbrief in hegtenis geneem word en die landdros voor wie hy verskyn, kan hom vonnis ople ten opsigte van die misdryf waaraan hy skuldig bevind is.

(c) Wanneer die tenuitvoerlegging van 'n vonnis kragtens paragraaf (c) of (d) van subartikel (1) of kragtens subartikel (2) of (3) opgeskort is, kan enige hof van gelyke of hoër bevoegdheid by oortuiging dat die veroordeelde persoon wens omstandighede buite sy beheer nie in staat was om een of ander voorwaarde van die opskorting na te kom nie of om enige ander gegronde en voldoende rede, 'n bevel uitreik waarby die tenuitvoerlegging van die vonnis verder opgeskort word op sodanige voorwaardes soos ten tyde van die oplegging of opskorting van die vonnis gestel kon geword het.

(8) Wanneer 'n veroordeelde persoon ingevolge paragraaf (e) van subartikel (1) met 'n waarskuwing of berisping ontslaan is, het die ontslag, behalwe by die toepassing van hoofstuk XV, die uitwerking van 'n vry-spraak.

339. (1) Wanneer iemand aan 'n misdryf skuldig bevind en ten opsigte daarvan tot betaling van 'n boete met of sonder 'n alternatiewe tydperk van gevangenisstraf gevonnis word, kan die hof (sonder afbreuk aan sy ander bevoegdhede kragtens hierdie ordonnansie ten opsigte van die betaling van boetes) na goedunke beveel dat die boete, hetsy ten volle of gedeeltelik, gevorder word deur beslaglegging op gelde in besit van die veroordeelde persoon, of as daar 'n bedrag as loon deur die werkewer van die veroordeelde persoon betaalbaar is of daarna betaalbaar sal word daardie werkewer beveel om van die loon aldus betaalbaar, of van tyd tot tyd wanneer dit betaalbaar word, 'n bepaalde bedrag af te trek, voldoende om die bedrag van die boete in 'n enkele som of in paaimeente te betaal.

(2) As die veroordeelde persoon die diens van die werkewer in subartikel (1) bedoel, verlaat voordat die boete ten volle vereffen is, kan die hof enige nuwe werkewer van die veroordeelde persoon gelas om van die loon wat deur hom aan die veroordeelde persoon betaalbaar is of daarna betaalbaar sal word, 'n bedrag af te trek voldoende om die bedrag van die boete wat dan nog veruskuldig is in 'n enkele som of in paaimeente te betaal.

340. Niemand word deur 'n laer hof tot gevangenisstraf van minder as vier dae gevonnis nie, tensy die vonnis is dat die veroordeelde persoon aangehou word tot die hof verdaag.

341. (1) Wanneer iemand voor of na die inwerkting van hierdie ordonnansie tot gevangenisstraf sonder die keuse van 'n boete gevonnis is ten opsigte van 'n misdryf in deel II van die derde bylae vermeld, kan die Administrateur by skriftelike kennisgewing aan daardie persoon gerig en oorhandig of aangebied, hom verbied om binne een of ander in die kennisgewing omskrewe gebied aanwesig te wees gedurende 'n daarin vermelde tydperk wat minstens dertig dae en hoogstens ses maande na daardie persoon se ontslag uit die gevangenis begin.

(2) Die Administrateur kan te eniger tyd so 'n kennisgewing intrek of wysig of so iemand skriftelik verlof verleen om tydelik 'n plek waar hy ingevolge die kennisgewing nie aanwesig mag wees nie, te besoek.

(3) Iemand wat in 'n gebied aanwesig is waarin dit hom ingevolge hierdie artikel verbode is om aanwesig te wees, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met gevangenisstraf vir 'n tydperk van hoogstens twaalf maande.

(4) 'n Polisiebeampte kan iemand verwyder uit 'n gebied waarin dit hom ingevolge hierdie artikel verbode

section and may detain him in custody pending his removal.

342. (1) The Administrator may from time to time by proclamation in the *Official Gazette* remove from or add to any group of Part I of the Third Schedule any offence mentioned in the proclamation and may in like manner add any group of offences to the said Part I.

(2) Any proclamation issued under sub-section (1) shall be laid on the Table of the Legislative Assembly of the Territory within fourteen days after promulgation thereof if the Assembly is then in ordinary session or if the Assembly is not then in ordinary session, within fourteen days after the commencement of its next ensuing ordinary session.

(3) If the said Legislative Assembly by resolution passed in any session during which a proclamation has been laid on the Table of the Assembly in terms of sub-section (2), disapproves of any such proclamation or of any provision in any such proclamation, such proclamation or such provision thereof shall thereafter cease to be of force and effect to the extent to which it is so disapproved.

343. The Administrator may make regulations as to —

- (a) the powers and duties of employers in relation to any order made under section *three hundred and thirty-nine* for deduction from the wages of a convicted person;
- (b) the powers and duties of probation officers appointed under the Children's Ordinance, 1961 (Ordinance 31 of 1961), in relation to the care or supervision of persons whose sentences of imprisonment are suspended under this Ordinance or in respect of whom the passing of sentence has been postponed under this Ordinance, the circumstances under which courts of law may entrust such care or supervision to probation officers, the conditions which shall be observed by such persons while on probation, and the varying of such conditions,

and generally for the better carrying out of the objects and purposes of this Chapter.

CHAPTER XVIII.

COSTS, COMPENSATION AND RESTITUTION

344. (1) When any person is convicted by a superior court, the court of a regional division or an inferior court with jurisdiction in civil cases, of an offence which has caused damage to or loss of property belonging to some other person, the court trying the case may, after recording the conviction and upon the application of the injured party or of the person conducting the prosecution acting on the instructions of such party, forthwith award him compensation for such damage or loss: Provided that —

- (a) the court of a regional division shall not make any such award unless the compensation claimed does not exceed one thousand rand;
- (b) an inferior court with civil jurisdiction shall not make any such award unless the compensation claimed does not exceed four hundred rand.

(2) For the purposes of determining the amount of compensation or the liability of the accused therefor, the court may refer to the proceedings and evidence at the trial or hear further evidence either upon affidavit or verbally.

(3) The court may order a person convicted upon a private prosecution to pay the costs and expenses of such prosecution, in addition to the sum (if any) awarded under sub-section (1) of this section: Provided that if such private prosecution was instituted after a certificate by the attorney-general that he declined to prosecute, the court may order the costs thereof to be paid by the State.

(4) When a court has convicted a person under sub-section (1) of section *twenty-three* of the Children's Ordinance, 1961 (Ordinance 31 of 1961), of having conducted to the commission of an offence mentioned in sub-section

is om aanwesig te wees en kan hom in hegtenis hou in afwagting van sy verwydering.

342. (1) Die Administrateur kan van tyd tot tyd by proklamasie in die *Offisiële Koerant* 'n misdryf in die proklamasie genoem, van enige groep van deel I van die derde bylae skrap of daarby voeg en kan insgelyks 'n groep misdrywe by genoemde deel I voeg.

(2) 'n Kragtens subartikel (1) uitgevaardigde proklamasie word binne veertien dae na afkondiging daarvan in die Wetgewende Vergadering van die Gebied ter tafel gelê as 'n gewone sessie van die Vergadering dan aan die gang is, of as 'n gewone sessie van die Vergadering nie dan aan die gang is nie, binne veertien dae na die aanvang van sy eersvolgende gewone sessie.

(3) As die genoemde Wetgewende Vergadering by besluit geneem in 'n sessie waarin 'n proklamasie ooreenkomsdig subartikel (2) in die Vergadering ter tafel gelê is, so 'n proklamasie of 'n bepaling van so 'n proklamasie afkeur, verval die regskrag van die proklamasie of die bepaling daarvan vir sover dit aldus afgekeur word.

343. Die Administrateur kan regulasies uitvaardig met betrekking tot —

- (a) die bevoegdhede en pligte van werkgewers met betrekking tot 'n bevel uitgereik kragtens artikel *drie-honderd negen-en-dertig* vir aftrekking van die loon van 'n veroordeelde persoon;
- (b) die bevoegdhede en pligte van proefbeamptes kragtens die Kinderordonnansie 1961 (Ordonnansie 31 van 1961) aangestel met betrekking tot die sorg of toesig van persone wie se vonnis tot gevangenisstraf kragtens hierdie ordonnansie opgeskort word, of ten opsigte van wie die oplegging van vonnis kragtens hierdie ordonnansie uitgestel word, die omstandighede waaronder geregshewe sodanige sorg of toesig aan proefbeamptes kan opdra, die voorwaardes wat sodanige persone gedurende hul proeftyd moet nakom, en die wysiging van sodanige voorwaardes,

en in die algemeen vir die doeltreffender uitvoering van die oogmerke en doeleindes van hierdie hoofstuk.

HOOFSTUK XVIII.

KOSTE, VERGOEDING EN TERUGGAWE VAN GOED.

344. (1) Wanneer iemand deur 'n hoër hof, die hof van 'n streekafdeling of 'n laer hof metregsbevoegdheid in siviele sake, skuldig bevind word aan 'n misdryf waardeur skade aan of verlies van eiendom behorende aan 'n ander persoon veroorsaak is, kan die hof wat die saak verhoor, na aantekening van die skuldigbevinding en op aansoek van die benadeelde party of van die persoon belas met die vervolging handelende in opdrag van bedoelde party, onverwyld skadevergoeding vir sodanige skade of verlies aan hom toeken: Met dien verstande dat —

- (a) die hof van 'n streekafdeling so 'n toekenning nie doen nie tensy die geëiste skadevergoeding eenduidig rand nie te bove gaan nie;
- (b) 'n laer hof metregsbevoegdheid in siviele sake so 'n toekenning nie doen nie tensy die geëiste skadevergoeding vierhonderd rand nie te bove gaan nie.

(2) Ten einde die bedrag van die skadevergoeding of die aanspreeklikheid van die beskuldigde daarvoor vas te stel, kan die hof die verrigtinge en getuienis by die verhoor raadpleeg of verdere getuienis, hetsy by beëdigde verklaring of mondeling, aanhoor.

(3) Die hof kan gelas dat, benewens die bedrag ingevolge subartikel (1) van hierdie artikel toegeken (as dit die geval is), iemand wat by 'n private vervolging skuldig bevind word, die koste van en uitgawes verbonde aan so 'n vervolging betaal: Met dien verstande dat as so 'n private vervolging ingestel is na die verlenging van 'n sertifikaat deur die Prokureur-generaal waarby hy geweier het om te vervolg, die hof kan gelas dat die koste daarvan deur die Staat betaal word.

(4) Wanneer 'n hof iemand ingevolge subartikel (1) van artikel *drie-en-twintig* van die Kinderordonnansie 1961 (Ordonnansie 31 van 1961) daarvan skuldig gevind het dat hy aanleiding gegee het tot die pleeg van 'n misdryf

(1) of this section, it may order the said person to pay to the party injured by the said offence, the compensation and costs mentioned in the preceding sub-sections of this section even though the said party has not applied herefor.

(5) (a) When an inferior court with civil jurisdiction has made any award of compensation, costs or expenses under this section, the award shall have the effect of a civil judgment of that court.

(b) When the court of a regional division has made any award of compensation, costs or expenses under this section, the award shall have the same effect as a civil judgment of the magistrate's court of the district in which the trial took place.

(c) When a superior court has made any award of compensation, costs or expenses under this section, the registrar of the court shall forward a certified copy of the award to the clerk of the magistrate's court of the district wherein the convicted person underwent the preparatory examination held in connection with the offence in question, and thereupon such award shall have the same effect as a civil judgment of that magistrate's court.

(6) Any costs awarded as aforesaid shall be taxed according to the scale, in civil cases, of the court which made the award, or if the award was made by a court of a regional division, according to the scale, in civil cases, of magistrates' courts.

(7) Where any moneys of the accused have been taken from him upon his arrest, the court may order payment in satisfaction or on account of the award, as the case may be, to be made forthwith from those moneys.

(8) No person against whom an award has been made under this section shall be liable at the suit of the person in whose favour the award has been so made to any other civil proceedings in respect of the injury for which compensation has been awarded.

345. When any person is convicted of theft or of any offence whereby he has unlawfully obtained any property, and it appears to the court on the evidence that he sold such property or part thereof to any person who had no knowledge that it was stolen or unlawfully obtained, and that money has been taken from the convicted person on his arrest, the court may, on the application of such purchaser and on restitution of such property to its owner, order that, out of the money so taken from the convicted person and belonging to him, a sum, not exceeding the amount of the proceeds of the sale, be delivered to such purchaser.

346. (1) If any person is convicted of theft or receiving stolen property, knowing it to have been stolen, or otherwise unlawfully obtaining any property, such property may be restored to the owner or his representative on application by him to the court.

(2) The court before which a person is convicted of any such offence may from time to time award writs of restitution in respect of the said property or order the restitution thereof in a summary manner.

(3) If it appears, before any award is made, that any valuable security has been *bona fide* paid or discharged by any person liable for the payment thereof or, being a negotiable instrument, has been *bona fide* taken or received by transfer or delivery by any person for a just and valuable consideration without notice or without any reasonable cause to suspect that it had been stolen or otherwise unlawfully obtained, or if it appears that the property stolen or received as aforesaid or otherwise unlawfully obtained has been transferred to an innocent purchaser for value who has acquired a lawful title thereto, the court shall not award or order the restitution of such security or property.

347. (1) The court may, after the conclusion of any trial and subject to any special provision contained in any law, make a special order as to the return to the person

in subartikel (1) van hierdie artikel bedoel, kan die hof gelas dat so iemand die skadevergoeding en koste in die voorafgaande subartikels van hierdie artikel bedoel, aan die party wat deur bedoelde misdryf benadeel is, betaal, selfs as die genoemde party nie daarom aansoek gedoen het nie.

(5) (a) Wanneer 'n laer hof metregsbevoegdheid in siviele sake 'n toekenning van skadevergoeding, koste of uitgawe ingevolge hierdie artikel gedoen het, het die toekenning die uitwerking van 'n siviele vonnis van daardie hof.

(b) Wanneer die hof van 'n streekafdeling 'n toekenning van skadevergoeding, koste of uitgawe ingevolge hierdie artikel gedoen het, het die toekenning dieselfde uitwerking as 'n siviele vonnis van die landdroshof van die distrik waarin die verhoor plaasgevind het.

