

No. 40, 1952.]

ACT

To amend the Magistrates' Courts Act, 1944, and the law relating to criminal procedure and evidence in matters incidental thereto.

(Afrikaans text signed by the Governor-General.)
(Assented to 20th June, 1952.)

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

1. In this Act—
Definitions.
“principal Act” means the Magistrates' Courts Act, 1944 (Act No. 32 of 1944);
“Criminal Code” means the Criminal Procedure and Evidence Act, 1917 (Act No. 31 of 1917), as amended.
2. Section *one* of the principal Act is hereby amended by the insertion after the definition of “practitioner” of the following definition: Amendment of section 1 of Act 32 of 1944.
“to record” means to take down in writing or in shorthand or to record by mechanical means and “recorded” has a corresponding meaning.”
3. Section *two* of the principal Act is hereby amended— Amendment of section 2 of Act 32 of 1944.
(a) by the insertion after paragraph (a) of the following new paragraph:
“(a)*bis*. create regional divisions consisting of a number of districts, or of a district together with one or more sub-districts, and declare the name by which any regional division shall be known;”
(b) by the insertion after paragraph (d) of the following new paragraph:
“(d)*bis*. establish a court for any regional division for the purpose of the trial of persons accused of committing any offence, which shall have increased jurisdiction as hereinafter provided;”
(c) by the insertion after paragraph (e) of the following new paragraph:
“(e)*bis*. appoint one or more places in each regional division for the holding of a court for such regional division;”
(d) by the insertion in paragraph (h) after the word “any”, where it occurs for the second time, of the words “regional division or”.
4. Section *three* of the principal Act is hereby amended by the insertion in sub-section (3) after the word “sub-district” where it occurs for the first time of the words “and no regional division” and where it occurs for the second time of the words “or division”. Amendment of section 3 of Act 32 of 1944.
5. Section *four* of the principal Act is hereby amended— Amendment of section 4 of Act 32 of 1944.
(a) by the deletion of sub-section (2); and
(b) by the deletion in sub-section (3) of the words “other than a garnishee order, writ or warrant”.
6. Section *five* of the principal Act is hereby amended by the insertion in sub-section (4) after the word “place” of the words “whether within or outside the jurisdiction of the court”. Amendment of section 5 of Act 32 of 1944.
7. Section *six* of the principal Act is hereby amended by the substitution in sub-section (1) for the words “taken down” in the English version of the word “recorded”. Amendment of section 6 of Act 32 of 1944.
8. Section *nine* of the principal Act is hereby amended by the addition at the end of sub-section (1) of the words— Amendment of section 9 of Act 32 of 1944

“and for every regional division a magistrate or magistrates: Provided that—

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

9. Section *twelve* of the principal Act is hereby amended by the addition to paragraph (a) of sub-section (1) of the following proviso: Amendment of section 12 of Act 32 of 1944.

“Provided that a court of a regional division may only be held by a magistrate of the regional division.”.

10. (1) Section *fourteen* of the principal Act is hereby amended— Amendment of section 14 of Act 32 of 1944.

(a) by the substitution for sub-section (1) of the following new sub-section:

“(1) Subject to the provisions of the law governing the public service of the Union, the Minister may appoint for every court, or if more than one place is appointed in any district for the holding of a court for such district, in respect of every place so appointed, a person who is an officer of the said service as a messenger of such court and so many persons who are such officers as deputy-messengers of such court, as may be necessary: Provided that if the duties to be performed by any such messenger or deputy-messenger are in the opinion of the Public Service Commission insufficient to keep at least one person fully occupied throughout the year, and no officer of the said service is, in the opinion of the said Commission, able to perform the duties of such messenger or deputy-messenger in addition to his ordinary duties, or if, in the opinion of the Minister, the duties of such messenger or deputy-messenger can be performed satisfactorily and at less cost to the State by a person who is not such an officer, the Minister may, without reference to the said law, appoint any person who is not an officer of the said service, as such messenger or deputy-messenger at such remuneration and upon such conditions as the Minister may determine.”;

(b) by the substitution for sub-section (6) of the following new sub-section:

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

(c) by the insertion in sub-sections (7) and (8) of the words “or plaintiff” after the word “practitioner” wherever it occurs.

