

Swaziland

THE MAGISTRATE'S COURTS ACT

Date of commencement: 1st January, 1939.

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An Act to make provision for the constitution of Magistrate's Courts, and for the jurisdiction, powers and duties of officers presiding over such courts.

PART I

PRELIMINARY

Short Title.

1. This Act may be cited as the Magistrate's Courts Act, No. 66 of 1938.

Interpretation.

2. In this Act, unless inconsistent with the context —

“Civil Service Board” means the board established under the Civil Service Order, No. 16 of 1973;

“court” means a magistrate's court established under this Act;

“district” means any area which has been or may from time to time be defined under section 6 of the General Administration Act, No. 11 of 1905;

“High Court” means the High Court of Swaziland;

“immovable property” includes every right or interest to and in any buildings and other fixtures erected within Swaziland with the consent, express or implied, of the Government;

“judge” means a judge of the High Court;

“judgment” in civil cases, includes a sentence, decree, rule or order;

“judicial officer” means a person empowered under this Act or under the Judicial Service Commission Act, 1982, to hold a court; (Amended A.1/1988.)

“Minister” means the Minister responsible for justice; (Added A.13/1982.)

“offence” means an act or omission punishable by law or by a regulation or order made or in force under this Act;

“rules” means rules in force under section 95 of this Act;

“sheriff” means the officer appointed under section 3 of the Sheriff’s Act No. 17 of 1902.

PART II COURTS

Constitution of courts.

3. There shall be and are hereby constituted courts subordinate to the High Court, to be known as “magistrate’s courts” as follows, namely: —

- (a) magistrate’s courts of the first class;
- (b) magistrate’s courts of the second class; and
- (c) magistrate’s courts of the third class.

Minister may determine area of jurisdiction.

4. (1) Subject to subsection (2), a magistrate or a magistrate’s court shall have jurisdiction over such area as the Minister may, by notice in the Gazette, determine and a magistrate above the rank of Senior Magistrate or a magistrate’s court presided over by him shall, unless otherwise stated in any notice under this subsection, have jurisdiction within every district in Swaziland.

(2) The areas of jurisdiction of magistrates’ courts as set out under the General Administration Act, 1905 in accordance with Legal Notice No. 121 of 1963 shall, until such Notice is amended or revoked, be deemed to be areas of jurisdiction determined under subsection (1).

(Amended L.N.8/1969; K.O-I-C. 26/1973; K.O-I-C. 26/1976; A.13/1982.)

5. (Repealed A.13/1982.)

Nature of magistrate’s courts and force and effect of process.

6. (1) Every magistrate’s court shall be a court of record.

(2) Every summons, subpoena, writ, warrant or other process issued out of any magistrate's court shall be of force throughout the district, and all such process when endorsed by a judicial officer of any other district (and every judicial officer is hereby required on production to him of any such process to endorse the same) shall be of force throughout the district for which such judicial officer is appointed, and may be served or executed therein through the messenger of such last-mentioned district or of the court out of which such process is issued.

Courts to be open to the public with exceptions.

7. (1) Subject to the exceptions provided in this Act or in any other law in force in Swaziland, the proceedings in magistrate's courts in all criminal cases and the trial of all defended civil actions shall be carried on in open court, and not otherwise, and the evidence shall be recorded in the English language.

(2) The trial of any child who is, in the opinion of the court, less than sixteen years of age may be held *in camera* and in some other place than an ordinary court room:

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

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

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

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

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

Public access to records.

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

Provided that after a period of thirty years has expired from the date of judgment in such proceedings, the Prime Minister may order the removal of such records and proceedings to a central place of custody. (Amended L.N. 38/1967.)

PART III

OFFICERS OF THE COURT

Clerk to the court.

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

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

Messenger of the court.

10. (1) Notwithstanding any other law the Minister for Justice may by notice in the Gazette appoint any person who is not a public officer as a messenger of a court upon such terms and conditions as he may determine:

Provided that a messenger of any court holding office as such on the date of commencement of this Order shall be deemed to have been appointed under this subsection. (Amended K.O-I-C. 16/1973; K.O-I-C. 26/1973; K.O-I-C. 39/1974.)

(2) The messenger may, with the prior approval of the presiding officer of the court, appoint one or more deputy messengers, for whom he shall be responsible.

(3) If in any matter objection is made to the service or execution of process by the messenger or his deputy by reason of the interest of either of them in such matter or of the relation of either of them to a party to such matter or of any other good cause of challenge, or if by reason of the illness or absence of the messenger, it is necessary to appoint an acting messenger, the presiding officer may appoint a person so to act.

Service of process by the police.

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

Messenger's return to be evidence.

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

Suspension of messenger for misconduct.