(c) Wanneer 'n hoër hof 'n toekenning van skadevergoeding, koste of uitgawe ingevolge hierdie artikel gedoen het, stuur die griffier van die hof 'n gesertificeerde afskrif van die toekenning aan die klerk van die landdroshof van die distrik waarin die voorlopige ondersoek ten opsigte van die betrokke misdryf teen die veroordeelde persoon gehou is, en daarop het so 'n toekenning dieselfde uitwerking as 'n siviele vonnis van daardie landdroshof.

(6) Koste wat soos voormeld toegeken word, word ooreenkomsdig die skaal getakseer wat ten opsigte van siviele sake van toepassing is by die hof wat die toekenning gedoen het, of as die toekenning deur die hof van 'n streekafdeling gedoen is, volgens die tarief, in siviele sake, van landdroshewe.

(7) Wanneer geld wat aan die beskuldigde behoort, by sy inhegtenisneming van hom geneem is, kan die hof gelas dat betaling ter voldoening van of by wyse van afbetaling op die toekenning, na gelang, onverwyld uit daardie geld gedoen word.

(8) Niemand teen wie 'n toekenning ingevolge hierdie artikel gedoen is, is aan enige ander siviele vordering deur die persoon ten gunste van wie die toekenning aldus gedoen is, ten opsigte van die skade waarvoor vergoeding toegeken is, onderhewig nie.

345. Wanneer iemand aan diefstal of 'n misdryf waardeur hy goed wederregtelik verkry het, skuldig bevind word en dit uit die getuenis vir die hof blyk dat hy bedoelde goed of 'n gedeelte daarvan aan iemand verkoop het wat nie geweet het dat dit gesteel of wederregtelik verkry was nie, en dat geld van die veroordeelde persoon by sy inhegtenisneming geneem is, kan die hof, op versoek van so 'n koper en by teruggawe van sodanige goed aan die eienaar daarvan, gelas dat uit die geld wat aldus van die veroordeelde persoon geneem is en wat aan hom behoort, 'n bedrag van hoogstens die opbrengs van die verkoop aan so 'n koper oorhandig word.

346. (1) As iemand aan diefstal of die ontvangs van gesteelde goed wetende dat dit gesteel is of die wederregtelike verkryging van goed op 'n ander wyse skuldig bevind word, kan sodanige goed aan die eienaar of sy verteenwoordiger, op 'n aansoek deur hom by die hof, terugbesorg word.

(2) Die hof voor wie iemand aan so 'n misdryf skuldig bevind word, kan van tyd tot tyd lasbriewe vir teruggawe van goed ten opsigte van bedoelde goed toeken of die terugbesorging daarvan op summiere wyse beveel.

(3) As dit, voordat 'n toekenning gedoen word, blyk dat geldwaardige sekuriteit te goeder trou betaal of afgeleis is deur iemand wat vir die betaling daarvan aanspreeklik is, of as dit 'n verhandelbare dokument is, te goeder trou by wyse van oordrag of lewering deur iemand geneem of ontvang is teen 'n billike en geldwaardige teenprestasie en sonder kennis of ander redelike gronde om te vermoed dat dit gesteel of andersins wederregtelik verkry is, of as dit blyk dat die goed wat aldus gesteel of ontvang is of wat op 'n ander wyse wederregtelik verkry is, aan 'n koper te goeder trou vir waarde oorgedra is, wat 'n regstel daarop verkry het, mag die hof nie teruggawe van sodanige sekuriteit of goed toeken of gelas nie.

347. (1) Na afloop van 'n verhoor kan die hof, behoudens enige besondere wetsbepaling, 'n spesiale bevel uitrek betreffende die teruggawe van die goed ten op-

entitled thereto of the property in respect of which the offence was committed or of any property seized or taken under this Ordinance or produced at the trial, and if no such order is made the property shall, on application, be returned to the person from whose possession it was obtained, unless it was proved during the trial that he was not entitled to such property, after payment of the expenses incurred since the conclusion of the trial in connection with the custody of the property; but if within a period of three months after the conclusion of the trial no application is made under this section for the return of the property or if the person applying is not entitled thereto or does not pay the expenses aforesaid, the property shall vest in the State.

(2) The court convicting any person of an offence which was committed by means of any weapon, instrument or other article produced to the court may, if it thinks fit, declare such weapon, instrument or other article to be forfeited to the State.

(3) The court convicting any person of any offence specified in Part I of the Second Schedule, or of theft either at common law or as defined by any statute, or of breaking or entering any premises with intent to commit an offence, may, if satisfied that any vehicle or receptacle was used for the purpose of or in connection with the commission of the offence or (when the conviction is in respect of the theft of any goods) for the purpose of conveying or removing any of the stolen goods, declare such vehicle or receptacle, or the convicted person's rights thereto, to be forfeited to the State: Provided that such declaration shall not affect any rights which any person other than the convicted person may have to the vehicle or receptacle in question if it is proved that he did not know that it was being used or would be used for the purpose of or in connection with the commission of such offence or for the purpose of conveying or removing such stolen goods, or that he could not prevent such use.

(4) The court which is holding or which held the trial may at any time after the making of such declaration enquire into and determine any person's rights to the vehicle or receptacle in question; and if such determination is adverse to any person, he may appeal therefrom as if it were a conviction by the court making the determination, and such appeal may be heard either separately or jointly with an appeal against the conviction as a result whereof the forfeiture was declared, or against a sentence imposed as a result of such conviction.

(5) If any such declaration is set aside or varied after the sale, on behalf of the State, of the vehicle or receptacle or rights declared to be forfeited, the person whose rights were upheld by the setting aside or variation of the declaration may, at his option, enforce those rights against any person in possession or custody of the vehicle or receptacle in question, or claim from the State an amount equal to the value of those rights but not exceeding the proceeds of the sale of those rights.

348. (1) Any award or order of restitution made under this Chapter may be made subject to the applicant giving security *de restituendo* in case the award or order be reversed on appeal or review.

(2) The court may in any case refer a person applying for compensation under this Chapter to his remedy under the civil law.

(3) Where any such award or order is made against two or more persons it shall be joint and several.

CHAPTER XIX.

APPEALS IN CASES OF CRIMINAL PROCEEDINGS BEFORE SUPERIOR COURTS

349. (1) In respect of appeals and questions of law reserved in connection with criminal cases dealt with by a superior court, the court of appeal shall be the Appellate Division of the Supreme Court of South Africa.

sigte waarvan die misdryf gepleeg is, of van enige goed ingevolge hierdie ordonnansie in beslag of in besit geneem of by die verhoor vertoon, aan die persoon wat daarop geregtig is, en as so 'n bevel nie uitgereik word nie, word die goed op aansoek en na betaling van die uitgawes in verband met die bewaring daarvan sedert die afloop van die verhoor aangegaan, aan die persoon uit wie se besit dit verkry is, teruggegee, tensy dit gedurende die verhoor bewys is dat hy nie op sodanige goed geregtig is nie; maar as geen aansoek om die teruggawe van die goed binne 'n tydperk van drie maande na afloop van die verhoor ingevolge hierdie artikel gedoen word nie, of as die persoon wat aansoek doen nie daarop geregtig is nie of nie bedoelde uitgawes betaal nie, gaan die goed op die Staat oor.

(2) Die hof wat iemand skuldig bevind aan 'n misdryf wat gepleeg is deur middel van 'n wapen, werktyug of ander voorwerp wat in die hof vertoon word, kan, as die hof dit goedvind, so 'n wapen, werktyug of ander voorwerp ten gunste van die Staat verbeurd verklaar.

(3) Die hof wat iemand aan 'n in deel I van die tweede bylae genoemde misdryf of aan diefstal, hetsy volgens die gemenerg of soos by wet omskryf, of aan inbraak of betreding van 'n perseel met die doel om 'n oortreding te pleeg, hetsy volgens die gemenerg of instryd met 'n wetsbepaling, skuldig bevind, kan, indien oortuig dat 'n voertuig of houer vir die doel van of in verband met die pleging van die misdryf, of (waar die skuldigbevinding ten opsigte van die diefstal van goedere geskied) vir die vervoer of verwydering van enige van die gesteelde goedere, gebruik is, bedoelde voertuig of houer, of die regte van die veroordeelde persoon daarop, ten gunste van die Staat verbeurd verklaar: Met dien verstande dat so 'n verbeurdverklaring geen afbreuk doen aan enige regte wat iemand anders as die veroordeelde op die betrokke voertuig of houer het nie, as dit bewys word dat hy nie geweet het dat die voertuig of houer vir die doel van of in verband met die pleging van bedoelde misdryf of vir die vervoer of verwydering van bedoelde gesteelde goed gebruik is of gebruik sou word nie, of dat hy sodanige gebruik nie kon verhinder nie.

(4) Die hof wat die saak verhoor of verhoor het, kan te eniger tyd na so 'n verbeurdverklaring na enigeen se regte op die betrokke voertuig of houer ondersoek instel en dit bepaal; en as so 'n bepaling vir enigeen ongunstig is, kan hy daarteen appelleer asof dit 'n skuldigbevinding was deur die hof wat die bepaling gedoen het, en so 'n appèl kan of afsonderlik van of saam met 'n appèl teen die skuldigbevinding as gevolg waarvan die verbeurdverklaring geskied het of teen 'n vonnis wat ten gevolge van so 'n skuldigbevinding opgelê is, verhoor word.

(5) As so 'n verbeurdverklaringsbevel tersyde gestel of gewysig word nadat die voertuig of houer of regte wat verbeurd verklaar is, ten behoeve van die Staat verkoop is, kan die persoon wie se regte deur die tersydestelling of wysiging van die verbeurdverklaringsbevel gehandhaaf is, na eie keuse daardie regte teenoor enigeen in wie se besit of bewaring die betrokke voertuig of houer is, afdwing of 'n bedrag gelyk aan die waarde van daardie regte maar van hoogstens die opbrengs van die verkoop van daardie regte, van die Staat vorder.

348.(1) 'n Toekenning of bevel vir teruggawe van goed ingevolge hierdie hoofstuk gedoen of verleent, kan aan die voorwaarde onderworpe gestel word dat die applikant sekerheid vir teruggawe stel, ingeval die toekenning of bevel by appèl of hersiening tersyde gestel word.

(2) Die hof kan in enige geval iemand wat ingevolge hierdie hoofstuk om vergoeding aansoek doen, na sy regsmiddels kragtens die siviele reg verwys.

(3) Wanneer so 'n toekenning of bevel teen twee of meer persone gedoen of verleent word, is die toekenning of bevel solidêr.

HOOFSTUK XIX.

APPÈLLE IN DIE GEVALLE VAN STRAFSAKE VOOR HOËR HOWE.

349. (1) Ten opsigte van appèlé en regsvrae wat voorbehou word in verband met strafsaake waarmee 'n hoërhof gehandel het, is die Appelafdeling van die Hooggereghof van Suid-Afrika die appèlhof.

(2) An appeal shall lie to the court of appeal only as provided in sections *three hundred and fifty to three hundred and fifty-three* inclusive, and not as of right.

350. (1) An accused convicted of any offence before a superior court, may, within a period of fourteen days of the passing of any sentence as a result of such conviction, or within such extended period as may on good cause be allowed, apply —

- (a) if the conviction was by a special criminal court, to that court, or any judge who was a member of that court, or if no such judge is available, to any judge of the Supreme Court; and
- (b) if the conviction was by any other court, to the judge who presided at the trial, or if he is not available, or if in the case of a conviction before a circuit court, the said court is not sitting, to any other judge of the Supreme Court,

for leave to appeal to the court of appeal against his conviction or against any sentence or order following thereon, and an accused convicted of any offence before any such court on a plea of guilty, may, within the same period, apply for leave so to appeal against any sentence or any order following thereon.

(2) Every application for leave to appeal shall set forth clearly and specifically the grounds upon which the accused desires to appeal: Provided that if the accused applies verbally for such leave immediately after the passing of the sentence, he shall state such grounds and they shall be taken down in writing and form part of the record.

(3) If an application under sub-section (1) for leave to appeal is granted, the registrar of the court granting such application shall cause notice to be given accordingly to the registrar of the court of appeal without delay, and shall cause to be transmitted to the said registrar a certified copy of the record including copies of the evidence, whether oral or documentary, taken or admitted at the trial, and a statement of the grounds of appeal: Provided that, instead of the whole record, with the consent of the accused and the attorney-general, copies (one of which shall be certified) may be transmitted of such parts of the record as may be agreed upon by the attorney-general and the accused to be sufficient, in which event the court of appeal may nevertheless call for the production of the whole record.

(4) If an application under sub-section (1) for leave to appeal is refused, the accused may, within a period of twenty-one days of such refusal, or within such extended period as may on good cause be allowed, by petition addressed to the Chief Justice submit his application to the court of appeal, at the same time giving written notice that this has been done to the registrar of the Supreme Court. Such registrar shall forward to the court of appeal a copy of the application for leave to appeal and of the reasons for refusing such application.

(5) The petition may be considered in Chambers by the Chief Justice or by any other judge of the court of appeal to whom it may be referred by the Chief Justice.

(6) The judge considering the petition may —

- (i) call for any further information from the judge who presided at the trial; or
- (ii) order that the application be argued before him at a time and place appointed; or
- (iii) whether he has acted under paragraph (i) or (ii) or not, grant or refuse the application; or
- (iv) refer the matter to the court of appeal for consideration, whether upon argument or otherwise, and the court of appeal may then grant or refuse the application.

(2) 'n Appèl na die appèlhof kan slegs soos in artikels *driehonderd en vyftig tot en met driehonderd drie-en-vyftig* bepaal, aangeteken word, en nie uit hoofde van enige vanselfsprekende reg nie.