(2) The provisions of paragraphs (a) and (b) of sub-section (1) shall be deemed to have been in force as from the second day of July, 1945.

11. Section *fifteen* of the principal Act is hereby amended— Amendment of section 15 of Act 32 of 1944.

- (i) by the deletion in sub-section (1) of the words “or deputy-messenger” where they occur for the first time;
- (ii) by the substitution for the word “deputy-messenger” where it occurs for the second time in the said sub-section of the word “messenger”; and

- (iii) by the substitution in sub-section (2) for the words "and any fine imposed on conviction thereof is to be paid into the revenue of that public body, the process of the court and all other documents in the case in which such prosecution takes place" of the words "or whenever under any law any fine imposed on conviction in respect of any offence is to be paid into the revenue of a public body, the process of the court and all other documents in the case in which prosecution takes place for such offence".

12. Section *twenty-eight* of the principal Act is hereby amended— Amendment of section 28 of Act 32 of 1944.

- (a) by the insertion in sub-section (1) after the word "be" of the words "the following and no other—";
- (b) by the insertion at the end of sub-paragraph (ii) of paragraph (e) of the said sub-section of the word "or" and the addition of the following sub-paragraphs to the said paragraph:
- "(iii) such proceedings are taken under sub-section (2) of section *sixty-nine* and the person therein referred to as the 'third party' resides, carries on business, or is employed within the district; or
- (iv) all the parties consent to the jurisdiction of the court."

13. Section *twenty-nine* of the principal Act is hereby amended by the insertion in paragraph (b) of sub-section (1) after the word "premises" wherever it occurs of the words "or land". Amendment of section 29 of Act 32 of 1944.

14. Section *fifty-three* of the principal Act is hereby amended by the substitution in sub-section (2) of the English version for the words "taken down" of the word "recorded". Amendment of section 53 of Act 32 of 1944.

15. The following new section is hereby substituted for section *sixty-five* of the principal Act: Substitution of section 65 of Act 32 of 1944.

"Enquiry into financial position of debtor.

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

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

- (i) of his assets and liabilities;
- (ii) of his monthly or weekly income and expenses, supported by documentary evidence and if he is in receipt of emoluments, a statement by his employer giving full particulars of such emoluments; and
- (iii) any book of account or other document in his possession or custody or under his control specified in such notice.

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

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

- (5) (a) If the judgment debtor fails to appear at the enquiry on the date specified in the notice, the court may authorize the issue of a warrant for his arrest.
- (b) On the date when the judgment debtor is brought before the court on the said warrant, the court may, in summary manner, enquire into the failure of the judgment debtor to obey or comply with the said notice, and unless it is proved that the judgment debtor had a reasonable excuse for such disobedience or failure, impose upon the judgment debtor a fine not exceeding fifty pounds, or in default of payment imprisonment for a period not exceeding three months or such imprisonment without the option of a fine.
- (c) Such sentence shall be enforced and shall be subject to an appeal as if it were a sentence in a criminal case imposed by the Magistrate's Court of the district in which it was imposed.

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

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

- (a) authorize the issue of a warrant of execution against the movable or immovable property of the judgment debtor or such portion of it as the court deems fit;
- (b) make an order in terms of section *seventy-two*;
- (c) authorize the issue of such warrant coupled with an order under section *seventy-three*;
- (d) order the judgment debtor to pay the judgment debt by specified periodical instalments;
- (e) make such order as to costs as may be just.

(8) At such enquiry the judgment debtor may apply to the court for a stay of the proceedings to enable him to make application in terms of section *seventy-four*. Upon such application the court may postpone the proceedings to a specified date. If upon such date no application in terms of section

seventy-four has been made by the judgment debtor, the proceedings shall be continued in terms of sub-sections (6) and (7).