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

(2) The presiding officer shall report forthwith to the Minister any action he has taken under this section and the Minister may, after investigation, set aside, confirm the order or

dismiss the messenger from Office. (Amended K.O-I-C. 16/1973; K.O-I-C. 24/1973; A.13/1982.)

(3) The powers conferred by this section are to be exercised subject to the Public Officers (Delegations and Authorisation) Regulations, 1967, (published under Legal Notice No. 30 of 1967) or any law amending or replacing those regulations. (Amended L.N.8/1969.)

Officers appointed previously to remain in office.

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

PART IV CIVIL MATTERS

Jurisdiction in respect of persons.

15. Saving any other jurisdiction assigned to any courts by this Act, or by any other law the persons in respect of whom the court shall have jurisdiction shall be —

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

Jurisdiction in respect of causes of action.

16. (1) The jurisdiction of magistrate's courts of the first and second class in respect of causes of action shall be in the case of —

- (a) courts of the first class, all actions where neither party is not a Swazi, and all other actions where the claim or value of the matter in dispute does not exceed two thousand emalangeni; (Amended A.1/1988.)
- (b) courts of the second class, all actions where neither party is not a Swazi, and all other actions where the claim or value of the matter in dispute does not exceed one thousand emalangeni; (Amended A.1/1988.)

Provided that when both parties are Swazis, and the cause of action is, in the opinion of the clerk of the court, one suitable to be heard in a Swazi Court of appropriate jurisdiction established or recognised under the Swazi Courts Act, No. 80 of 1950, he may refuse to issue summons, and may order the plaintiff to commence his action in such Swazi court:

Provided further that at any time after the issue of summons commencing action in any case where both parties are Swazis, the court may order that the action be transferred to a Swazi court of appropriate jurisdiction established or recognised under the Swazi Courts Act, No. 80 of 1950. (Amended P.39/1964.)

(2) Courts of the third class shall not be competent to exercise civil jurisdiction.

Arrests and interdicts.

17. (1) Subject to the limits prescribed by this Act, magistrate's courts of the first and second class may grant against persons and things orders for arrest *tanquam suspectus de fuga*, attachments, interdicts and *mandament van spolie*.

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

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

- (a) the cause of action appears to amount, exclusive of costs, to at least forty emalangeni; and
- (b) the applicant appears to have no security for the debt, or only security falling short of the amount of the debt by at least forty emalangeni; and
- (c) it appears that the respondent is about to remove from Swaziland. (Amended P.30/1964.)

Attachment to found or confirm jurisdiction.

17bis. A court of the first class may order attachment of person or property to found or confirm jurisdiction against any person who does not reside in Swaziland, in respect of an action within its jurisdiction where the claim or the value of the matter in dispute amounts to at least E40, exclusive of any costs in respect of the recovery thereof, and may grant an order allowing service of any process in such action to be effected in such manner as may be stated in such order. (Added K.O-I-C. 25/1975.)

Curator ad litem.

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

Assessors.

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

Transfer from one court to another.

20. An action or proceeding may, with the consent of all the parties thereto, or upon the application of any party thereto, and upon its being made to appear that the trial of such action or proceeding in the court wherein summons has been issued may result in undue expense or inconvenience to such party, be transferred by the court to any other court of the same class or of a higher class than the court from which it is desired to remove the proceedings.

What judgments may be rescinded.

21. (1) The court may, on the application of the party in whose favour a judgment has been given, rescind or vary such judgment in the absence of the party against whom the judgment was granted:

Provided that such last-mentioned party has received notice of the application and has been given an opportunity to appear at the hearing of the same.

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

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

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

Incidental jurisdiction.

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

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

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

Abandonment of part of claim.

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

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

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

Deduction of admitted debt.

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

Splitting of claims disallowed.

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

Jurisdiction cumulative.

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

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

Application of sections 19 to 26 to claims in reconvention.

27. In sections 19 to 26 inclusive, “action”, “claim”, and “summons” include “claim in reconvention”, and “plaintiff” and “defendant” include “plaintiff in reconvention” and “defendant in reconvention”, respectively.

Jurisdiction by consent of parties.

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

Matters beyond jurisdiction of magistrate's courts.

29. Magistrate's courts shall have no jurisdiction in matters in which —

- (a) the dissolution of a marriage or separation from bed and board or of goods of married persons is sought, where the parties to the action are not Swazis;
- (b) the validity or interpretation of a will or other testamentary document is in question;
- (c) the status of a person in respect of mental capacity is sought to be affected;
- (d) is sought the specific performance of an act without an alternative of payment of damages (except the rendering of an account in respect of which the claim does not exceed an amount within the jurisdiction of the court, or the delivery or transfer of property not exceeding in value the jurisdiction of the court);
- (e) is sought a decree of perpetual silence;
- (f) provisional sentence is sought.

Counterclaim exceeding jurisdiction.

