THE CRIMINAL PROCEDURE AND EVIDENCE ACT

Date of commencement: 1st January. 1939

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An Act to regulate procedure and evidence in criminal cases, and to make provision for other matters incidental thereto.

PART I

PRELIMINARY

Short title and application.

1. This Act may be cited as the Criminal Procedure and Evidence Act, 1938, and shall apply to all criminal proceedings instituted after the 1st January, 1939, in respect of any offence in any part of Swaziland whenever such offence was committed.

Interpretation.

2. In this Act unless the context otherwise requires —

"Chief" has the meaning assigned to it under the Swazi Administration Act, No. 79 of 1950;

"company" means a company incorporated or registered under any law generally governing companies, or under any special law or under letters patent or Royal Charter;

"counsel" includes an attorney in proceedings before the High Court in which such attorney has the right of audience;

"court" or "the court" in relation to any matter dealt with under a particular provision of this Act, means the judicial authority which under this Act or any other law has jurisdiction in respect of that matter;

"Crown" means the Attorney-General prosecuting in the name and on behalf of His Majesty;

"day" or "day-time" when used in contradistinction to "night" or "night-time", means the space of time between sunrise and sunset;

"district officer" includes a Senior District Officer, an Assistant District Officer, a Magistrate and an Assistant Magistrate;

"district" means a district defined under the provisions of the General Administration Act, No. 11 of 1905;

"His Majesty" shall mean the King of Swaziland; (Amended L.N.38/1967.)

"judge" means a judge of the High Court;

"judicial officer" includes a judge, magistrate or justice;

"justice" means a justice of the peace appointed or exercising functions as such under any law;

"magistrate" means any person entitled to preside over a court established under the Magistrates Court Act, No. 66 of 1938;

"magistrate's court" means any court established under the Magistrates Court Act, No. 66 of 1938 and any court other than the High Court or a Swazi Court which now or hereafter possesses criminal jurisdiction under any law;

"money" includes all coined money whether current in Swaziland or not, and all bank-notes, bank-drafts, cheques, orders, warrants, or any other authorities whatever for the payment of money;

"night" or "night-time" when used in contradistinction to "day" or "day-time", means the space of time between sunset and sunrise;

"offence" means an act or omission punishable by law, or by a regulation or order lawfully made and in force under any statute;

"peace officer" includes any magistrate or justice; a sheriff or a deputy sheriff; and police officer or person carrying out under any law the powers, duties and functions of a police officer in Swaziland; a gaoler or a warder of any prison or gaol, and any chief; (Amended P.6/1956.)

"person" and "owner" and other like terms, when used in reference to property or acts, include corporations of all kinds, and any other associations of persons capable of owning or holding property or doing acts; and, when relating to property, include the Government and any department thereof;

"policeman" includes any person carrying out under any law the powers, duties and functions of a police officer; and "police" has a corresponding meaning;

"premises" include, in addition to any land, building or structure, any vehicle, conveyance, ship or boat;

"property" includes everything, animate or inanimate, corporeal or incorporeal, capable of being the subject of ownership;

"public prosecutor" includes any person delegated generally or specially by the Attorney-General under this Act;

"rules of court" means rules in force under the High Court Act No. 20 of 1954, or the Magistrates Court Act, No. 66 of 1938 as the case may be;

"telegraph" includes transmission by radio telegraphy or radio telephony; (Amended P.6/1956.)

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

PART II

PROSECUTION AT THE PUBLIC INSTANCE

A. — ATTORNEY-GENERAL

Attorney-General vested with right of prosecuting all offences.

3. The Attorney-General, in accordance with the powers conferred upon him by section 91 of the Constitution is vested with the right and entrusted with the duty of prosecuting in the name and on behalf of His Majesty the King in respect of any offence committed in Swaziland. (Amended P.49/64; L.N. 8/1969.)

Prosecution by Attorney-General in person or by substitute.

4. The Attorney-General may appear —

(*a*) personally;

(*b*) by Crown Counsel; or

(*c*) by any person, or by any person of a class, delegated by him,

at any preparatory examination held under Part VII or to conduct any prosecution before any court, other than a Swazi Court established under the Swazi Courts Act No. 80 of 1950. (Amended P.49/1964.)

Presiding officer may appoint prosecutor in certain cases.

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

Provided that where no fit and proper person is available, the presiding officer may, in his discretion, proceed with the trial of any case or the hearing of any examination in the absence of a prosecutor.

Attorney-General's power of stopping prosecutions.

6. The Attorney-General may, at any time before conviction, stop any prosecution commenced by him or by any other person; but, in the event of the accused having already pleaded to any charge, he shall be entitled to a verdict of acquittal in respect of such charge.