350. (1) 'n Beskuldigde wat voor 'n hoë hof aan 'n misdryf skuldig bevind word, kan binne 'n tydperk van veertien dae vanaf die oplegging van vonnis ten gevolge van so 'n skuldigbevinding, of binne so 'n langer tydperk soos om gegrond rede toegelaat word —

- (a) in die geval van 'n skuldigbevinding deur 'n spesiale strafhof, by daardie hof of 'n regter wat lid van daardie hof was, of, as so 'n regter nie beskikbaar is nie, by 'n regter van die Hooggeregs-hof; en
- (b) in die geval van 'n skuldigbevinding deur 'n ander hof, by die regter wat by die verhoor voorgesit het, of, as hy nie beskikbaar is nie of, in die geval 'n skuldigbevinding deur 'n rondgaande hof, bedoelde hof nie sitting hou nie, by 'n ander regter van die Hooggereghof,

aansoek doen om verlof om na die appèlhof teen sy skuldigbevinding of teen enige vonnis of bevel wat daarop gevolg het, te appelleer, en 'n beskuldigde wat op grond van 'n pleit van skuldig voor so 'n hof aan 'n misdryf skuldig bevind is, kan binne dieselfde tydperk aansoek doen om verlof om aldus teen 'n vonnis of bevel wat daarop gevolg het, te appelleer en 'n beskuldigde wat op grond van 'n pleit van skuldig voor so 'n hof aan 'n misdryf skuldig bevind is, kan binne dieselfde tydperk aansoek doen om verlof om aldus teen 'n vonnis of bevel wat daarop gevolg het, te appelleer.

(2) Iedere aansoek om verlof om te appelleer moet die gronde waarop die beskuldigde wil appelleer, duidelik en uitdruklik uiteensit: Met dien verstande dat as die beskuldigde onmiddellik na die oplegging van vonnis mondeling om sodanige verlof aansoek doen, hy daardie gronde moet opgee, en dit word op skrif gestel en maak deel van die noule uit.

(3) As 'n aansoek ingevolge subartikel (1) om verlof tot appèl toegestaan word, laat die griffier van die hof wat so 'n aansoek toestaan, sonder versuim dienooreenkomsdig aan die griffier van die appèlhof kennis gee, en 'n gesertifiseerde afskrif van die noule, met inbegrip van afskrifte van die getuenis, hetsy dit mondeling of dokumentêr is, wat by die verhoor afgeneem of toegelaat is, en 'n opgaaf van die gronde van appèl, aan bedoelde griffier deurstuur: Met dien verstande dat, in plaas van die noule in die geheel, afskrifte (een waarvan gesertifiseer moet wees) van die gedeeltes van die noule wat die Prokureur-generaal en die beskuldigde by ooreenkoms as voldoende bepaal, met toestemming van die beskuldigde en die Prokureur-generaal deurstuur kan word, in watter geval die appèlhof nogtans kan gelas dat die noule in die geheel voorgelê word.

(4) As 'n aansoek ingevolge subartikel (1) om verlof tot appèl geweier word, kan die beskuldigde binne 'n tydperk van een-en-twintig dae na die weiering, of binne so 'n langer tydperk soos om gegrond rede toegelaat word, by wyse van versoekskrif aan die Hoofregter gerig, sy aansoek aan die appèlhof voorlê, en moet hy terselfdertyd aan die griffier van die Hooggereghof skriftelik kennis gee dat dit gedoen is. Daardie griffier stuur 'n afskrif van die aansoek om verlof tot appèl en van die redes vir die weiering van die aansoek aan die appèlhof.

(5) Die versoekskrif kan in kamers oorweeg word deur die Hoofregter of deur enige ander regter van die appèlhof na wie dit deur die Hoofregter verwys word.

- (6) Die regter wat die versoekskrif oorweeg, kan —
 - (i) enige verdere inligting van die regter wat by die verhoor voorgesit het, aanvra; of
 - (ii) gelas dat die aansoek op 'n bepaalde tyd en plek voor hom beredeneer word; of
 - (iii) hetsy hy ingevolge paragraaf (i) of (ii) gehandel het of nie, die aansoek toestaan of weier; of
 - (iv) die aangeleentheid na die appèlhof vir oorweging, hetsy na beredenering of andersins, verwys, en die appèlhof kan dan die aansoek toestaan of weier.

(7) The decision of a judge of the court of appeal, or of the court of appeal, as the case may be, to grant or refuse the application, shall be final.

(8) Notice shall be given to the attorney-general concerned and the accused of the date fixed for the hearing of any application under this section, and of any place appointed under sub-section (6) for any hearing.

351. (1) If an accused thinks that any of the proceedings in connection with or during his trial before a superior court are irregular or not according to law, he may, either during his trial or within a period of fourteen days after his conviction, or within such extended period as may on good cause be allowed, apply for a special entry to be made on the record stating in what respect the proceedings are alleged to be irregular or not according to law and such a special entry shall, upon such application, be made unless the court to which or the judge to whom application is made is of opinion that the application is not made *bona fide*, or that it is frivolous or absurd, or that the granting of the application would be an abuse of the process of the court.

(2) Save as hereinafter provided the application shall be made to the judge who presided at the trial, or if he is not available, or if in the case of a conviction before a circuit court, the said court is not sitting, to any other judge of the Supreme Court.

(3) If the accused was convicted by a special criminal court, the application shall be made to that court, or if that court is not sitting, to any judge who was a member of that court, or if no such judge is available, to any judge of the Supreme Court.

(4) The terms of a special entry shall be settled by the court which or the judge who grants the application.

(5) If an application under sub-section (1) is refused, the accused may, within a period of twenty-one days of such refusal, or within such extended period as may on good cause be allowed, by petition addressed to the Chief Justice, apply to the court of appeal for a special entry to be made on the record stating in what respect the proceedings are alleged to be irregular or not according to law and thereupon the provisions of sub-sections (5), (6), (7) and (8) of section *three hundred and fifty* shall, *mutatis mutandis*, apply.

352. (1) If a special entry is made on the record, the person convicted may appeal to the court of appeal against his conviction on the ground of the irregularity or illegality stated in the special entry if, within a period of twenty-one days after entry is so made, or within such extended period as may on good cause be allowed, notice of appeal has been given to the registrar of the court of appeal and to the registrar of the Supreme Court.

(2) The registrar of the Supreme Court shall forthwith after receiving such notice, give notice thereof to the attorney-general, and shall transmit to the registrar of the court of appeal a certified copy of the record including copies of the evidence, whether oral or documentary, taken or admitted at the trial and of the special entry made in manner aforesaid: Provided that, with the consent of the accused and the attorney-general, the registrar concerned may, instead of transmitting the whole record, transmit copies, one of which shall be certified, of such parts of the record as may be agreed upon by the attorney-general and the accused to be sufficient, in which event the court of appeal may nevertheless call for the production of the whole record.

353. (1) If any question of law arises on the trial in a superior court of any person for any offence, that court may, of its own motion or at the request either of the prosecutor or the accused, reserve that question for the consideration of the court of appeal, and thereupon the first-mentioned court shall state the question reserved, and

(7) Die beslissing van 'n regter van die appèlhof, of van die appèlhof, na gelang, om die aansoek toe te staan of te weier, is afdoende.

(8) Kennis van die dag wat vir die verhoor van 'n aansoek ingevolge hierdie artikel bepaal is, en van die plek ingevolge subartikel (6) vir enige verhoor bepaal, moet aan die betrokke prokureur-generaal en die beskuldigde gegee word.

351. (1) As 'n beskuldigde meen dat enige van die verrigtinge in verband met of gedurende sy verhoor voor 'n hoë hof onreëlmatic of met die reg strydig is, kan hy of gedurende sy verhoor of binne 'n tydperk van veertien dae na sy skuldigbevinding of binne die langer tydperk wat om gegrondede redes toegelaat word, aansoek doen dat op die notule 'n spesiale aantekening aangebring word wat aangee in watter oopsig die verrigtinge na bewering onreëlmatic of met die reg strydig is, en op so 'n aansoek word so 'n spesiale aantekening gedaan, tensy die hof of die regter aan wie die aansoek gerig word, meen dat die aansoek nie te goeder trou gedaan word nie, of dat dit beuselagtig of onsinngig is, of dat die toestaan van die aansoek op 'n misbruik van geregtelike proses sal neerkom.

(2) Behalwe soos hieronder bepaal, word die aansoek gerig aan die regter wat by die verhoor voorgesit het of, as hy nie beskikbaar is nie of, in die geval van 'n skuldigbevinding deur 'n rondgaande hof, bedoelde hof nie sitting hou nie, aan 'n ander regter van die Hooggereghof.

(3) As die beskuldigde deur 'n spesiale strafhof skuldig bevind is, word die aansoek gerig aan daardie hof of, indien daardie hof nie sitting hou nie, aan 'n regter wat 'n lid van daardie hof was of, as so 'n regter nie beskikbaar is nie, aan 'n regter van die Hooggereghof.

(4) Die bewoording van 'n spesiale aantekening word bepaal deur die hof of die regter wat die aansoek toestaan.

(5) As 'n aansoek ingevolge subartikel (1) gewei word, kan die beskuldigde binne 'n tydperk van een-en-twintig dae vanaf so 'n weiering of binne so 'n langer tydperk soos om gegrondede redes toegelaat word, by wyse van versoekskrif aan die Hoofregter gerig, by die appèlhof aansoek doen dat op die notule 'n spesiale aantekening gedaan word wat aangee in watter oopsig die verrigtinge na bewering onreëlmatic of met die reg strydig is, en daarna is die bepalings van subartikels (5), (6), (7) en (8) van artikel *drie honderd-en-vyftig mutatis mutandis* van toepassing.

352. (1) As 'n spesiale aantekening op die notule gedaan word, kan die persoon wat skuldig bevind is op grond van die onreëlmaticheid of strydigheid met die reg wat in die spesiale aantekening aangegee word, teen sy skuldigbevinding na die appèlhof appelleer, as kennis van appèl binne 'n tydperk van een-en-twintig dae nadat die aantekening aldus gedaan is of binne so 'n langer tydperk soos om gegrondede redes toegelaat word, gegee is aan die griffier van die appèlhof en aan die griffier van die Hooggereghof.

(2) Nadat die griffier van die Hooggereghof sodanige kennis ontvang het, gee hy onverwyd kennis daarvan aan die Prokureur-generaal en stuur hy 'n gesertificeerde afskrif van die notule, met inbegrip van afskrifte van die getuenis hetsy dit mondeling of dokumentêr is, wat by die verhoor afgeneem of toegelaat is, en van die spesiale aantekening wat op voormalde wyse gedaan is, aan die griffier van die appèlhof deur: Met dien verstande dat in plaas van die notule in die geheel deur te stuur die betrokke griffier, met toestemming van die beskuldigde en die prokureur-generaal, afskrifte, een waarvan gesertificeer moet wees, van die gedeeltes van die notule wat die Prokureur-generaal en die beskuldigde by ooreenkoms as voldoende bepaal, kan deurstuur, in watter geval die appèlhof nogtans kan gelas dat die notule in die geheel voorgelê word.

353. (1) As 'n regsvraag by die verhoor van iemand in 'n hoë hof weens 'n misdryf ontstaan, kan daardie hof uit eie beweging of op versoek van of die aanklaer of die beskuldigde daardie vraag vir oorweging deur die appèlhof voorbehou, en daarop sit eersgenoemde hof die vraag wat voorbehou word, uiteen en gelas dat dit spe-

shall direct that it be specially entered in the record and that a copy thereof be transmitted to the registrar of the court of appeal.

(2) The grounds upon which any exception or objection to an indictment is taken shall, for the purposes of this section, be deemed to be questions of law.

(3) The provisions of sub-sections (2), (3), (4) and (5) of section *three hundred and fifty-one* and of sub-section (2) of section *three hundred and fifty-two* shall apply *mutatis mutandis* to all proceedings under this section.

354. The judge or judges (as the case may be) of any court before whom a person is convicted shall, in the case of an appeal under section *three hundred and fifty*, or of an application for a special entry under section *three hundred and fifty-one*, or for the reservation of a question of law under section *three hundred and fifty-three*, or, in the case of an application made to the court of appeal for leave to appeal or for a special entry under this Ordinance, furnish to the registrar a report giving his (or their) opinion upon the case or upon any point arising in the case, and such report, which shall form part of the record, shall, without delay, be forwarded by the registrar to the registrar of the court of appeal.

355. The execution of the sentence of a superior court shall not be suspended by reason of any appeal against a conviction or by reason of a question having been reserved for consideration of the court of appeal, unless —

(a) the sentence is that the accused suffer death or be whipped, in either of which cases the sentence shall not be executed until the appeal or question reserved has been heard and decided; or

(b) the superior court from which the appeal is made or by which the question is reserved thinks fit to order that the accused be released on bail or, that he be treated as an unconvicted prisoner until the appeal or the question reserved has been heard and decided:

Provided that, when the accused is ultimately sentenced to imprisonment, the time during which he was so released on bail shall be excluded in computing the term for which he is so sentenced: Provided further that when the accused has been detained as an unconvicted prisoner as hereinbefore provided, the time during which he has been so detained shall be included or excluded in computing the terms for which he is ultimately sentenced, as the court of appeal may determine.

356. (1) In case of any appeal against a conviction or any question being reserved as aforesaid, the court of appeal may —

(a) allow the appeal if it thinks that the judgment of the trial court should be set aside on the ground of a wrong decision of any question of law or that on any ground there was a failure of justice; or

(b) give such judgment as ought to have been given at the trial, or impose such punishment as ought to have been imposed at the trial; or

(c) make such other order as justice may require:

Provided that, notwithstanding that the court of appeal is of opinion that any point raised might be decided in favour of the accused, no conviction or sentence shall be set aside or altered by reason of any irregularity or defect in the record or proceedings, unless it appears to the court of appeal that a failure of justice has, in fact, resulted from such irregularity or defect.

(2) Upon an appeal under section *three hundred and fifty* against any sentence, the court of appeal may confirm the sentence, or may delete or amend the sentence and impose such punishment as ought to have been imposed at the trial.

(3) Where a question of law has been reserved on the application of a prosecutor in the case of an acquittal, and the court of appeal has given a decision in favour of the prosecutor, the court of appeal may order that such

siaal in die notule aangeteken word en dat 'n afskrif daarvan aan die griffier van die appèlhof deurgestuur word.

(2) Die gronde waarop 'n eksepsie of beswaar teen 'n akte van beskuldiging opgewerpt word, word by die toepassing van hierdie artikel geag regsvorae te wees.

(3) Die bepalings van subartikels (2), (3), (4) en (5) van artikels *driehonderd een-en-vyftig* van subartikel (2) van artikel *driehonderd twee-en-vyftig* is *mutatis mutandis* op alle verrigtinge ingevolge hierdie artikel van toepassing.