30. (1) When in answer to a claim within the jurisdiction the defendant sets up a counter-claim exceeding the jurisdiction, the claim shall not on that account be dismissed; but the

court may, if satisfied that the defendant has a reasonable prospect of recovering an amount exceeding the jurisdiction, stay the action for a reasonable period in order to enable him to institute an action in a competent court. The plaintiff in the court in which the action was originally instituted may (notwithstanding his action therein) counterclaim in such competent court, and in that event all questions as to the costs incurred shall be decided by that competent court.

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

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

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

Judgment.

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

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

32. (Amended P.39/1964; repealed A.1/1988.)

Return of civil proceedings.

33. At such intervals as the Chief Justice may require every magistrate's court shall forward to the High Court in such form as the Chief Justice may from time to time direct a complete list of all civil matters decided by, pending in, or brought before such court during such interval. (Added P.61/1962.)

PART V

WITNESSES AND EVIDENCE IN CIVIL ACTIONS

Modes of procuring attendance of witnesses and penalty for non-attendance.

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

(2) If any person, being duly subpoenaed to give evidence or to produce any books, papers or documents in his possession or under his control, which the party requiring his attendance desires to show in evidence, fails, without lawful excuse, to attend or to give evidence or to produce those books, papers or documents according to the subpoena, or, unless duly excused, fails to remain in attendance throughout the trial, the court may, upon being satisfied upon oath or by the written return of the messenger that such person has been duly subpoenaed and that his reasonable expenses have been paid or offered to him, impose upon the said person a fine, not exceeding fifty emalangeni, for his default, and in default of payment imprisonment not exceeding one month. (Amended P.39/1964.)

(3) If any person subpoenaed in terms of subsection (2) hereof fails to appear or, unless duly excused, to remain in attendance throughout the trial, the court may also, upon being satisfied as provided for in subsection (2) hereof and in case no lawful excuse for such failure shall seem to the court to exist, issue a warrant for his apprehension in order that he may be brought up to give his evidence and to be otherwise dealt with according to law.

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

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

Interrogatories.

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

(2) The court wherein such witness resides or is shall thereupon subpoena such witness to appear, and upon his appearance shall take his evidence in manner and form as if he were a witness in a case pending before that court, and shall put to the witness the said interrogatories and such other questions as may seem to it necessary to obtain full and true answers to the interrogatories, and shall record the evidence of the witness and shall transmit such record to the court in which such case is pending.

(3) The record referred to in subsection (2) hereof shall (subject to all lawful objections) be received as evidence in such case.

(4) Every witness duly subpoenaed to appear shall be liable to the same penalties if he fails to attend or give evidence or to produce books, papers or documents as if he had been subpoenaed to give evidence in the court of the district in which he resides or is.

Commissions de bene esse.

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

(2) The person appointed under subsection (1) hereof shall put to such witness such questions as have been transmitted to him on agreement between the parties, or otherwise

shall allow the parties to examine such witness, and shall be permitted himself to examine such witness, as if the witness were being examined in court, and shall record the evidence or cause it to be recorded, whereupon the evidence taken down shall be read over to the witness and shall be signed by him.

(3) The record referred to in subsection (2) shall (subject to all lawful objections) be received in evidence in the case.

PART VI EXECUTION

Jurisdiction of courts to issue execution.

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

Superannuation of judgments and revival thereof and force of warrants of execution.

38. (1) A judgment shall become superannuated by the lapse of three years from the day on which it was pronounced, and execution against property may not thereafter be issued upon it:

Provided that it may be revived for the purpose of the issue of such execution on the application and at the expense of the judgment creditor, after due notice to the judgment debtor to show cause why it should not be revived, either in the court in which judgment was pronounced or in any court having jurisdiction in respect of the judgment debtor.

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

Setting aside of warrant.

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

Execution in case of judgment debt ceded.

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

Manner of execution.

41. (1) If a court gives judgment for the payment of money the amount shall be recoverable, in the case of failure to pay forthwith or at the time or times and in the manner ordered by the court, by execution against the movable property and, if there be not found sufficient movable property to satisfy the judgment, then against the immovable property of the party against whom such judgment has been given.

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

Property exempt from execution.

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

- (a) the necessary beds, bedding and wearing apparel of the person against whose property execution is levied and of his family;
- (b) the necessary furniture and household utensils in so far as the same do not exceed in value the sum of thirty emalangeni;
- (c) the supply of food and drink in the house sufficient for the needs of such person and of his family during one month;
- (d) tools and implements of trade, and tools necessarily used in the cultivation of land, in so far as any such tools or implements do not exceed in value the sum of forty emalangeni;
- (e) professional books, documents, or instruments, necessarily used by such person in his profession, in so far as the same do not exceed in value the sum of forty emalangeni. (Amended P.39/1964.)

Property executable.