Power of ordering liberation of persons committed for further examination, sentence or trial.

7. (1) The Attorney-General may order the liberation of any person committed to prison for further examination, sentence, or trial.

(2) A writing setting forth that the Attorney-General sees no ground for prosecuting such person and subscribed by him shall be a sufficient warrant for such liberation.

Neither acquittal nor conviction a bar to civil action for damages.

8. Neither a conviction nor an acquittal following on any prosecution shall be a bar to civil action for damages at the instance of any person who may have suffered any injury from the commission of an alleged offence.

B. — LOCAL PUBLIC PROSECUTOR

Powers and duties of local public prosecutor.

9. (1) All public prosecutors in any magistrate's court are, as representatives of the Attorney-General, and subject to his instructions, charged with the duty of prosecuting in such court, in the name and on behalf of His Majesty the King, all offences which such court has jurisdiction to try.

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

(3) If a sworn declaration in writing is lodged with or made before a local public prosecutor by any person disclosing that any other person has committed an offence chargeable in the magistrate's court to which such public prosecutor is attached, he shall determine whether there are good grounds for prosecution or not:

Provided that —

(*a*) he may refer the question whether he shall prosecute or not to the Attorney-General; and

(*b*) any other person may be specially authorised by the Attorney-General to prosecute in such matter.

PART III

PRIVATE PROSECUTIONS

Private prosecution on refusal of Attorney-General to prosecute.

10. If the Attorney-General declines to prosecute for an alleged offence, any private party who can show some substantial and peculiar interest in the issue of the trial, arising out of some injury which he individually has suffered by the commission of such offence, may prosecute the person alleged to have committed it in any court.

Other persons entitled to prosecute.

11. (1) The right of prosecution under section 10 as private parties shall also be possessed by —

(*a*) a husband in respect of an offence committed against his wife;

(*b*) the legal guardian or curator of a minor or lunatic in respect of an offence committed against his ward; and,

(*c*) the wife or child or, if there is no wife or child, any next of kin, of any deceased person in respect of any offence by which the death of such person is alleged to have been caused.

(2) All persons described in this section and section 10 are hereinafter referred to as private parties.

Private prosecutor may apply to court for warrant.

12. If, by virtue of the right of prosecution given to private parties in section 10 or 11, any private party desires to prosecute for any offence any person for whose liberation from prison any warrant has been issued by the Attorney-General, such private party may apply to the magistrate within whose jurisdiction such offence is alleged to have been committed, for a warrant for the further detention or, if he is on bail, for the detention of such person, and such magistrate shall make any order which to him seems right under the circumstances.

Certificate of Attorney-General that he declines to prosecute.

13. (1) No private party may obtain the process of any court for summoning any person to answer any charge, unless he produces to the officer authorised by law to issue such process a certificate signed by the Attorney-General that he has seen the statements or affidavits on which such charge is based and declines to prosecute at the public instance.

(2) In every case in which the Attorney-General declines to prosecute he shall grant such certificate at the request of the party intending to prosecute.

Recognisances to be entered into by private prosecutor.

14. No private party shall take any proceedings under the right conferred upon him by this Part until he has —

(*a*) if the prosecution is in the High Court, deposited the sum of one hundred rand or entered into a recognisance in the sum of one hundred rand with two sufficient sureties in the sum of fifty rand each (to be approved by the court in which the proceedings are to be instituted) as security that he will prosecute the charge against the accused to a conclusion without delay; and,

(*b*) in any prosecution given security in such amount and in such manner as the court may direct that he will pay the accused such costs incurred by him in respect of his defence to the charge, as the court before which the case is tried may order him to pay.

Failure of private prosecutor to appear on appointed day.

15. (1) If the private party does not appear on the day appointed for appearance, the charge or complaint shall be dismissed unless the court sees reason to believe that such party was prevented from being present by circumstances beyond his control, in which case it may adjourn the hearing of the case.

(2) If any such dismissal takes place, the accused shall not be again liable to prosecution, on the same charge, by any private party:

Provided that such dismissal shall not prevent the Attorney-General, or a public prosecutor on the instructions of the Attorney-General, from afterwards instituting a prosecution.

Mode of conducting private prosecutions.

16. A private prosecution shall, subject to this Act, be proceeded with in the same manner as if it were being conducted at the public instance, save that all costs and expenses of the prosecution shall be paid by the party prosecuting, subject to any order which the court may make when such prosecution is finally concluded.

Competency of Attorney-General to take up and conduct prosecution at the public instance in all cases.

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

Deposit of money by private prosecutor.

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

Costs of private prosecutions.