354. Die regter of regters (na gelang) van 'n hof voor wie iemand skuldig bevind word, moet, in die geval van 'n appèl ingevolge artikel *driehonderd en vyftig* of van 'n aansoek dat 'n spesiale aantekening ingevolge artikel *driehonderd een-en-vyftig* gedoen of dat 'n regsvraag ingevolge artikel *driehonderd drie-en-vyftig* voorbehou word, of in die geval van 'n aansoek by die appèlhof om verlof om te appelleer of dat 'n spesiale aantekening ingevolge hierdie ordonnansie gedoen word, aan die griffier 'n verslag verstrek wat sy (of hul) sienswyse oor die saak of oor enige vraag wat in die loop daarvan ontstaan het, aangee, en daardie verslag, wat deel van die notule uitmaak, word sonder versuim deur die griffier aan die griffier van die appèlhof deurgestuur.

355. Die tenuitvoerlegging van 'n vonnis van 'n hoëhof word nie ten gevolge van 'n appèl teen 'n skuldigbevinding of ten gevolge van die voorbehoud van 'n vraag vir oorweging deur die appèlhof opgeskort nie, tensy —

(a) die vonnis lui dat die beskuldigde die doodstraf of lyfstraf moet ondergaan, in elk van watter gevallen die vonnis nie ten uitvoer gelê word voordat die appèl of voorbehoue vraag verhoor en daaroor beslis is nie; of

(b) die hoëhof van wie die appèl afkomstig is of deur wie die vraag voorbehou word, dit goedvind om te gelas dat die beskuldigde op borgtug vrygelaat word of dat hy as 'n onveroordeelde gevange behandel word totdat die appèl of die voorbehoue vraag verhoor en daaroor beslis is: Met dien verstande dat as die beskuldigde uiteindelik tot gevangenisstraf gevonnis word, die tydperk waarin hy aldus op borgtug vrygelaat is by die berekening van die tydperk van die aldus opgelegde gevangenisstraf uitgesluit word: Met dien verstande voorts dat as die beskuldigde soos hierbo bepaal as 'n onveroordeelde gevangene aangehou is, dit tydperk waarin hy aldus aangehou is by die berekening van die tydperk van die uiteindelik opgelegde gevangenisstraf in- of uitgesluit word, na gelang die appèlhof beslis.

356. (1) Ingeval van 'n appèl teen 'n skuldigbevinding, of ingeval 'n vraag voorbehou word, soos voormeld, kan die appèlhof —

(a) die appèl handhaaf as hy meen dat die uitspraak van die verhoorhof op grond van 'n verkeerde beslissing oor 'n regsvraag tersyde gestel behoort te word of dat om enige rede geregtigheid nie geskied het nie; of

(b) die uitspraak gee wat by die verhoor behoort gegee te gewees het, of die vonnis oplê wat by die verhoor opgelê behoort te gewees het; of

(c) so 'n ander bevel soos geregtigheid vereis, uitreik: Met dien verstande dat al meen die appèlhof dat 'n vraag wat geopper word ten gunste van die beskuldigde beslis sou kan word, geen skuldigbevinding of vonnis op grond van 'n onreëlmatrijheid of gebrek ten opsigte van die notule of verrigtinge tersyde gestel of gewysig word nie, tensy dit na die mening van die appèlhof blyk dat ten gevolge van so 'n onreëlmatrijheid of gebrek, geregtigheid inderdaad nie geskied het nie.

(2) By 'n appèl ingevolge artikel *driehonderd-en-vyftig* teen 'n vonnis kan die appèlhof die vonnis bekratig, of dit tersyde stel of wysig en die straf oplê wat by die verhoor behoort opgelê te gewees het.

(3) Wanneer 'n regsvraag op aansoek van die aanklaer in die geval van 'n onskuldigbevinding voorbehou is en die appèlhof ten gunste van die aanklaer beslis het, kan die appèlhof beveel dat sodanige van die in artikel

of the steps referred to in section *three hundred and fifty-seven* be taken as the court may direct.

(4) The order of direction of the court of appeal shall be transmitted by the registrar of the court of appeal to the registrar of the court before which the case was tried, and such order or direction shall be carried into effect and shall authorize every person affected by it to do whatever is necessary to carry it into effect.

(5) In exercising its powers under any of the preceding sub-sections the court of appeal shall not impose any punishment more severe than the sentence imposed by the court below.

357. Whenever a conviction and sentence are set aside by the court of appeal on the ground that —

- (a) the court which convicted the accused was not competent to do so; or
- (b) the indictment on which the accused was convicted was invalid or defective in any respect; or
- (c) there has been any other technical irregularity or defect in the procedure,

proceedings in respect of the same offence to which the conviction and sentence referred may again be instituted either on the original charge, suitably amended where necessary, or upon any other charge as if the accused had not previously been arraigned, tried and convicted: Provided that no judge or judicial officer before whom the original trial took place shall take part in such proceedings.

CHAPTER XX.

PARDON AND COMMUTATION

358. Nothing in this Ordinance or the law relating to prisons shall affect the State President's power of pardon.

359. (1) In any case in which the State President is empowered to extend a conditional reprieve to a person under sentence of death, he may, without the consent of that person, commute the punishment to any other punishment provided by law.

(2) Any such commutation is to be signified in writing to the Administrator who is required thereupon to allow the said person the benefit of the conditional pardon and to make an order that he be punished in the manner directed by the State President and such allowance and order shall have the effect of a valid sentence passed by the court before which the said person was convicted.

360. A free or unconditional pardon by the State President shall have the effect of discharging the convicted person from the consequences of the conviction.

361. In any case in which the State President is empowered to reprieve a person under sentence of imprisonment, he may reprieve such person upon condition that he enters into a recognizance on conditions as in the case of persons discharged by the court upon suspension of the execution of a sentence and thereupon the said person shall be liable to the same obligations and shall be dealt with in all respects in the same manner as a person discharged by the court on recognizance upon such suspension.

CHAPTER XXI.

GENERAL AND SUPPLEMENTARY

362. Every warrant or summons or other process relating to any criminal matter shall be of force throughout and may be executed anywhere within the Territory.

363. (1) Unless some other period is expressly provided, any notice or document required to be served upon an accused shall be served by delivering it to the accused ten days at least before the day specified therein for his trial, if his trial is to be before a superior court or two

driehonderd sewen-en-vyftig bedoelde stappe gedoen word soos die hof gelas.

(4) Die bevel of opdrag van die appèlhof word deur die griffier van die appèlhof aan die griffier van die hof voor wie die saak verhoor is, gestuur, en so 'n bevel of opdrag word ten uitvoer gebring en magtig iedereen wat daardeur geraak word om alles te doen wat nodig is om dit ten uitvoer te bring.

(5) By die uitoefening van sy bevoegdhede ingevolge een of ander van die voorafgaande subartikels, lê die appèlhof nie 'n swaarder straf op as die wat die laer hof oopgelê het nie.

357. Wanneer 'n skuldigbevinding en vonnis deur die appèlhof tersyde gestel word op grond daarvan dat —

- (a) die hof wat die beskuldigde skuldig bevind het, nie bevoeg was om dit te doen nie; of
- (b) die akte van beskuldiging ten opsigte waarvan die beskuldigde skuldig bevind is, ongeldig of in enige opsig gebreklik was; of
- (c) daar 'n ander tegniese onreëlmataigheid of gebrek by die prosedure was,

kan 'n vervolging ten opsigte van dieselfde misdryf waarop die skuldigbevinding en vonnis betrekking gehad het, hetsy op die oorspronklike aanklag, met gepaste wysigings waar nodig, of op 'n ander aanklag, weer ingestel word asof die beskuldigde nie vantevore voorgebring, verhoor en skuldig bevind was nie: Met dien verstande dat geen regter of regterlike beampete voor wie die oorspronklike verhoor gedien het, aan sodanige verrigtinge mag deelneem nie.

HOOFTUK XX.

BEGENADIGING EN STRAFVERSAGTING.

358. Geen bepaling van hierdie ordonnansie of die wet op gevangenisse doen aan die Staatspresident se bevoegdheid van begenadiging afbreuk nie.

359. (1) Die Staatspresident kan in enige geval waar hy bevoeg is om gracie voorwaardelik te verleen aan iemand wat ter dood veroordeel is, sonder die toestemming van daardie persoon die straf tot enige ander straf wat regtens oopgelê kan word, versag.

(2) So 'n strafversagting word skriftelik tot die kennis van die Administrateur gebring wat daarop aan bedoelde persoon die voordeel van die voorwaardelike gracie vergun en 'n bevel uitrek dat hy op die wyse deur die Staatspresident gelas, gestraf word, en so 'n vergunning en bevel het die uitwerking van 'n geldige vonnis wat oopgelê is deur die hof voor wie bedoelde persoon skuldig bevind is.

360. 'n Algehele of onvoorwaardelike gracie deur die Staatspresident verleen, het die uitwerking dat die veroordeelde van die gevolge van die skuldigbevinding bevry word.

361. In 'n geval waar die Staatspresident bevoeg is om gracie te verleen aan iemand wat tot gevangenistraf gevonnis is, kan hy die gracie verleen op voorwaarde dat bedoelde persoon 'n borgakte aangaan op dieselfde voorwaarde as in die geval van persone wat deur die hof met opskorting van die tenuitvoerlegging van 'n vonnis ontslaan word, en daarop is bedoelde persoon aan dieselfde verpligtende onderhewig en word in alle opsigte op dieselfde wyse met hom gehandel as in die geval van 'n persoon wat deur die hof by sodanige opskorting op borgtog vrygelaat is.

HOOFTUK XXI.

ALGEMENE EN AANVULLENDE BEPALINGS.

362. Iedere lasbrief of dagvaarding of ander geregtelike stuk wat betrekking het op 'n strafsaak, is dwarsdeur die Gebied van krag en kan op enige plek daarbinne ten uitvoer gelê word.

363. (1) Tensy 'n ander tydperk uitdruklik voorgeskyf word, word 'n kennissiging of dokument wat aan 'n beskuldigde bestel moet word, bestel deur dit aan die beskuldigde te oorhandig minstens tien dae voor die datum daarin vir sy verhoor aangedui, as sy verhoor voor 'n hoër hof moet plaasvind of minstens twee dae (met

days at least (Sundays and public holidays excluded) before that day if his trial is to be before an inferior court, or, where the accused cannot be found, by leaving a copy of the notice or document with a member of his household at his dwelling or, if no person belonging to his household can be found, then by affixing such copy to the principal outer door of the said dwelling or of any place where he actually resides or was last known to reside.

(2) Where the accused has been released on bail, any such notice or document may either be served upon him personally or left at the place specified in the recognizance as that at which any notice of trial and service of the indictment or summons may be made.

(3) The officer serving any such notice or document as aforesaid shall forthwith deliver or transmit to the official from whom he has received the notice or document for service a return of the mode in which service was made and such return shall be *prima facie* evidence that the service of the notice or document was made in the manner and form as in the return stated.

(4) Members of any police force shall, subject to the rules of court, be as qualified to serve any notice or document under this Ordinance as if they had been appointed deputy-sheriffs or deputy-messengers or other like officers of the court.

364. Whenever it is necessary to prove service of any summons, subpoena, notice, or other process or the execution of any judgment or warrant under this Ordinance, the service or execution may be proved by affidavit made before a justice or commissioner of oaths having jurisdiction to take affidavits in the district wherein the affidavit is made, or in any other manner in which the service or execution might have been proved if it had been effected in the district or other area from which the summons, subpoena, notice, or other process or judgment or warrant emanated.

365. Any summons, writ, warrant, rule, order, notice or other process, document, or communication which by any law, rule of court, or agreement of parties is required or directed to be served or executed upon any person, or left at the house or place of abode or business of any person, in order that such person may be affected thereby, may be transmitted by telegraph, and a telegraphic copy served or executed upon such person, or left at his house or place of abode or business, shall be of the same force and effect as if the original had been shown to, or a copy thereof served or executed upon such person, or left as aforesaid, as the case may be.

366. Whenever a person has made to a peace officer a statement in writing or a statement which was reduced to writing, relating to any transaction, and criminal proceedings are thereafter instituted in connection with that transaction, any person in possession of such statement shall furnish the person who made the statement, at his request, with a copy of such statement.

367. (1) For the purpose of imposing upon a corporate body criminal liability for any offence, whether under any law or at common law —

- (a) any act performed, with or without a particular intent, by or on instructions or with permission, express or implied, given by a director or servant of that corporate body; and
- (b) the omission, with or without a particular intent, of any act which ought to have been but was not performed by or on instructions given by a director or servant of that corporate body,

in the exercise of his powers or in the performance of his duties as such director or servant, or in furthering or endeavouring to further the interests of that corporate body, shall be deemed to have been performed (and with the same intent, if any) by that corporate body or, as the case may be, to have been an omission (and with the same intent, if any) on the part of that corporate body.

uitsluiting van Sondae en openbare feesdae) voor daardie datum as sy verhoor voor 'n laer hof moet plaasvind, of, as die beskuldigde nie gevind kan word nie, deur 'n afskrif van die kennisgewing of dokument by 'n lid van sy huisgesin by sy woning te laat of, as geen lid van sy huisgesin gevind kan word nie, dan deur so 'n afskrif te heg aan die hoof-buitedeur van bedoelde woning of van die plek waar hy inderdaad woon of volgens die jongste inligting gewoon het.

(2) Wanneer die beskuldigde op borgtogg vrygelaat is, kan so 'n kennisgewing of dokument of aan hom persoonlik bestel word of gelaat word by die plek aangedui in die borgakte as die plek waar 'n kennisgewing van verhoor en die akte van beskuldiging of dagvaarding bestel kan word.

(3) Die beampte wat so 'n kennisgewing of dokument soos voormeld bestel, moet onverwyd aan die beampte van wie hy die kennisgewing of dokument vir bestelling ontvang het, 'n relaas van die wyse waarop bestelling geskied het, oorhandig of stuur, en so 'n relaas is *prima facie bewys* dat bestelling van die kennisgewing of dokument geskied het op die wyse en in die vorm in die relaas vermeld.

(4) Lede van 'n polisiemag is, behoudens die hofreëls, net so bevoeg om 'n kennisgewing of dokument ingevolge hierdie ordonnansie te bestel, asof hulle as onderbalju's of ondergeregsbodes of ander soortgelyke hofbeamptes aangestel was.