43. (1) The messenger executing any process of execution against movable property may, by virtue of such process, also seize and take any money or bank notes, and may seize, take and sell in execution cheques, bills of exchange, promissory notes, bonds or securities for money belonging to any person against whom any such execution shall have been issued as aforesaid.

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

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

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

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

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

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

Interpleader claims.

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

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

Sale in execution gives goods title.

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

Surplus after execution.

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

Debt, salary or wages may be attached.

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

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

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

Future and accruing earnings when attachable.

48. (1) Nothing in this Act shall be construed as authorising the attachment of future or accruing earnings otherwise than with the consent in writing or in open court of the judgment debtor:

Provided that upon such consent being given the court may if satisfied upon sworn information that sufficient means will, after satisfaction of the order, be left to the judgment debtor to maintain himself and those dependant on him, grant a garnishee order in respect of such earnings as if they were actually payable.

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

(3) The provisions of section 47(3) shall apply to any order made under this section only if the judgment debtor proves to the satisfaction of the court that, after he gave such consent his financial position changed substantially for the worse otherwise than by his own serious and wilful default.

Jurisdiction to decide disputes arising out of garnishee orders.

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

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

Execution or payment is discharge pro tanto.

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

Saving of existing law prohibiting attachment of certain property.

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

Order for payment by instalments.

52. (1) The court, may, upon the application of any judgment debtor and if convinced that the debtor is unable to satisfy the judgment in full at once, but is able to pay periodical instalments towards satisfaction of the judgment, suspend execution against that debtor in respect of any household furniture of the value of fifty emalangeni or less in addition to the goods mentioned in section 42 for so long as the debtor continues to pay the debt by such instalments and at such periods as the court may fix.

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

Execution or suspension in case of appeal, etc.

53. (1) If an appeal has been noted or an application to rescind, correct or vary a judgment has been made, the court may direct either that the judgment shall be carried into execution or that execution thereof shall be suspended pending the decision upon the appeal or application.

(2) Such direction shall be made upon such terms, if any, as the court may determine as to security for the due performance of any judgment which may be given upon the appeal or application.

PART VII CIVIL IMPRISONMENT

Summons for civil imprisonment.

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

(2) Such summons may be taken out either in the court wherein the original judgment was given or in the court of any district wherein the judgment debtor is for the time being residing, carrying on business or employed.

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

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

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

Decree of civil imprisonment.

55. The court may, upon the return of the summons and whether the judgment debtor appears or not, make a decree of civil imprisonment against such judgment debtor and authorise the issue of a warrant for his arrest and detention in any gaol named in such warrant:

Provided that —

- (a) the court may at any time suspend the execution of or altogether discharge any such decree or warrant upon such terms as may appear to the court to be fair and reasonable;
- (b) no such decree shall be pronounced and no such warrant shall be issued if the judgment debtor proves to the satisfaction of the court that he has no means of satisfying the judgment debt either wholly or in part and either out of present or out of future earnings or income, unless it appears that the judgment debtor either —
 - (i) has wilfully made away with any property in order to defeat or delay payment of the judgment debt; or
 - (ii) is able to earn sufficient to satisfy the judgment debt by instalments or otherwise to settle the same, but in order to defeat or delay payment of the judgment debt wilfully refuses to do so; or
 - (iii) is squandering his money or is apparently living beyond his means;
- (c) in computing the degree to which the debtor can satisfy such debt the court shall take into consideration the conditions under which he obtains his income and the amount of his necessary expenses and those of the persons dependent on him.

Debtor may show that he has executable property.

56. If on the hearing of a summons for civil imprisonment, the judgment debtor satisfies the court that he has property capable of being attached in execution by the messenger and sufficient to satisfy the judgment debt and costs, the court shall either dismiss the summons or adjourn the further hearing thereof until the said property has been sold in execution.

Period of imprisonment.

57. The period of civil imprisonment shall be decided by the court, but shall not in any case exceed three months, and, where the judgment debt and costs, so far as the same are unsatisfied, amount to less than ten emalangeni, shall not exceed fourteen days. (Amended P.39/1964.)

Costs of civil imprisonment.

58. (1) Unless it appears to the court upon the hearing of any proceedings for civil imprisonment that the debtor has, within forty-eight hours after having notice of the judgment upon which such proceedings are founded, made to the judgment creditor an offer to satisfy the debt by instalments which the court judges to be reasonable, or notified the creditor that he is unable to make an offer and the court finds this to be true, the court may order the debtor to pay the costs of such proceedings:

Provided that if it appears that the judgment creditor has refused such offer, the court may order the creditor to pay such costs.

(2) Upon any proceedings for the discharge or suspension of any decree, warrant or order for civil imprisonment, the court may order the judgment debtor to pay the costs of such proceedings, unless it appears that the proceedings were due to some fault or omission on the part of the judgment creditor.

(3) Nothing in this section shall be construed as depriving the court of its discretion to make such order as to costs as may be just.