- (9) (a) If the judgment debtor fails to comply with an order made in terms of paragraph (d) of sub-section (7), the court may on application of the judgment creditor make an order on the judgment debtor to show cause why he should not be committed for contempt of court.
- (b) If the judgment debtor fails to appear on such order, or fails to satisfy the court that he has been unable through circumstances beyond his control to comply with the order made in terms of paragraph (d) of sub-section (7), the court may commit him for a period not exceeding thirty days.
- (c) The court may at any time suspend or discharge such order of committal upon such terms as may appear to the court to be fair and reasonable.

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

16. Section *sixty-six* of the principal Act is hereby amended by the insertion in sub-section (1) after the words "to satisfy the judgment" of the words "or the court, on good cause shown so directs".

Amendment of section 66 of Act 32 of 1944.

17. The following new section is hereby substituted for section *seventy-two* of the principal Act:

Substitution of section 72 of Act 32 of 1944.

"Debts and emoluments may be attached.

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

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

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

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

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

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

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

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

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

18. Section *seventy-three* of the principal Act is hereby amended by the insertion in sub-section (1) after the expression "paragraph (c)" of the expression "or (d)".

Amendment of section 73 of Act 32 of 1944.

19. Section *seventy-four* of the principal Act is hereby amended—

Amendment of section 74 of Act 32 of 1944.

- (a) by the substitution in sub-section (1) for the expression "paragraph (d) of sub-section (7)" of the expression "sub-section (8)";
- (b) by the substitution in sub-section (3) for the word "seven" of the word "fourteen";
- (c) by the insertion in sub-section (5) after the word "administrator" of the words "a practitioner or" and the addition at the end of the said sub-section of the following proviso:

"Provided that no practitioner shall be so appointed unless and until he has agreed so to act.";
- (d) by the insertion after sub-section (5) of the following paragraph, the existing sub-section (5) becoming paragraph (a):

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

(e) by the insertion after sub-section (8) of the following paragraph, the existing sub-section (8) becoming paragraph (a):

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

(f) by the insertion in sub-section (9) after the word “individually” of the words “and may from time to time add to such list the name of any creditor omitted from the original list and the amount due to such creditor, if the liability had been incurred at the date of the granting of the administration order”;

(g) by the insertion in sub-section (10) after the word “creditors” of the words “unless all creditors otherwise agree”; and

(h) by the insertion after sub-section (10) of the following paragraph, the existing sub-section (10) becoming paragraph (a):

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

20. The following new section is hereby substituted for section *ninety* of the principal Act: Substitution of section 90 of Act 32 of 1944.

“Local limits of jurisdiction.

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

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

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

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

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

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

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

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

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

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

(7) Where by any special provision of law a magistrate's court has jurisdiction in respect of an offence committed beyond the local limits of the district, or of the regional division, as the case may be, such court shall not be deprived of such jurisdiction by any of the provisions of this section.

(8) Notwithstanding anything contained in this section, the Attorney-General may, with the consent of the person charged with having committed an offence within the area of jurisdiction of such

Attorney-General, cause such person to be tried for such offence in the court of any district or any regional division, as may be required, in such area.”.

21. Section *ninety-two* of the principal Act is hereby amended— Amendment of section 92 of Act 32 of 1944.

- (a) by the insertion in sub-section (1) after the word “Act” where it appears for the first time of the words “of Chapter XVIII of the Criminal Procedure and Evidence Act, 1917 (Act No. 31 of 1917)”.
- (b) by the insertion in paragraph (a) of sub-section (1) after the word “months” of the expression “or in the case of the court of a regional division not exceeding three years” and by the substitution in the English text for the word “hard” of the word “compulsory”.
- (c) by the substitution in paragraph (b) of the said sub-section for the words “fifty pounds” of the words “one hundred pounds (or in the case of the court of a regional division not exceeding three hundred pounds)”.

22. Section *ninety-three* of the principal Act is hereby amended by the addition of the following sub-section: Amendment of section 93 of Act 32 of 1944.

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

23. The following new section is hereby inserted after section *ninety-three* of the principal Act: Insertion of section 93bis in Act 32 of 1944.