364. Wanneer die bestelling van 'n dagvaarding, getuedagvaarding, kennisgewing of ander prosesstuk of die tenuitvoerlegging van 'n vonnis of lasbrief ingevolge hierdie ordonnansie bewys moet word, kan die bestelling of tenuitvoerlegging bewys word by wyse van 'n beëdigde verklaring afgelê voor 'n vrederegter of kommissaris van ede wat bevoeg is om beëdigde verklarings af te neem in die distrik waarin die beëdigde verklaring afgelê word, of op enige ander wyse waarop die bestelling of tenuitvoerlegging bewys sou kon word as dit plaasgevind het in die distrik of ander gebied waaruit die dagvaarding, getuedagvaarding, kennisgewing of ander prosesstuk of vonnis of lasbrief kom.

365. 'n Dagvarding, bevelskrif, lasbrief, reël, bevel, kennisgewing of ander prosesstuk, dokument of mededeling wat ingevolge 'n wet, hofreël of ooreenkoms tussen partiee aan iemand bestel of ten aansien van hom uitgevoer moet word, of by die huis of woning of besigheidsplek van iemand gelaat moet word ten einde vir daardie persoon bindend te wees, kan telegrafies oorgesend word, en 'n telegrafiese afskrif wat aan daardie persoon bestel of ten aansien van hom uitgevoer word, of by sy huis of woning of besigheidsplek gelaat word, het dieselfde regskrag en gevolg asof die oorspronklike aan daardie persoon getoon is of 'n afskrif daarvan aan hom bestel is of ten aansien van hom uitgevoer is soos voormeld gelaat is, na gelang.

366. Wanneer iemand in verband met 'n handeling aan 'n vredesbeampte 'n skriftelike verklaring verstrek het, of 'n verklaring wat neergeskryf is, en 'n vervolging daarna met betrekking tot daardie handeling ingestel word, moet enigiemand wat so 'n verklaring in sy besit het, aan die persoon wat die verklaring afgelê het op sy versoek 'n afskrif van daardie verklaring verstrek.

367. (1) Ten einde 'n regspersoon strafregtelike aanspreeklikheid op te lê weens 'n misdryf, hetsy wetteregtelik of gemeenregtelik, word —

- (a) enige daad wat deur of in opdrag of met uitdruklike of stilswyende toestemming van 'n direkteur of dienaar van daardie regspersoon, met of sonder 'n besondere opset, verrig word; en
 - (b) die versuum, met of sonder 'n besondere opset, om 'n daad te verrig wat verrig moes geword het maar nie verrig is nie, deur of in opdrag van 'n direkteur of dienaar van daardie regspersoon,
- by die uitoefening van sy bevoegdhede of die uitvoering van sy pligte as so 'n direkteur of dienaar, of ter bevordering of gepoogde bevordering van die belang van daardie regspersoon, geag 'n daad met dieselfde opset, as daar opset by is, deur daardie regspersoon verrig te gewees het of, na gelang, 'n versuum en met dieselfde opset, as daar opset by is, aan die kant van daardie regspersoon te gewees het.

(2) In any prosecution against a corporate body, a director or servant of that corporate body shall be cited, as representative of that corporate body, as the offender, and thereupon the person so cited may, as such representative, be dealt with as if he were the person accused of having committed the offence in question: Provided that —

- (a) if the said person pleads guilty, the plea shall not be valid unless the corporate body authorized him to plead guilty;
- (b) if at any stage of the proceedings the said person ceases to be a director or servant of that corporate body or absconds or is unable to attend, the court or magistrate concerned may, at the request of the prosecutor, from time to time substitute for the said person, any other person who is a director or servant of the said corporate body at the time of the said substitution, and thereupon the proceedings shall continue as if no substitution had taken place;
- (c) if the said person, as representing the corporate body, is committed for trial, he shall not be committed to prison but shall be released on his own recognizance to stand his trial;
- (d) if the said person, as representing the corporate body, is convicted, the court convicting him shall not impose upon him in his representative capacity any punishment, whether direct or as an alternative, other than a fine, even if the relevant law makes no provision for the imposition of a fine in respect of the offence in question, and such fine shall be payable by the corporate body and may be recovered by attachment and sale of any property of the corporate body in terms of section *three hundred and twenty-two*;
- (e) the citation of a director or servant of a corporate body as aforesaid, to represent that corporate body in any prosecution instituted against it, shall not exempt that director or servant from prosecution for that offence in terms of sub-section (5).

(3) In any criminal proceedings against a corporate body, any record which was made or kept by a director, servant or agent of the corporate body within the scope of his activities as such director, servant or agent, or any document which was at any time in the custody or under the control of any such director, servant or agent within the scope of his activities as such director, servant or agent, shall be admissible in evidence against the accused.

(4) For the purposes of sub-section (3) any record made or kept by a director, servant or agent of a corporate body or any document which was at any time in his custody or control shall be presumed to have been made or kept by him or to have been in his custody or control within the scope of his activities as such director, servant or agent, unless the contrary is proved.

(5) When an offence has been committed, whether by the performance of any act or by the failure to perform any act, for which any corporate body is or was liable to prosecution, any person who was, at the time of the commission of the offence, a director or servant of the corporate body, shall be deemed to be guilty of the said offence, unless it is proved that he did not take part in the commission of the offence, and that he could not have prevented it, and shall be liable to prosecution therefor, either jointly with the corporate body or apart therefrom, and shall on conviction be personally liable to punishment therefor.

(6) In any proceedings against a director or servant of a corporate body, in respect of an offence —

- (a) any evidence which would be or was admissible against that corporate body in a prosecution for that offence, shall be admissible against the accused;
- (b) whether or not such corporate body is or was liable to prosecution for the said offence, any document, memorandum, book or record which was drawn

(2) By 'n vervolging teen 'n regspersoon, word 'n direkteur of dienaar van daardie regspersoon, in die hoedanigheid van verteenwoordiger van daardie regspersoon, as die oortreder gedaag, en met die aldus gedaagde persoon kan dan, as so 'n verteenwoordiger, gehandel word asof hy die persoon was wat beskuldig word dat hy die betrokke misdryf gepleeg het: Met dien verstande dat —

- (a) as bedoelde persoon skuldig pleit, die pleit nie geldig is nie tensy die regspersoon hom gemagtig het om skuldig te pleit;
- (b) as bedoelde persoon in enige stadium van die saak ophou om 'n direkteur of dienaar van daardie regspersoon te wees of vlug of nie in staat is om aanwesig te wees nie, die betrokke hof of landdros op versoek van die aanklaer van tyd tot tyd bedoelde persoon kan vervang deur iemand anders wat ten tyde van so 'n plaasvervanging 'n direkteur of dienaar van bedoelde regspersoon is, en die verrigtinge dan voortgaan asof geen plaasvervanging geskied het nie;
- (c) as bedoelde persoon, as verteenwoordiger van die regspersoon ter strafzitting verwys word, hy nie na die gevangenis verwys word nie maar op sy eie borgakte vrygelaat word om op verhoor gestel te word;
- (d) as bedoelde persoon, as verteenwoordiger van die regspersoon, skuldig bevind word, die hof wat hom skuldig bevind, hom in sy verteenwoordigende hoedanigheid geen straf, hetsy regstreeks of as alternatief, behalwe 'n boete, oplê nie, selfs as die toepaslike wetsbepaling vir die oplegging van 'n boete ten opsigte van die betrokke misdryf geen voorstiening maak nie, en sodanige boete deur die regspersoon betaalbaar is en deur beslaglegging op en verkoping van enige eiendom van die regspersoon, ingevolge artikel *driehonderd twee-en-twintig* verhaal kan word;
- (e) die daging van 'n direkteur of dienaar van 'n regspersoon soos voormeld om daardie regspersoon by 'n vervolging wat daarteen ingestel word, te verteenwoordig, daardie direkteur of dienaar nie van 'n vervolging weens daardie misdryf ingevolge subartikel (5) vrystel nie.

(3) By 'n strafsaak teen 'n regspersoon is enige aantekening deur 'n direkteur, dienaar of agent van die regspersoon binne die bestek van sy werkzaamhede as sodanige direkteur, dienaar of agent gedoen of gehou, of enige dokument wat te eniger tyd in die bewaring of onder die beheer van so 'n direkteur, dienaar of agent was, as getuienis teen die beskuldigde toelaatbaar.

(4) By die toepassing van subartikel (3) word enige aantekening deur 'n direkteur, dienaar of agent van 'n regspersoon gedoen of gehou of enige dokument wat te eniger tyd in sy bewaring of onder sy beheer was, vermoed deur hom binne die bestek van sy werkzaamhede as so 'n direkteur, dienaar of agent, gedoen of gehou te gewees het of in sy bewaring of onder sy beheer te gewees het tensy die teendeel bewys word.

(5) Wanneer 'n misdryf gepleeg is hetsy deur die verrigting van 'n daad of deur die versuim om 'n daad te verrig, waarvoor 'n regspersoon vervolg kan word of kon geword het, word enigiemand wat ten tyde van die pleeg van die misdryf 'n direkteur of dienaar van die regspersoon was, geag aan bedoelde misdryf skuldig te wees tensy dit bewys word dat hy nie aan die pleeg van die misdryf deelgeneem het en dit nie kon verhoed het nie, en kan hy saam met die regspersoon of afsonderlik weens daardie misdryf aangekla word, en by skuldigbevinde persoonlik daarvoor gestraf word.

(6) By 'n strafsaak teen 'n direkteur of dienaar van 'n regspersoon weens 'n misdryf —

- (a) is getuienis wat teen daardie regspersoon by 'n vervolging weens daardie misdryf toelaatbaar sou wees of was, teen die beskuldigde toelaatbaar;
- (b) is 'n dokument, memorandum, boek of aantekening wat in die gewone loop van die besigheid van die regspersoon opgestel, aangeteken of gehou is, of wat te eniger tyd in die bewaring of onder die beheer was van 'n direkteur, dienaar of agent van

up, entered up or kept in the ordinary course of that corporate body's business, or which was at any time in the custody or under the control of any director, servant, or agent of such corporate body, in his capacity as director, servant or agent, shall be *prima facie* evidence of its contents and admissible in evidence against the accused, unless and until he is able to prove that at all material times he had no knowledge of the said document, memorandum, book or record, in so far as its contents are relevant to the offence charged, and was in no way party to the drawing up of such document or memorandum or making of any relevant entries in such book or record.

(7) When a member of an association of persons, other than a corporate body, has in carrying on the business or affairs of that association or in furthering or in endeavouring to further its interests committed an offence, whether by the performance of any act or by the failure to perform any act, any person who was, at the time of the commission of the offence, a member of that association, shall be deemed to be guilty of the said offence, unless it is proved that he did not take part in the commission of the offence, and that he could not have prevented it: Provided that if the business or affairs of the association are governed or controlled by a committee or other similar governing body, the provisions of this sub-section shall not apply to any person who was not at the time of the commission of the offence a member of that committee or other body.

(8) In any proceedings against a member of an association of persons in respect of an offence mentioned in sub-section (7) any record which was made or kept by any member or servant or agent of the association within the scope of his activities as such member, servant or agent or any document which was at any time in the custody or under the control of any such member, servant or agent within the scope of his activities as such member, servant or agent, shall be admissible in evidence against the accused.

(9) For the purposes of sub-section (8) any record made or kept by a member or servant or agent of an association or any document which was at any time in his custody or control shall be presumed to have been made or kept by him or to have been in his custody or control within the scope of his activities as such member or servant or agent, unless the contrary is proved.

(10) In this section the word "director" in relation to a corporate body means any person who controls or governs that corporate body or who is a member of a body or group of persons which controls or governs that corporate body or where there is no such body or group, who is a member of that corporate body.

(11) The provisions of this section shall be additional to and not in substitution for any other law which provides for a prosecution against corporate bodies or their directors or servants or against associations of persons or their members.

368. Where an act or omission constitutes an offence under two or more statutory provisions or is an offence against a statutory provision and the common law, a person guilty of such act or omission shall, unless the contrary intention appears, be liable to be prosecuted and punished under either statutory provision, or, as the case may be, under the statutory provision or the common law, but shall not be liable to more than one punishment for the act or omission constituting the offence.

369. If in any criminal proceedings the age of any person is a relevant fact of which no or insufficient evidence is available in those proceedings, the judge or officer presiding at those proceedings may estimate the age of such person by his appearance or from any information which may be available and the age so estimated shall be deemed to be such person's correct age, unless —

- (a) it is subsequently proved that the said estimate was incorrect; and
- (b) the person accused in those proceedings could not have been lawfully convicted of the offence with which he was charged if the said person's correct age had been proved.

bedoelde regspersoon, in sy hoedanigheid as direkteur, dienaar of agent, *prima facie* bewys van die inhoud daarvan en as getuienis teen die beskuldigde toelaatbaar, hetsy bedoelde regspersoon weens die misdryf vervolg kan of kon word, al dan nie, tensy en totdat hy in staat is om te bewys dat hy te alle ter sake dienende tye geen kennis van bedoelde dokument, memorandum, boek of aantekening gehad het nie vir sover die inhoud daarvan op die ten laste gelegde misdryf betrekking het, en op generlei wyse aan die opstel van bedoelde dokument of memorandum of die aanbring van enige ter sake dienende inskrywing in bedoelde boek of die aantekening medepligtig was nie.

(7) Wanneer 'n lid van 'n vereniging van persone wat nie 'n regspersoon is nie, in verband met die behartiging van die besigheid of sake van daardie vereniging of in verband met die bevordering of gepoogde bevordering van sy belang, 'n misdryf pleeg, hetsy deur 'n daad te verrig of deur te versuim om 'n daad te verrig, word enigiemand wat ten tyde van die pleeg van die misdryf 'n lid van daardie vereniging was, geag aan daardie misdryf skuldig te wees, tensy dit bewys word dat hy nie aan die pleeg van die misdryf deelgeneem het nie en dat hy dit nie kon verhoed het nie: Met dien verstande dat as die besigheid of sake van die vereniging deur 'n komitee of ander soortgelyke bestuursliggaam bestuur of beheer word, die bepalings van hierdie subartikel nie van toepassing is op iemand wat ten tyde van die pleeg van die misdryf nie 'n lid van daardie komitee of ander liggaam was nie.