Custody by gaoler.

59. The keeper of any prison or gaol thereto authorised by warrant or order shall receive into his custody and detain in such gaol the judgment debtor named in such warrant or order in accordance with the tenor of such warrant and the provisions of the Prisons Regulations, No. 40 of 1964(1):

Provided always that the judgment creditor shall pay and satisfy the charges for the maintenance of the judgment debtor, which shall be such an amount not exceeding thirty-five cents per day, as the court shall determine, and which shall be paid weekly in advance to the keeper of the prison or gaol, who shall then issue a daily ration to the judgment debtor based on the amount of the maintenance money received. (Amended P.39/1964.)

Discharge from imprisonment.

60. The keeper of the gaol shall forthwith discharge the judgment debtor from imprisonment —

- (a) upon expiry of the time for which such judgment debtor was imprisoned;
- (b) if the judgment creditor gives his written consent to such discharge;
- (c) if the judgment creditor or the messenger certifies in writing that the amount of the judgment debt and costs mentioned in the warrant and of any maintenance money that may have been paid by him for the unexpired portion of the period of the imprisonment has been satisfied; and upon such satisfaction the judgment creditor or the messenger shall so certify to the said keeper;
- (d) if such amount is paid to the said keeper by or on behalf of the judgment debtor; or
- (e) upon an order given by a judge of the High Court or by any judicial officer of the district where the decree of civil imprisonment was pronounced against the judgment debtor or of the district wherein the gaol is.

Effect of discharge from imprisonment.

61. No judgment debtor who has been once lawfully discharged from imprisonment (except a debtor discharged by an order of court suspending such imprisonment) shall ever again be liable to be arrested for the same debt or cause of action:

Provided that no arrest or imprisonment or discharge therefrom shall be deemed to be a satisfaction of the judgment debt, or of any part thereof, so as to prevent the judgment creditor from having further execution against the property of the said debtor.

Warrant of civil imprisonment may be suspended by court of district wherein it is executed.

62. The court of any district wherein a judgment debtor is arrested shall have the same jurisdiction as the court from which the warrant was issued to suspend such warrant and may cancel or vary any order of suspension made by itself:

Provided that such first-mentioned court may not discharge altogether any warrant issued out of any other court.

PART VIII APPEALS

By consent decisions of magistrate's courts may be final.

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

Appeals from magistrate's court.

64. Subject to section 63, a party to any civil suit or proceedings in a magistrate's court may appeal to the High Court against —

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

Time, manner and conditions of appeal.

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

Right of appeal not lost by satisfaction of judgment.

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

Respondent may abandon judgment.

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

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

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

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

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

Powers of High Court on appeal.

68. The High Court may, on appeal —

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

Execution of judgment of High Court on appeal.

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

PART IX

CRIMINAL MATTERS

Jurisdiction in respect of classes of crimes and offences.

70. (1) Magistrate's courts of the first class shall have jurisdiction over all offences except treason, murder and sedition and any conspiracy or attempt to commit any of these offences. (Amended P.61/1962.)

(2) Notwithstanding any other law, magistrate's courts of the first class may punish any person convicted of the offence of rape or of any conspiracy or attempt to commit such offence with imprisonment. (Amended P.61/1962; P.39/1964.)

(3) Magistrate's courts of the second class and third class shall have jurisdiction over all offences except treason, murder, sedition, offences relating to coinage and currency, rape and any conspiracy or attempt to commit any of these offences. (Amended P.61/1962.)

Local limits of jurisdiction.

71. (1) Subject to the provisions of section 70, any person charged with any offence committed within any district may be tried by the court of that district:

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

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

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

such person may be tried by the court of the district as if such person had been charged with an offence committed within the district.

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

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

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

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

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

Jurisdiction in the matter of punishment.

72. (1) Subject to this Act and of any other law, magistrate's courts may punish any person convicted of any offence in the following manner and (save as is specially provided by this Act or any other law) in no other or more severe manner, that is to say —

- (a) a magistrate's courts of the first class —
 - (i) imprisonment for a period not exceeding two years;
 - (ii) fine not exceeding four hundred emalangeni or in default of payment such imprisonment as aforesaid;
 - (iii) whipping, subject to the provisions of section 84 and of this section, not exceeding fifteen strokes with a cane;
- (b) a magistrate's court of the second class —
 - (i) imprisonment for a period not exceeding one year;
 - (ii) not exceeding one hundred emalangeni or in default of payment such imprisonment as aforesaid;
 - (iii) whipping, subject to the provisions of section 84 and of this section, not exceeding eight strokes with a cane;
- (c) a magistrate's court of the third class —
 - (i) imprisonment for a period not exceeding six months;
 - (ii) fine not exceeding fifty emalangeni or in default of payment such imprisonment not exceeding six months;

Provided that a magistrate's court of the third class shall have no power to impose a punishment of whipping: (Amended P.61/1962; P.39/1964.)