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

24. Section *ninety-five* of the principal Act is hereby amended— Amendment of section 95 of Act 32 of 1944.

- (a) by the insertion after the word “court” where it appears for the first time of the words “(other than the court of a regional division)”.
- (b) by the substitution in paragraph (a) of the words “two hundred pounds” for the words “one hundred pounds”.

25. Section *ninety-six* of the principal Act is hereby amended— Amendment of section 96 of Act 32 of 1944.

- (a) by the substitution in sub-section (1) for the word “twenty-five” of the word “fifty”.
- (b) by the insertion in the said sub-section after the word “pounds” of the words “or in the case of a court of a regional division, for a period exceeding one year or a fine exceeding one hundred pounds”.
- (c) by the substitution in sub-section (2) for the words “twenty-five pounds” of the words “fifty pounds, or in the case of a court of a regional division exceeds one year or one hundred pounds.”.

26. Section *one hundred* of the principal Act is hereby amended by the deletion in sub-section (2) of the words “other” and “same” respectively. Amendment of section 100 of Act 32 of 1944.

27. Section *one hundred and six* of the principal Act is hereby amended by the addition of the following proviso at the end thereof: Amendment of section 106 of Act 32 of 1944.

- “Provided that for the purposes of this section the term ‘order’ shall not include an order referred to in sub-section (7) of section *sixty-five*.”.

28. The following new section is hereby substituted for section *one hundred and nine* of the principal Act: Substitution of section 109 of Act 32 of 1944.

“Judgment debtor to inform court of his address. 109. Any person against whom a court has, in a civil case, given any judgment or made any order, who has not satisfied in full such judgment or order and all costs for which he is liable in connection therewith, shall be guilty of an offence and liable on

conviction to a fine not exceeding twenty-five pounds, if he has changed his place of residence or employment and fails to give within fourteen days from the date of every such change to the clerk of the court which gave such judgment or made such order, and to the plaintiff or the plaintiff's attorney a notice in writing setting forth fully and correctly the new place of residence or employment, and the names of the parties."

29. Section *sixty-nine* of the Criminal Code is hereby amended by the substitution for sub-section (2) of the following new sub-section:

"(2) Subject to the proviso to sub-section (2) of section *sixty* and to sections *ninety-five* and *ninety-six*, the evidence given by a witness at a preparatory examination shall be given in the presence of the accused, shall be recorded and shall be read over to the witness who gave it. If such evidence was recorded in shorthand writing or by mechanical means, such record shall be transcribed and read over to the witness who gave it, and 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 recorded such evidence shall *prima facie* be equivalent to such original record."

Amendment of section 69 of Act 31 of 1917 as amended by section 11 of Act 39 of 1926 and section 14 of Act 46 of 1935.

30. Section *eighty-five* of the Criminal Code is hereby amended—

- (a) by the insertion in paragraph (a) after the word "within" of the words "or outside"; and
- (b) by the insertion in paragraph (d) after the word "court" where it occurs for the second time of the words "(including the court of a regional division)".

Amendment of section 85 of Act 31 of 1917 as amended by section 17 of Act 46 of 1935 and section 93 of Act 31 of 1937.

31. Section *ninety* of the Criminal Code is hereby amended—

- (a) by the insertion in paragraph (c) of sub-section (1), after the word "court" of the words "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 has been held"; and
- (b) by the insertion in paragraphs (d), (e) and (f) of the said sub-section, after the word "rape" where it occurs in each case, of the words "or the preparatory examination was held by the court of a regional division".

Amendment of section 90 of Act 31 of 1917.

32. The following new section is hereby inserted after section *ninety-eight* of the Criminal Code:

"Applica-
tion of
provisions
relating to
a district
to a
regional
division.

98bis. The provisions of this Chapter relating to a district established under the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), shall apply *mutatis mutandis* to any regional division established under the said Act, in regard to preparatory examinations held by the court of a regional division under section *ninety-three* of the said Act."

Insertion of new section 98bis in Act 31 of 1917

33. This Act shall be called the Magistrates' Courts Amend- Short title.
ment Act, 1952.