(8) By 'n saak teen 'n lid van 'n vereniging van persone weens 'n in subartikel (7) bedoelde misdryf, is enige aantekening wat deur 'n lid of dienaar of agent van die vereniging binne die bestek van sy werkzaamhede as sodanige lid, dienaar of agent, gedoen of gehou is of enige dokument wat te eniger tyd in die bewaring of onder die beheer van so 'n lid, dienaar of agent binne die bestek van sy werkzaamhede as sodanige lid, dienaar of agent was, as getuienis teen die beskuldigde toelaatbaar.

(9) By die toepassing van subartikel (8) word enige aantekening deur 'n lid of dienaar of agent van 'n vereniging gedoen of gehou of enige dokument wat te eniger tyd in sy bewaring of onder sy beheer was, vermoed deur hom binne die bestek van sy werkzaamhede as sodanige lid of dienaar of agent gedoen of gehou te gewees het of in sy bewaring of onder sy beheer te gewees het, tensy die teendeel bewys word.

(10) In hierdie artikel beteken die woord „direkteur“ met betrekking tot 'n regspersoon iemand wat daardie regspersoon beheer of bestuur of wat lid is van 'n liggaam of groep persone wat daardie regspersoon beheer of bestuur of, waar daar nie so 'n liggaam of groep is nie, wat lid is van daardie regspersoon.

(11) Die bepalings van hierdie artikel vul enige ander wetsbepaling aan wat vir 'n vervolging teen regspersone of hul direkteure of dienare of teen verenigings van persone of hul lede voorsiening maak, en vervang dit nie.

368. Wanneer 'n daad of versuim 'n misdryf ingevolge twee of meer wetteregtelike bepalings of 'n oortreding van 'n wetteregtelike bepaling en die gemene reg uitmaak, kan iemand wat hom aan so 'n daad of versuim skuldig maak, tensy die teendeel blyk, vervolg en gestraf word ingevolge enigeen van die wetteregtelike bepalings of ingevolge die wetteregtelike bepaling of die gemene reg, na gelang, maar hy word nie meer as een straf weens die daad of versuim wat die misdryf uitmaak, opgelê nie.

369. As iemand se ouderdom in 'n strafsaak ter sake is en daar geen of onvoldoende bewys daaromtrent in daardie saak beskikbaar is, kan die regter of beampete wat by daardie saak voorsit, die ouderdom van so iemand volgens sy voorkoms of op grond van enige beskikbare inligting skat, en die aldus geskatte ouderdom word daardie persoon se juiste ouderdom geag te wees, tensy —

- (a) dit later bewys word dat bedoelde skatting onjuis was; en
- (b) die persoon wat in daardie saak aangekla is, nie regtens weens die oortreding waarvan hy aangekla is, skuldig bevind kon word as sy juiste ouderdom bewys was nie.

370. (1) Whenever a complaint on oath is made to a magistrate that any person is conducting himself violently towards, or is threatening injury to the person or property of another or that he has used language or behaved in a manner towards another likely to provoke a breach of the peace or assault, then whether such conduct occurred or such language was used or such threat was made in a public or private place, the magistrate may order such person to appear before him and if necessary may cause him to be arrested and brought before him, and thereupon the magistrate shall enquire into and determine upon such complaint and may place the parties or any witnesses thereto on oath and in his discretion may order the person against whom the complaint is made to give recognizances with or without sureties in an amount not exceeding fifty rand for a period not exceeding six months to keep the peace towards the complainant and refrain from doing or threatening injury to his person or property.

(2) The magistrate may, upon any such enquiry, order the person against whom the complaint is made or the complainant to pay the costs of and incidental to the enquiry.

(3) If any person after having been ordered to give recognizances under this section refuses or fails to do so the magistrate may order him to be committed to prison for a period not exceeding one month unless such security is sooner found.

(4) If the conditions upon which the recognizances were given are not observed by the person who gave the same, the magistrate may declare the recognizances to be forfeited and any such declaration of forfeiture shall have the effect of a judgment in a civil action in the magistrate's court of the district.

371. Whenever the attorney-general has any doubt as to the correctness of any decision given by a superior court in any criminal case on a question of law, he may submit that decision to the Appellate Division of the Supreme Court of South Africa and cause the matter to be argued before it, in order that it may determine the said question for the future guidance of all courts.

372. (1) If an accused is tried upon a charge referred to in sub-section (5) of section *sixty-four* no person shall at any time (subject to the provisions of sub-section (4)) publish by radio or in any document any information relating to the said trial or any information disclosed thereto, unless the judge or officer presiding at such trial has, after having consulted the person against or in connection with whom the offence charged is alleged to have been committed (or if he is a minor, his guardian) given his consent, conveyed in a document signed by himself or by the registrar or clerk of the court, to such publication.

(2) No person shall at any time publish in any manner described in sub-section (1) the name, address, school, place of occupation or any other information likely to reveal the identity of any person under the age of eighteen years who is being or has been tried in any court on a charge of having committed any offence: Provided that, subject to the provisions of sub-section (1), if the Administrator or if the judge or judicial officer who presides or presided at the trial is of the opinion that such publication would be just and equitable and in the interest of any particular person, he may by order dispense with the prohibition contained in this sub-section to such an extent as may be specified in the order.

(3) Any person who contravenes sub-section (1) or (2) shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred rand or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

(4) The prohibition contained in sub-section (1) shall not apply to the publication in the form of a *bona fide* law report of any information relating to or disclosed at any trial as aforesaid, which is necessary to report any

370. (1) Wanneer daar by 'n landdros 'n klagte onder eed ingedien word dat iemand geweld teenoor 'n ander gebruik, of dreig om hom liggaamlike letsel toe te dien of om sy eiendom te beskadig of dat hy teenoor 'n ander taal gesig het, of homself teenoor 'n ander gedra het op 'n wyse wat waarskynlik 'n vredebreuk of aanranding tot gevolg sal hê, dan kan die landdros, hetsy sodanige gedrag voorgeval het of taal gesig is of sodanige dreigemente geuit is in 'n openbare of 'n private plek, daardie persoon gelas om voor hom te verskyn en indien nodig hom in hegtenis laat neem en voor hom laat bring, en die landdros moet dan omtrent daardie klagte ondersoek instel en daaroor beslis, en kan die partye of enige getuies daarby betrokke die eed ople en kan die persoon teen wie die klagte ingedien is, na goeddunke gelas om 'n borgakte, met of sonder borge, ten bedrae van hoogstens vyftig rand en ten opsigte van 'n tydperk van hoogstens ses maande aan te gaan as sekerheid dat hy die vrede sal bewaar teenoor die klaer, en hom sal weerhou van die toediening van liggaamlike letsel aan die klaer of dreigemente te dien effekte, of die beskadiging van sy eiendom of dreigemente te dien effekte.

(2) By so 'n ondersoek kan die landdros die persoon teen wie die klagte ingedien is of die klaer gelas om die koste van en verbonde aan die ondersoek te betaal.

(3) As iemand wat gelas is om 'n borgakte ingevolge hierdie artikel aan te gaan, weier of versium om dit te doen, kan die landdros gelas dat hy vir 'n tydperk van hoogstens een maand gevange gesit word tensy sodanige borgstelling eerder aangegaan word.

(4) As die voorwaarde van die borgakte nie deur die persoon wat dit aangegaan het, nagekom word nie, kan die landdros die borggeld verbeurd verklaar en sodanige verbeurdverklaring het die uitwerking van 'n vonnis in 'n siviele geding in die landdroshof van die distrik.

371. Wanneer die Prokureur-generaal in twyfel verkeer aangaande die juistheid van 'n beslissing wat deur 'n hoër hof in 'n strafsaak insake 'n regsvraag gegee is, kan hy daardie beslissing aan die Appèlafdeling van die Hooggereghof van Suid-Afrika voorlê en die vraag voor daardie hof laat beredeneer sodat daardie Afdeling oor die vraag kan beslis om as leidraad vir alle howe in die toekoms te dien.

372. (1) As 'n beskuldigde weens 'n in subartikel (5) van artikel *vier-en-sestig* bedoelde aanklag verhoor word, mag niemand (behoudens die bepalings van subartikel (4)) te eniger tyd deur middel van radio of in enige dokument enige inligting met betrekking tot bedoelde verhoor of enige inligting wat daar aan die lig kom, publiseer nie, tensy die regter of beampete wat by die verhoor voorsit, na raadpleging met die persoon teen of ten opsigte van wie die ten laste gelegde misdryf na bewering gepleeg is (of as hy 'n minderjarige is, sy voog) deur middel van 'n dokument deur hom, of deur die griffeier of klerk van die hof onderteken, tot sodanige publikasie toegestem het.

(2) Niemand mag te eniger tyd op die wyse in subartikel (1) vermeld die naam, adres, skool of werkplek van iemand onder die ouderdom van agtien jaar wat in enige hof verhoor word of verhoor is weens 'n aanklag dat hy 'n misdryf gepleeg het, of enige ander inligting wat so 'n persoon se identiteit waarskynlik aan die lig sal bring, publiseer nie: Met dien verstande dat, behoudens die bepalings van subartikel (1), die Administrateur of regter of regterlike beampete wat by die verhoor voorsit of voorgesit het, as hy meen dat sodanige publikasie regverdig en billik en in die belang van 'n bepaalde persoon sal wees, kan beveel dat die verbod in hierdie subartikel vervat, opgehef word in die mate wat in die bevel aangedui word.

(3) Iemand wat subartikel (1) of (2) oortree, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens eenhonderd rand of met gevangenisstraf vir 'n tydperk van hoogstens drie maande of met beide sodanige boete en sodanige gevangenisstraf.

(4) Die verbod in subartikel (1) vervat, is nie van toepassing nie op die publikasie, by wyse van 'n *bona fide* verslag van uitgewysde sake, van enige inligting wat betrekking het op of aan die lig gekom het by so 'n verhoor soos voormeld en wat verstrekk moet word ten einde 'n verslag te gee van 'n regsvraag wat ontstaan het gedurende die verhoor of gedurende enige verrigtinge wat

question of law which was raised during such trial or during any proceedings resulting therefrom, and any decision or ruling given by any court on such question, if such report does not mention the name of the person tried or of the person against or in connection with whom or the place where the offence in question was alleged to have been committed or of any witness at the trial.

373. (1) If a person has received from a policeman or any other officer in the service of the State who has been authorized by the Administrator either generally by notice in the *Official Gazette* or specially, to issue a notification under this section, or from an officer in the employ of any council or board established in terms of any law for the management of the affairs of any city, town, village or other similar community, a notification in writing, alleging that the said person has committed, at a place and upon a date and at a time or during a period specified in the said notification, any offence likewise therein specified, of any class mentioned in Part III of the Second Schedule, and setting forth the amount of the fine which a court trying such person for such offence would probably impose upon him, the said person may within seven days after the receipt of the said notification deliver or transmit the said notification, together with a sum of money equal to the said amount, to the magistrate of the district wherein the offence is alleged to have been committed, and thereupon the said person shall not be prosecuted for having committed such offence: Provided that an officer in the employ of a council, or board shall not issue any such notification in respect of an offence committed outside the area of jurisdiction of his employer.

(2) Any money paid to a magistrate in terms of subsection (1) shall be dealt with as if it had been paid as a fine for the offence in question.

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

(4) The amount to be specified in any notification issued under this section as the amount of the fine which a court would probably impose in respect of any offence, shall be determined from time to time for any particular area, by the magistrate of the district in which such area is situate.

(5) The Administrator may by regulation declare that any officer mentioned in sub-section (1), of a class defined in such regulation, shall, in any area likewise defined, be deemed to be a peace officer in relation to any offence specified in such regulation or in connection with any duty of such officer likewise specified.

374. The right of prosecution for murder shall not be barred by lapse of time; but the right of prosecution for any other offence, whether at the public instance or at the instance of a private prosecutor, shall, unless some other period is expressly provided by law, be barred by the lapse of twenty years from the time when the offence was committed.

375. Neither a conviction nor an acquittal following on any prosecution for any offence shall be a bar to a civil action for damages at the instance of any person who has suffered any injury in consequence of the commission of that offence.

376. (1) The Administrator may make rules prescribing forms of complaint, summons, charges, depositions, indictments, judgments, records, convictions, warrants and recognizances and other forms to be used in any court or which may be prescribed.

(2) The Judge President of the Supreme Court may make rules, subject to the approval of the Administrator and not inconsistent with this Ordinance, regulating the following matters in respect of superior courts —

- (a) the sittings of any superior courts for criminal purposes;
- (b) the proceedings upon the trial of persons charged with offences;

daaruit voorspruit, en van 'n beslissing of uitspraak van die hof insake so 'n regsvraag, as daar in so 'n verslag nie melding gemaak word van die naam van die persoon wat verhoor is of van die naam van die persoon teen ten aansien van wie, of van die plek waar, die betrokke misdryf na bewering gepleeg is of van enige getuie by die verhoor nie.

373. (1) As iemand van 'n polisiebeampte of ander beampte in diens van die Staat wat deur die Administrator, hetsy in die algemeen by kennisgewing in die *Offisiële Koerant* of in die besonder, gemagtig is of 'n kennisgewing ingevolge hierdie artikel uit te reik, of van 'n beampte in diens van 'n raad of komitee wat ooreenkomsdig 'n wet vir die bestuur van die sake van enige afdeling, stad, dorp of ander soortgelyke gemeenskap ingestel is, 'n skriftelike kennisgewing ontvang het waarin vermeld word dat bedoelde persoon op 'n plek en datum en uur of gedurende 'n tydperk in bedoelde kennisgewing aangedui, 'n misdryf gepleeg het wat ook daarin aangedui word en wat ressorteer onder 'n kategorie in deel III van die tweede bylae vermeld, en waarin aangegee word die bedrag van die boete wat 'n hof by die verhoor van bedoelde persoon hom weens daardie misdryf waarskynlik sal oplê, kan bedoelde persoon daardie kennisgewing, tesele met 'n som geld gelyk aan bedoelde bedrag, binne sewe dae na ontvangst van daardie kennisgewing aan die landdros van die distrik waarin die misdryf na bewering gepleeg is, oorhandig of stuur, en daarop word bedoelde persoon nie weens die pleeg van daardie misdryf vervolgh nie: Met dien verstande dat 'n beampte in diens van 'n raad of bestuur sodanige kennisgewing nie ten opsigte van 'n misdryf buite die regssgebied van sy werkewer gepleeg, mag uitrek nie.