Provided further that a magistrate above the rank of Senior Magistrate shall, in addition to the other powers conferred by this section and subject to the maximum penalty prescribed by any law, have jurisdiction in criminal matters to impose such fine as may in accordance with law, be imposed or a term of imprisonment not exceeding ten years or, where the law provides for both a fine and imprisonment, both such fine and imprisonment. (Added K.O.-I-C. 26/1976; amended A.13/1982; A.1/1988.)

(2) Any person convicted of any offence may be punished by both such fine and such imprisonment or by both such imprisonment and such whipping, but an offender shall not for the same offence be punished both by fine and by whipping.

(3) The court may, in imposing a punishment of both fine and imprisonment under this section, sentence the accused to a further period of imprisonment if the fine be not paid:

Provided that the maximum period of imprisonment laid down in subsection (1) of this section be not exceeded.

(4) The punishment of whipping shall be subject to the provisions of section 84 and shall only be imposed for —

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

Provided that the punishment of whipping shall not be imposed on females:

Provided further that, notwithstanding any other law, the punishment of whipping shall not be imposed more than once for the same offence. (Amended P.61/1962.)

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

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

(7) Nothing in this section shall be construed as authorising a court to declare a person to be an habitual criminal. (Amended P.50/1959.)

Power to confer increased jurisdiction.

73. The Minister may, in consultation with the Chief Justice by notice in the Gazette, confer upon a Magistrate jurisdiction in criminal matters to impose any penalty authorised by law in excess of the penalties prescribed in section 72(1) but not exceeding such penalties as are referred to in the second proviso thereto.

(Amended P.61/1962; P.39/1964; L.N.8/1969; K.O.-I-C. 26/1976; A.1/1988.)

When summary trial to be turned into preparatory examination.

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

Return of criminal proceedings.

75. (1) Within seven days of the end of every month every magistrate's court shall forward to the High Court in such form as the Chief Justice may from time to time direct a complete list of all criminal cases decided by, pending in or brought before such court during that month. (Added P.61/1962.)

(2) The High Court may, in respect of any case mentioned in any such list, call for the record and take any or all such steps and make such orders in connections therewith as if the case had been submitted to the High Court for review. (Added P.61/1962.)

Penalties in respect of cases remitted for trial or sentence.

76. A magistrate before whom a case is remitted for trial in consequence of a preparatory examination or for sentence shall have the same jurisdiction as is vested in him under or in accordance with this Act. (Amended A.1/1988.)

77. (Amended P.39/1964; repealed A.1/1988.)

Review of sentences imposed by a magistrate's court of the third class.

78. All sentences in criminal cases imposed by a magistrate's court of the third class other than sentences of imprisonment for a period exceeding three months shall be subject to review as of course by an officer appointed to hold a first class magistrate's court in the district in which such third class magistrate's court is situate; but without prejudice to the right of appeal against such sentence, whether before or after confirmation of the sentence by the officer reviewing the same.

Certain sentences subject to automatic review by the High Court.

79. (1) Without prejudice to the right of appeal against a judgment which right may be exercised before or after a review under this section and subject to the time prescribed or for appeals, every sentence shall be subject to review in the ordinary course by the High Court where the punishment awarded —

- (a) exceeds two years of a custodial sentence or a fine of E2000 imposed by a magistrate in the exercise of his increased jurisdiction under section 73 or by a magistrate above the rank of senior magistrate; or
- (b) exceeds six months of a custodial sentence or a fine of five hundred Emalangeni imposed by a magistrate other than a magistrate referred to in paragraph (a).

(2) The provisions of subsection (1) shall apply *mutatis mutandis* to any sentence which consists of whipping.

(Amended P.39/1964; A.1/1988.)

Submission of records and remarks to reviewing officer or judge for consideration.

80. (1) If a magistrate's court of the third class imposes a punishment (other than a sentence of imprisonment for a period exceeding three months) upon any person convicted of an offence, the officer so imposing the punishment shall forthwith transmit the proceedings to a reviewing officer as provided in section 78 together with such remarks, if any, as he may desire to append thereto.

(2) If a magistrate's court imposes upon any person convicted of an offence any such punishment as in section 79 mentioned, the clerk of the court shall transmit to the registrar of the High Court, not later than one week next after the determination of the case, the record of the proceedings in the case together with such remarks, if any, as the presiding officer may desire to append thereto, and with any written statements or arguments which the accused may within three days after the sentence supply to the clerk of the court, and the registrar shall, with all convenient speed, lay the same before a judge, in chambers, for his consideration.

Proceedings in review.