(2) Daar word oor geld wat ingevolge subartikel (1) aan 'n landdros betaal word, beskik asof dit betaal is as 'n boete wat ten opsigte van die betrokke misdryf opgelê is.

(3) Die Administrator kan van tyd tot tyd by kennisgewing in die *Offisiële Koerant* 'n misdryf by die in deel III van die tweede bylae vermelde misdrywe voeg of 'n daarin vermelde misdryf daaruit skrap.

(4) Die bedrag wat in 'n ingevolge hierdie artikel uitgereikte kennisgewing aangegee moet word as die bedrag van die boete wat 'n hof ten opsigte van 'n misdryf waarskynlik sal oplê, word van tyd tot tyd vir 'n bepaalde gebied deur die landdros van die distrik waarin daardie gebied geleë is, bepaal.

(5) Die Administrator kan by regulasie verklaar dat 'n in subartikel (1) bedoelde beampte wat behoort tot 'n kategorie in sodanige regulasie omskryf, in 'n insgelyks omskrewe gebied geag word 'n vredesbeampte te wees met betrekking tot 'n misdryf in daardie regulasie aangedui of in verband met 'n insgelyks aangeduide plig wat aan daardie beampte opgedra is.

374. Die reg om weens moord te vervolg verval nie weens tydsverloop nie; maar die reg om weens enige ander misdryf, hetsy van staatsweé of in opdrag van 'n private aanklaer, te vervolg, verval na verloop van twintig jaar vanaf die tydstip waarop die misdryf gepleeg is, tensy regtens 'n ander tydperk uitdruklik bepaal word.

375. Nog 'n skuldigbevinding nog 'n vryspreek wat volg op 'n vervolging weens 'n misdryf, sluit 'n siviele vordering om skadevergoeding deur iemand wat skade gely het as gevolg van die pleeg van daardie misdryf uit.

376. (1) Die Administrator kan reëls uitvaardig wat vorms voorskryf van klages, dagvaardings, aanklagte, verklarings, aktes van beskuldiging, vonnis, notule, skuldigbevindings, lasbriewe en borgaktes en ander vorms wat in 'n hof gebruik moet word of wat voorgeskryf kan word.

(2) Die Regter-president van die Hooggereghof kan, onderhewig aan die goedkeuring van die Administrator, reëls uitvaardig wat nie onbestaanbaar is met hierdie ordonnansie nie ter reëling van die onderstaande aangeleenthede ten opsigte van hoër howe:—

- (a) die sittings van 'n hoër hof vir strafregtelike aangeleenthede;
- (b) die verrigtinge by die verhoor van persone wat weens misdrywe aangekla is;

- (c) bail and costs;
- (d) the duties of the officers of any superior court; and
- (e) generally any other matter which it is deemed expedient to regulate for carrying this Ordinance into effect.

377. (1) Subject to the provisions of sub-section (2), the laws specified in the Sixth Schedule are hereby repealed to the extent set out in the third column of that Schedule.

(2) Any proclamation, regulation, notice, approval, authority, return certificate or document issued, made, promulgated, given or granted and any other action taken under any provision of a law repealed by sub-section (1), shall be deemed to have been issued, made, promulgated, given, granted or taken under the corresponding provision of this Act.

378. This Ordinance shall be called the Criminal Procedure Ordinance, 1963 and shall come into operation on a date to be fixed by the Administrator by proclamation in the *Official Gazette*.

SCHEDULES

FIRST SCHEDULE

OFFENCES IN RESPECT OF WHICH ARRESTS MAY UNDER CHAPTER IV BE MADE WITHOUT WARRANT

- Treason.
- Sedition.
- Murder.
- Culpable Homicide.
- Rape, or any statutory offence of a sexual nature against a girl under a prescribed age.
- Sodomy and Bestiality.
- Indecent Assault.
- Robbery.
- Assault in which a dangerous wound is inflicted.
- Arson.
- Breaking or entering any premises with intent to commit an offence.
- Theft, either under the common law or under any statutory provision.
- Receiving stolen goods knowing the same to have been stolen.
- Fraud.
- Forgery or uttering a forged document knowing it to be forged.
- Offences against the laws for the prevention of illicit dealing in or possession of precious minerals or unwrought precious metals or rough or uncut diamonds or of the supply of intoxicating liquor to natives or coloured persons.
- Offences relating to the coinage.
- Offences the punishment whereof may be a period of imprisonment exceeding six months, without the option of a fine.
- Any conspiracy, incitement or attempt to commit any of the above-mentioned offences.

SECOND SCHEDULE

PART I.

OFFENCES IN CONNECTION WHEREWITH VEHICLES AND RECEPTACLES MAY BE SEIZED AND CONFISCATED UNDER SECTIONS FORTY-NINE AND THREE HUNDRED AND FORTY-SEVEN

- Any offence under any law relating to the illicit possession, conveyance or supply of habit forming drugs or intoxicating liquor.

- (c) borgtog en koste;
- (d) die pligte van die beampies van 'n hoër hof; en
- (e) in die algemeen, enige ander aangeleenthed wat raadsaam geag word om te reël ten einde aan hierdie ordonnansie gevolg te gee.

377. (1) Die wette in die sesde bylae vermeld word hiermee, behoudens die bepalings van subartikel (2) herroep in die mate in die derde kolom van daardie bylae aangedui.

(2) 'n Proklamasie, regulasie, kennisgewing, goedkeuring, magtiging, relaas, sertifikaat of dokument wat uitgereik, uitgevaardig, afgekondig, gegee of toegestaan is en enige ander stappe wat gedoen is kragtens 'n bepaling van 'n by subartikel (1) herroep wet, word geag kragtens die oooreenstemmende bepaling van hierdie ordonnansie uitgereik, uitgevaardig, afgekondig, gegee, toegestaan of gedoen te gewees het.

378. Hierdie ordonnansie heet die Strafprosesordonansie 1963 en tree in werking op 'n datum wat die Administrateur by proklamasie in die *Offisiële Koerant* bepaal.

BYLAES

EERSTE BYLAE

MISDRYWE TEN OPSIGTE WAARVAN INHEGTENIS-NEMING SONDER LASBRIEF INGEVOLGE HOOF-STUK IV GEDOE WORD.

- Hoogverraad
- Oproer
- Moord
- Strafbare Manslag
- Verkragting, of 'n wetteregtelike geslagsmisdryf teen 'n meisie onder 'n voorgeskrewe ouerdom.
- Sodomie en Bestialiteit
- Onsedelike Aanranding
- Roof
- Aanranding waarby 'n gevaarlike wond toegedien is
- Brandstigting
- Oopbreek of betreding van 'n perseel met die oopset om 'n misdryf te pleeg.
- Diefstal, hetsy ingevolge die gemene reg of ingevolge 'n wetteregtelike bepaling.
- Ontvangs van gesteelde goedere wetende dat dit gesteel is.
- Bedrog
- Vervalsing of uitgifte van 'n vervalste stuk wetende dat dit vervals is.
- Misdrywe teen die wetsbepalings ter voorkoming van onwettige handel in, of besit van, edele minerale of onbewerkte edele metale of ruwe of ongeslypte diamante of van die verskaffing van bedwelmende drank aan naturelle of kleurlinge.
- Misdrywe betreffende die munt van geld.
- Misdrywe waarvoor gevangenisstraf vir 'n tydperk langer as ses maande sonder die keuse van 'n boete opgelê kan word.
- Enige sameswering, uitlokking of poging om enige van die bogenoemde misdrywe te pleeg.

TWEEDE BYLAE

DEEL I

MISDRYWE IN VERBAND WAARMEE VOERTUIE EN HOUERS INGEVOLGE ARTIKELS NEGEN-EN-VEERTIG EN DRIEHONDERD SEWEN-EN-VEERTIG IN BESLAG GENEEM EN VERBEURD VERKLAAR WORD.

- Enige misdryf ingevolge 'n wet betreffende die onwettige besit, vervoer of verskaffing van gewoonte-vormende verdowingsmiddels of bedwelmende drank.

Any offence under any law relating to the illicit possession of, or dealing in precious minerals or unwrought precious metals or rough or uncut diamonds.

PART II.

OFFENCES IN CONNECTION WHEREWITH BAIL MAY NOT BE GRANTED UNDER SUB-SECTION (2) OF SECTION ONE HUNDRED AND EIGHT

Treason.

Sedition.

Murder.

Rape.

Robbery.

Assault in which a dangerous injury is inflicted.

Arson.

Breaking or entering any premises with intent to commit an offence.

Theft, either under the common law or under any statutory provision, receiving stolen goods knowing the same to have been stolen, fraud, forgery or uttering a forged document knowing it to be forged, if the amount or value involved in the offence exceeds two hundred rand.

Any offence under any law relating to illicit possession of or dealing in precious minerals or unwrought precious metals or rough or uncut diamonds.

Any offence relating to the coinage.

Any conspiracy, incitement or attempt to commit any of the above-mentioned offences.

PART III.

OFFENCES WHICH MAY BE COMPOUNDED UNDER SECTION THREE HUNDRED AND SEVENTY-THREE

Any contravention of a bye-law or regulation made by or for a council or board referred to in section three hundred and seventy-three.

Any offence committed by —

- (a) driving a vehicle at a speed exceeding a prescribed limit;
- (b) driving a vehicle which does not bear prescribed lights, or any prescribed means of identification;
- (c) leaving or stopping a vehicle at a place where it may not be left or stopped, or leaving a vehicle in a condition in which it may not be left;
- (d) driving a vehicle at a place where and at a time when it may not be driven;
- (e) driving a vehicle which is defective or any part whereof is not properly adjusted, or causing any undue noise by means of a motor vehicle;
- (f) owning or driving a vehicle for which no valid licence is held;
- (g) driving a motor vehicle without holding a licence to drive it.

THIRD SCHEDULE.

PART I.

OFFENCES ON CONVICTION WHEREOF, THE OFFENDER SHALL IN CERTAIN CIRCUMSTANCES BE SENTENCED TO IMPRISONMENT FOR CORRECTIVE

Enige misdryf ingevolge 'n wet betreffende die onwettige besit van, of handel in, edele minerale of onbewerkte edele metale of ruwe of ongeslypte diamante.

DEEL II

MISDRYWE TEN OPSIGTE WAARVAN BORGTOG NIE INGEVOLGE SUBARTIKEL (2) VAN ARTIKEL EENHONDERD EN AGT TOEGESTAAN MAG WORD NIE.

Hoogverraad.

Oproer.

Moord.

Verkragting.

Roof.

Aanranding waarby 'n gevaaarlike letsel toegedien is. Brandstigting.

Oopbreuk of betreding van 'n perseel met die opset om 'n misdryf te pleeg.

Diefstal, hetsy ingevolge die gemene reg of ingevolge 'n wetteregtelike bepaling, ontvangs van gesteelde goed wetende dat dit gesteel is, bedrog, vervalsing, of uitgifte van 'n vervalste stuk wetende dat dit vervals is, as die bedrag of waarde by so 'n misdryf betrokke tweehonderd rand te bove gaan.

Enige misdryf ingevolge 'n wet betreffende die onwettige besit van, of handel in, edele minerale of onbewerkte edele metale of ruwe of ongeslypte diamante.

Enige misdryf betreffende die munt van geld.

Enige sameswering, uitlokking of poging om enige van bogenoemde misdrywe te pleeg.

DEEL III

MISDRYWE WAT INGEVOLGE ARTIKEL DRIEHONDERD DRIE-EN-SEVENTIG AFGEKOOP KAN WORD

Enige oortreding van 'n verordening of regulasie wat deur of vir 'n raad of bestuur bedoel in artikel driehonderd drie-en-sewentig uitgevaardig is.

Enige misdryf wat gepleeg word deur —

- (a) die bestuur van 'n voertuig teen 'n snelheid wat die voorgeskrewe beperking oorskry;
- (b) die bestuur van 'n voertuig wat nie die voorgeskrewe ligte of enige voorgeskrewe herkenningsmiddel aan het nie;
- (c) 'n voertuig te laat of tot stilstand te bring op 'n plek waar dit nie gelaat of tot stilstand gebring mag word nie, of 'n voertuig te laat in 'n toestand waarin dit nie gelaat mag word nie;
- (d) die bestuur van 'n voertuig op 'n plek waar en op 'n tydstip wanneer dit nie bestuur mag word nie;
- (e) die bestuur van 'n voertuig wat gebrekkig is of waarvan 'n onderdeel nie behoorlik reggestel is nie of die veroorsaking van 'n buitensporige geraas deur middel van 'n motorvoertuig;
- (f) die besit of bestuur van 'n voertuig waarvoor 'n geldige lizensie nie gehou word nie;
- (g) die bestuur van 'n motorvoertuig sonder die besit van 'n lizensie om dit te bestuur.

DERDE BYLAE

DEEL I

MISDRYWE BY SKULDIGBEVINDING WAARAAN DIE OORTREDER ONDER SEKERE OMSTANDIGHEDEN VEROORDEEL MOET WORD TOT GEVANGENIS-

TRAINING UNDER SECTION THREE HUNDRED AND EIGHTEEN OR TO IMPRISONMENT FOR THE PREVENTION OF CRIME UNDER SECTION THREE HUNDRED AND NINETEEN OR BE DECLARED AN HABITUAL CRIMINAL UNDER SECTION THREE HUNDRED AND TWENTY.

GROUP I.

- Murder.
- Rape.
- Culpable Homicide involving an assault.
- Robbery.
- Assault with intent to commit murder, rape, robbery or sodomy, or to do grievous bodily harm.
- Indecent assault.
- Arson.
- Malicious injury to property.
- Public violence.
- Sedition.
- Any conspiracy, incitement or attempt to commit any of the offences in this Group.

GROUP II.

- Rape.
- Assault with intent to commit rape or sodomy.
- Indecent assault.
- Abduction.
- Incest.
- Bestiality.
- Sodomy.
- Criminal *injuria* which involves an indecent act.
- Any conspiracy, incitement or attempt to commit any of the offences in this Group.

GROUP III.

- Breaking or entering any premises with intent to commit an offence.
- Receiving stolen property knowing it to have been stolen.
- Robbery.
- Theft.
- Extortion.
- Fraud.
- Forgery or uttering a forged instrument knowing it to be forged.
- Any conspiracy, incitement or attempt to commit any of the offences in this Group.

GROUP IV.

- Abortion.
- Disposing of the dead body of a child with intent to conceal the fact of its birth.
- Abduction.
- Any conspiracy, incitement or attempt to commit any of the offences in this Group.

GROUP V.

- Defeating or obstructing the course of justice.
- Perjury.
- Bribery.
- Any conspiracy, incitement or attempt to commit any of the offences in this Group.

GROUP VI.

- Extortion.
- Bribery.
- Fraud.
- Forgery or uttering a forged instrument knowing it to be forged.
- Any conspiracy, incitement or attempt to commit any of the offences in this Group.

GROUP VII.

- Treason.
- Sedition.
- Public violence.
- Any conspiracy, incitement or attempt to commit any of the offences in this Group.

STRAF VIR KORREKTIEWE OPLEIDING KAGTENS ARTIKEL DRIEHONDERD EN AGTIEN OF TOT GEVANGENISSTRAF TER VOORKOMING VAN MISDAAD KAGTENS ARTIKEL DRIEHONDERD EN NEGENTIEN OF KAGTENS ARTIKEL DRIEHONDERD EN TWINTIG TOT GEWOONTEMISDADIGER VERKLAAR MOET WORD.

GROEP I

- Moord.
- Verkragting.
- Strafbare manslag waarby aanranding betrokke is.
- Roof.
- Aanranding met die opset om moord, verkragting, roof of sodomie te pleeg of om ernstig te beseer.
- Onsedelike aanranding.
- Brandstigting.
- Opsetlike saakbeskadiging.
- Openbare geweld.
- Oproer.
- Enige sameswering, uitlokking of poging om enige van die misdrywe in hierdie groep te pleeg.

GROEP II

- Verkragting.
- Aanranding met die opset om verkragting of sodomie te pleeg.
- Onsedelike aanranding.
- Ontvoering.
- Bloedskande.
- Bestialiteit.
- Sodomie.
- Strafregtelike *injuria* waarby 'n onsedelike daad betrokke is.
- Enige sameswering, uitlokking of poging om enige van die misdrywe in hierdie groep te pleeg.

GROEP III

- Oopbreuk of betreding van 'n perseel met die opset om 'n oortreding te pleeg.
- Ontvangs van 'n gesteelde goed wetende dat dit gesteel is.
- Roof.
- Diefstal.
- Afpersing.
- Bedrog.
- Vervalsing of uitgifte van 'n vervalste stuk wetende dat dit vervals is.
- Enige sameswering, uitlokking of poging om enige van die misdrywe in hierdie groep te pleeg.

GROEP IV

- Vrugafdrywing.
- Die wegdoen van 'n lyk van 'n kind met die doel om die feit van sy geboorte te verberg.
- Ontvoering.
- Enige sameswering, uitlokking of poging om enige van die misdrywe in hierdie groep te pleeg.

GROEP V

- Dwarsboming of belemmering van die verloop van die gereg.
- Meineed.
- Omkopery.
- Enige sameswering, uitlokking of poging om enige van die misdrywe in hierdie groep te pleeg.

GROEP VI

- Afpersing.
- Omkopery.
- Bedrog.
- Vervalsing of uitgifte van 'n vervalste stuk wetende dat dit vervals is.
- Enige sameswering, uitlokking of poging om enige van die misdrywe in hierdie groep te pleeg.

GROEP VII

- Hoogverraad.
- Oproer.
- Openbare geweld.
- Enige sameswering, uitlokking of poging om enige van die misdrywe in hierdie groep te pleeg.

PART II.

OFFENCES, ON CONVICTION WHEREOF THE OFFENDER SHALL BE SENTENCED TO WHIPPING UNDER SECTION THREE HUNDRED AND TWENTYNINE.

Rape, where the death sentence is not imposed.

Robbery, where the death sentence is not imposed.

Culpable homicide, where assault with intent to commit rape or robbery is involved.

Assault with intent, or any attempt to commit rape or robbery where the death sentence is not imposed.

Breaking or entering or an attempt to break and enter any premises with intent to commit an offence where the death sentence is not imposed.

Theft of a motor vehicle (except where the accused obtained possession of the motor vehicle with the consent of the owner thereof).

Theft or an attempted theft of goods from a motor vehicle or part thereof where the said motor vehicle or the said part thereof was properly locked.

Receiving stolen property well knowing the same to have been stolen.

DEEL II

MISDRYWE BY SKULDIGBEVINDING WAARAAN DIE OORTREDER KAGTENS ARTIKEL DRIEHONDERD NEGEN-EN-TWINTIG TOT LYFSTRAF VEROORDEEL MOET WORD.

Verkragting, wanneer die doodvonnis nie opgelê word nie.

Roof, wanneer die doodvonnis nie opgelê word nie. Strafbare manslag waarby aanranding met die opset om verkragting of roof te pleeg, betrokke is.

Aanranding met die opset of 'n poging om verkragting of roof te pleeg, wanneer die doodvonnis nie opgelê word nie.

Oopbreek of betreding van 'n perseel met die opset om 'n misdryf te pleeg of 'n poging daar toe, wanneer die doodvonnis nie opgelê word nie.

Diefstal van 'n motorvoertuig (behalwe wanneer die beskuldigde met die toestemming van die eienaar daarvan besit van die motorvoertuig verky het).

Diefstal of 'n poging tot diefstal van goed uit 'n motorvoertuig, of deel daarvan wanneer bedoelde motorvoertuig of bedoelde deel daarvan behoorlik gesluit is.

Die ontvang van gesteelde goed wel wetende dat dit gesteel is.

FOURTH SCHEDULE.

OFFENCES ON CONVICTION WHEREOF THE OFFENDER CANNOT BE DEALT WITH UNDER SECTION THREE HUNDRED AND SEVENTEEN OR SUB-SECTION (1) OF SECTION THREE HUNDRED AND THIRTY-EIGHT.

Murder.

Rape.

Robbery.

Any offence in respect of which any law imposes a minimum punishment.

Any conspiracy, incitement or attempt to commit any of the above-mentioned offences.

VIERDE BYLAE

MISDRYWE BY SKULDIGBEVINDING WAARAAN DAAR NIE MET DIE OORTREDER INGEVOLGE ARTIKEL DRIEHONDERD EN SEVENTIEN OF SUBARTIKEL (1) VAN ARTIKEL DRIEHONDERD AGT-EN-DERTIG GEHANDEL KAN WORD NIE.

Moord.

Verkragting.

Roof.

Enige misdryf ten opsigte waarvan 'n wet 'n minimum straf voorskryf.

Enige sameswering, uitlokking of poging om enige van die bovenoemde misdrywe te pleeg.

VYFDE BYLAE

REËLS WAT INGEVOLGE ARTIKEL TWEEHONDERD DRIE-EN-TAGTIG NAGEKOM MOET WORD WANNEER VORIGE SKULDIGBEVINDINGS BY DIE OPLEGGING VAN 'N STRAF IN AANMERKING GENEEM WORD.

1. (a) Geen vorige skuldigbevinding word by die oplegging van 'n straf op 'n veroordeelde persoon in aanmerking geneem nie, as 'n tydperk van tien jaar verloop het na die datum van daardie skuldigbevinding of die datum van verstrekking van enige onverstreke tydperk van gevangenisstraf aan die veroordeelde persoon opgelê, watter datum ook al die jongste is, tensy dit bewys word dat hy gedurende daardie tydperk van tien jaar 'n misdryf gepleeg het.

(b) Die uitdrukking „onverstreke tydperk van gevangenisstraf“ in hierdie reël beteken die gesamentlike tydperk van die gevangenisstraf hetsy voor of op die datum van die vorige skuldigbevinding opgelê en wat ten tyde van die vorige skuldigbevinding ondergaan sou moes word by ontstentenis van betaling van 'n boete en van kwytskelding, van straf en van opskorting van 'n tydperk van gevangenisstraf.

2. Waar daar meer as een hoof in 'n aanklag voor kom, word 'n skuldigbevinding op elke hoof as 'n afsonderlike skuldigbevinding beskou.

3. Wanneer 'n beskuldigde aan meer as een misdryf op dieselfde dag skuldig bevind is, word 'n skuldigbevinding aan elke misdryf as 'n afsonderlike skuldigbevinding beskou.

4. By die berekening van 'n tydperk van gevangenisstraf is —

(a) twintig uur periodieke gevangenisstraf gelyk aan een dag gevangenisstraf;

FIFTH SCHEDULE.

RULES WHICH, IN TERMS OF SECTION TWO HUNDRED AND EIGHTY-THREE, SHALL BE OBSERVED WHEN TAKING PREVIOUS CONVICTIONS INTO ACCOUNT IN IMPOSING ANY SENTENCE.

1. (a) No previous conviction shall be taken into account in imposing any sentence on a convicted person, if a period of ten years has elapsed after the date of such conviction or the date of expiration of any unexpired period of imprisonment imposed on the convicted person, whichever is the later date, unless he is proved to have committed an offence during such period of ten years.

(b) The expression "unexpired period of imprisonment" in this rule means the aggregate of any periods of imprisonment imposed either before or on the date of the previous conviction and which would have had to be undergone at the time of the previous conviction, in the absence of payment of any fine and of remission of sentence and of suspension of any period of imprisonment.

2. Where there are more counts than one in any charge, a conviction on each count shall be treated as a separate conviction.

3. When an accused has been convicted of more offences than one on the same day, a conviction of each offence shall be treated as a separate conviction.

4. In calculating any period of imprisonment —

(a) twenty hours periodical imprisonment shall be equivalent to imprisonment for one day;

- (b) one week shall be equivalent to seven days;
- (c) thirty days shall be equivalent to one month;
- (d) imprisonment for corrective training shall be equivalent to imprisonment for a period of two years;
- (e) imprisonment for the prevention of crime shall be equivalent to imprisonment for a period of five years;
- (f) declaration as an habitual criminal shall be equivalent to imprisonment for a period of nine years.

5. Whenever the date of commission of an offence has not been proved, the date alleged in the charge shall be deemed to be the date of commission of the offence, or if a period is alleged in the charge, the date of commencement of that period shall be deemed to be the date of commission of the offence.

SIXTH SCHEDULE.

LAWS REPEALED.

No. and year of Law	Title	Extend of repeal
Proclamation 21 of 1919.	Administration of Justice Proclamation, 1919.	Section eight.
Proclamation 25 of 1921.	Special Justice of the Peace Proclamation, 1921.	The whole.
Proclamation 31 of 1931.	Special Justices of the Peace Amendment Proclamation, 1931.	The whole.
Proclamation 30 of 1935.	Criminal Procedure and Evidence Proclamation, 1935.	The whole.
Proclamation 6 of 1936.	Criminal Procedure and Evidence Amendment Proclamation, 1936.	So much as is unrepealed.
Proclamation 26 of 1943.	Criminal Procedure and Evidence Amendment Proclamation, 1943.	The whole.
Proclamation 19 of 1949.	Criminal Procedure and Evidence Amendment Proclamation, 1949.	The whole.
Ordinance 11 of 1954.	General Laws Amendment Ordinance, 1954.	Sections ten and eleven.
Ordinance 6 of 1955.	Administration of Justice Proclamation Amendment Ordinance, 1955.	Sections two and three.
Ordinance 32 of 1955.	Criminal Procedure and Evidence Proclamation Amendment Ordinance, 1955.	So much as is unrepealed.
Ordinance 17 of 1958.	Criminal Procedure and Evidence and Price Control and Game Preservation Admissions of Guilt Amendment Ordinance, 1958.	Section one.
Ordinance 22 of 1958.	General Law Amendment Ordinance, 1958.	Sections fifteen to twenty-three, both inclusive.
Ordinance 31 of 1961.	Children's Ordinance, 1961.	Sections ninety-two to ninety-six, both inclusive.

- (b) een week gelyk aan sewe dae;
- (c) dertig dae gelyk aan een maand;
- (d) gevangenisstraf vir korrektiewe opleiding gelyk aan gevangenisstraf vir 'n tydperk van twee jaar;
- (e) gevangenisstraf ter voorkoming van misdaad gelyk aan gevangenisstraf vir 'n tydperk van vyf jaar;
- (f) verklaring tot gewoontemisdadiger gelyk aan gevangenisstraf vir 'n tydperk van nege jaar.

5. Wanneer die datum waarop 'n misdryf gepleeg nie bewys is nie, word die datum in die aanklag beweer geag die datum te wees waarop die misdryf gepleeg of, as 'n tydperk in die aanklag beweer word, word die datum waarop daardie tydperk begin, geag die datum wees waarop die misdryf gepleeg is.

SESDE BYLAE

HERROEPE WETTE

No. en jaar van wet	Titel	Mate van herroeping
Proklamasie 21 van 1919.	Rechtsbedeeling Proklamatie 1919	Artikel agt
Proklamasie 25 van 1921.	Speciale Vrederechters Proklamatie 1921	Die hele
Proklamasie 31 van 1931.	Spesiale Vrederegters Wysigingsproklamasie 1931	Die hele
Proklamasie 30 van 1935.	Kriminele Prosedure en Bewyslewering Proklamasie 1935	Die hele
Proklamasie 6 van 1936.	Kriminele Prosedure en Bewyslewering Wysigings Proklamasie 1936	Die deel wat nog nie herroep is nie.
Proklamasie 26 van 1943.	Wysigingsproklamasie betreffende Kriminele Prosedure en Bewyslewering 1943	Die hele
Proklamasie 19 van 1949.	Wysigingsproklamasie op Strafprosedure en Bewyslewering 1949	Die hele
Ordonnansie 11 van 1954.	Algemene Regswysigingsordonnansie 1954	Artikels tien en elf
Ordonnansie 6 van 1955.	Wysigingsordonnansie op die "Rechtsbedeeling Proklamatie" 1955	Artikels twee en drie
Ordonnansie 32 van 1955.	Wysigingsordonnansie op die Kriminele Prosedure en Bewyslewering 1955	Die deel wat nog nie herroep is nie.
Ordonnansie 17 van 1958.	Wysigingsordonnansie 1958 op die Kriminele Prosedure en Bewyslewering en die Wildbeskerming- en Prysbeheerskuldbekentenis	Artikel een
Ordonnansie 22 van 1958.	Algemene Regswysigingsordonnansie 1958	Artikels vyftig tot en met dertig en twintig
Ordonnansie 31 van 1961.	Kinderordonnansie 1961	Artikels tweehonderd-en-negentig tot en met ses-en-negentig.