81. (1) If, upon considering the proceedings mentioned in section 80 and any further information or evidence which may, by the direction of the reviewing officer or the judge, be supplied or taken by the lower court, it appears to the reviewing officer or the judge, as the case may be, that they are in accordance with justice, he shall endorse his certificate to that effect upon the record thereof; and the said record shall then be returned to the court from which the same was transmitted.

(2) If, upon considering the proceedings aforesaid, it appears to the reviewing officer or the judge, as the case may be, that they are not in accordance with justice or that doubt exists whether or not they are in such accordance —

(a) the reviewing officer may —

- (i) alter or reverse the conviction or reduce or vary the sentence of the court which imposed the punishment; or
- (ii) if it appears necessary to do so, remit such case to the court which imposed the sentence with such instructions relative to the taking of further evidence and generally to the further proceedings to be had in such case as the reviewing officer thinks fit, and make such order touching the suspension of the execution of any sentence against the person convicted or the admitting of such person to bail, or, generally, touching any matter or thing connected with such person or the proceedings in regard to him as to the reviewing officer seems calculated to promote the ends of justice; or
- (iii) submit the proceedings to the judge for review as if the case were one falling under section 80 of this Act;

(b) the judge may—

- (i) alter or reverse the conviction or, subject to any maximum period of imprisonment or fine specified by law for the offence in question, increase the sentence to one which could have been imposed by the court which convicted the person of the offence or reduce or vary the sentence of that court; or (Amended P.61/1964.)

- (ii) if it appears necessary to do so, remit such case to the court which imposed the sentence with such instructions relative to the taking of further evidence and generally to the further proceedings to be had in such case as the judge thinks fit, and may make such order touching the suspension of the execution of any sentence against the person convicted or the admitting of such person to bail, or, generally, touching any matter or thing connected with such person or the proceedings in regard to him as to the judge seems calculated to promote the ends of justice:

Provided that in the event of any conviction being reversed or proceedings set aside on any ground mentioned in section 85(7) the provisions of that subsection in respect of the institution of fresh proceedings shall *mutatis mutandis* apply.

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

(4) If in any criminal case in which a magistrate's court of the first or second class has imposed a sentence which is not subject to review in the ordinary course in terms of section 79, it is brought to the notice of the judge that the proceedings in which the sentence was imposed were not in accordance with justice, the judge shall have the same powers in respect of such proceedings as if the record thereof had been laid before him in terms of section 80(2).

Warrant required for commitment to prison.

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

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

Execution of sentence suspended under certain conditions.

83. (1) The execution of any sentence of fine or of imprisonment shall not be suspended by the transmission of or the obligation to transmit the record for review unless the person sentenced shall give sufficient bail to pay the fine imposed upon him or to surrender himself in order to undergo such imprisonment (as the case may be) in case the proceedings in the case shall be approved as aforesaid and in case a written notice to pay or to surrender (as the case may be), signed by the clerk of the court, shall be served upon or for such person at some place to be mentioned in the bail bond or recognisance. (Amended P.39/1964.)

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

Person sentenced to whipping to be detained pending review.

84. (1) The punishment of whipping shall in no case be inflicted until either the proceedings in the case have been returned with such certificate as is mentioned in section 81(1) or the High Court has affirmed the sentence of the magistrate's court. (Amended A.1/1988.)

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

(3) In every case in which any person sentenced shall give bail as provided in subsection (2) hereof, the judicial officer (should he so think fit) may take bail also for the cost and charge of serving such notice as aforesaid (if necessary), which cost and charge shall be the same as that of serving a summons in a civil case against the same person at the same place.

Criminal appeals.

85. (1) Any person convicted of any offence by the judgment of any magistrate's court (including a person discharged after conviction under any provision of the Criminal Procedure and Evidence Act, No. 67 of 1938) may appeal against such conviction and against any sentence or order of the court following thereupon to the High Court.

(2) Every person giving notice of appeal to the High Court against the decision of a magistrate's court in any criminal matter shall deposit the sum of four emalangeni:

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

(Amended P.39/1964.)

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

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

(5) The High Court shall thereupon have the powers set out in section 81(2)(b):

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

(6) If an appeal under this section is noted, sections 83 and 84 shall apply *mutatis mutandis* to the sentence appealed against.

(7) If a conviction and sentence of a magistrate's court are set aside on appeal on the ground that evidence was admitted which should not have been admitted, or that evidence was rejected which should have been admitted, or on grounds of any other irregularity or defect in the procedure, proceedings in respect of the same offence to which the conviction and sentence referred may again be instituted either on the original summons or charge or upon any other indictment, summons or charge, as if the accused had not previously been arraigned, tried and convicted:

Provided that such proceedings shall not be instituted before the same judicial officer who recorded the conviction and imposed the sentence set aside.

Appeal by prosecutor.

86. (1) If a magistrate's court has in any criminal proceedings given a decision in favour of the accused on any matter of law, the Director of Public Prosecutions or his representative, or if a person or a body other than the Director of Public Prosecutions or his representative was the prosecutor in those proceedings then that other prosecutor, may require the judicial officer to state a case for the consideration of the High Court setting forth the question of law and his decision thereon, and, if evidence has been heard, his findings of fact, in so far as they are material to the question of law. (Amended P.57/1962.)

(2) If such a case has been stated, the Director of Public Prosecutions or his representative or other prosecutor, as the case may be, may appeal from that decision to the High Court.

(3) Section 85(3) shall apply to an appeal under subsection (2) hereof.

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

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

PART X
OFFENCES

Penalty for disobedience of order of court.

87. Any person wilfully disobeying or neglecting to comply with any order of a magistrate's court shall be guilty of a contempt of court and shall upon conviction, be liable to a fine not exceeding fifty emalangenis or, in default of payment, to imprisonment for a period not exceeding three months, or to such imprisonment without the option of a fine.

(Amended P.39/1964.)

Offences relating to execution.

88. Any person shall be guilty of an offence and liable on conviction to a fine not exceeding fifty emalangenis or, in default of payment, to imprisonment not exceeding three months or to such imprisonment without the option of a fine, if he —

- (a) obstructs a messenger or deputy messenger in the execution of his duty; or
- (b) being aware that goods are under arrest, interdict, or attachment by the court, makes away with or disposes of those goods in any manner not authorised by law, or knowingly permits those goods, if in his possession or under his control, to be made away with or disposed of in any such manner; or
- (c) being a judgment debtor and being required by a messenger or deputy messenger to point out property to satisfy any warrant issued in execution of judgment against such person, either —

- (i) falsely declares to such messenger or deputy messenger that he possesses no property or not sufficient property to satisfy the warrant; or
- (ii) although owning such property neglects or refuses to point it out; or
- (d) being a judgment debtor refuses or neglects to comply with any requirement of a messenger or deputy messenger in regard to the delivery of documents in his possession or under his control relating to the title of the immovable property under execution. (Amended P.39/1964.)

Custody and punishment for contempt of court.

89. (1) If any person, whether in custody or not, wilfully insults any judicial officer during his sitting or any clerk or messenger or other officer during his attendance at such sitting, or wilfully interrupts the proceedings of the court or otherwise misbehaves himself in the place where such court is held, he shall, in addition to his being liable to be removed and detained be liable to imprisonment for any period not exceeding one month or to pay a fine not exceeding forty emalangenì for every such offence or, in default of payment, to such imprisonment. (Amended P.39/1964.)

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

PART XI

GENERAL AND SUPPLEMENTARY

Jurisdiction as to plea of ultra vires.

90. No magistrate's court shall be competent to pronounce upon the validity of an Act of Parliament or King's Order-In-Council or Notice of the High Commissioner, and every such court shall assume that such Act or King's Order-In-Council is valid.
(Amended L.N. 8/1969.)

Amendment of proceedings.

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

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

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

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

Review of decisions.

92. If a decision is given by a magistrate's court in a criminal case on a matter of law, and the Director of Public Prosecutions or his representative is dissatisfied with such decision, the Director of Public Prosecutions or his representative may seek the ruling thereon of the High Court, and the High Court may set down the matter to be argued before it.

(Amended P.57/1962.)

Savings and non-application of Act.

93. (1) Nothing in this Act shall be construed as affecting the operation of the Criminal Procedure and Evidence Act, No. 67 of 1938.

(2) Nothing in this Act shall be construed as depriving the High Court of any power to review and correct the proceedings of any magistrate's court.

Saving existing custom of summoning Swazi accused or Swazi witnesses.

94. Nothing in this Act shall affect the existing custom whereby the attendance of Swazi accused or witness or party to a civil action in any court in Swaziland may be secured through his chief or indvuna by warning, either in writing or by messenger of such chief or induna.

Power of Chief Justice to make rules.

95. The Chief Justice may from time to time, by notice in the Gazette, make rules regulating and prescribing the practice, procedure, fees, costs and charges of, and the forms to be used in, the magistrate's courts; and all such rules shall have the same force and effect as if they had been contained in this Act.

Administration of oath or affirmation.

96. (1) Every officer or person entitled or appointed under section 4 to hold a court is hereby empowered to administer an oath or affirmation to any witness in any proceedings, whether civil or criminal, in such court, or at any preparatory examination.

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

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

Protection from actions.

97. No judicial officer shall be liable to be sued in any civil court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction, if he at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of to be done and no officer of any magistrate's court or other person bound to execute the lawful warrants or order of any such judicial officer shall be

liable to be sued in any civil court for the execution of any warrant or order which he would be bound to execute if within the jurisdiction of the person issuing it.

(Added P.61/1962.)

[NOTE: This Act was formerly styled the Subordinate Courts Proclamation (*Cap.* 20) and the courts established under it were known as subordinate courts.]