19. (1) If a person prosecuted at the instance of a private party is acquitted, the court in which the prosecution was brought may order such party to pay the person prosecuted the whole or any part of the expenses (including the costs both before and after committal) occasioned to him by such prosecution.

(2) If the court, upon hearing the charge or complaint on a private prosecution, pronounces it to be unfounded and vexatious, it shall award the accused at his request such costs as it thinks fit.

PART IV

PRESCRIPTION OF OFFENCES

Prosecution for murder not barred by lapse of time, for other offence barred by lapse of 20 years.

20. The right to prosecute for murder shall not be barred by any lapse of time; but the right to prosecute for any other offence, whether at the public instance or at the instance of a private party, shall, unless some other period is expressly provided by law, be barred by the lapse of twenty years from the time when such offence was committed.

PART V

ARRESTS

A. — WITHOUT WARRANT

Arrest and verbal order to arrest for offences committed in the presence of judicial officers.

21. (1) Any judicial officer who has knowledge of any offence by seeing it committed, may himself arrest the offender or by verbal order authorise other persons so to do.

(2) The persons so authorised are empowered and required to follow the offender if he flees, and execute such order on him out of the presence of such judicial officer.

Arrest by peace officer for offences committed in his presence and on reasonable grounds of suspicion.

22. Every peace officer and every other officer empowered by law to execute criminal warrants is hereby authorised to arrest without warrant every person —

(*a*) who commits any offence in his presence;

(*b*) whom he has reasonable grounds to suspect of having committed any of the offences mentioned in Part II of the First Schedule;

(*c*) whom he finds attempting to commit an offence, or clearly manifesting an intention so to do.

When peace officer may arrest without warrant.

23. (1) Any peace officer may, without any order or warrant, arrest any person —

(*a*) who has in his possession any implement of house-breaking, and is not able to account satisfactorily for such possession;

(*b*) in whose possession anything is found which is reasonably suspected to be stolen property or property dishonestly obtained, and who is reasonably suspected of having committed an offence with respect to such thing;

(*c*) who obstructs a policeman or other peace officer while in the execution of his duty, or who has escaped or attempts to escape from lawful custody;

(*d*) who is reasonably suspected of being a deserter from His Majesty's naval or military or air forces or from the Royal Swaziland Police;

(*e*) who is or is loitering in any place by night under such circumstances as to afford reasonable grounds for believing that he has committed or is about to commit an offence;

(*f*) reasonably suspected of committing or having committed an offence under any law governing the making, supplying, possession or conveyance of intoxicating liquor or of habit-forming drugs or the possession or disposal of arms and ammunition;

(*g*) reasonably suspected of being a prohibited immigrant for the purpose of any law regulating entry into or residence in Swaziland;

(*h*) found in any gambling house or at any gambling table, the keeping or visiting whereof is in contravention of any law for the prevention or suppression of gambling or games of chance; or,

(*j*) who is reasonably suspected of being or having been in unlawful possession of stock or produce as defined in any law for preventing the theft of stock or produce.

(2) If it is provided in any law that the arrest of any person may be made by a police officer or other official without warrant, subject to conditions or to the existence of circumstances set forth in such law, an arrest by any peace officer, without any warrant or order, may be made of such person subject to such conditions or the existence of such circumstances. (Amended P.49/1964.)

Failure to give particulars of name and address to a peace officer constitutes an offence.

24. (1) A peace officer may call upon any person —

(*a*) whom he has power to arrest;

(*b*) reasonably suspected of having committed an offence; and

(*c*) who may, in his opinion, be able to give evidence in regard to the commission or suspected commission of any offence;

to furnish him with his full name and address.

(2) If any person fails on such demand to furnish his full name and address, the peace officer making such demand may forthwith arrest him; and if any such person on such demand furnishes to such peace officer a name or address which such peace officer upon reasonable grounds suspects to be false, such person may be arrested and detained for a period not exceeding twenty-four hours until the name and address so furnished have been verified. (Amended P.6/1956.)

(3) Any person who, is called upon under subsection (1) or (2) to furnish his name and address, and fails to do so or furnishes a false or incorrect name or address shall be guilty of an offence and liable on conviction to a fine not exceeding sixty rand or imprisonment not exceeding three months without the option of a fine.

Arrest by private person for certain offences committed in his presence.

25. (1) Every private person, in whose presence anyone commits or attempts to commit an offence mentioned in Part II of the First Schedule or who has knowledge that any such offence has been recently committed, may, without warrant arrest or forthwith pursue, the offender and every other private person to whom the purpose of such pursuit has been made known may join and assist therein.

(2) Every private person may without warrant arrest any other person whom he believes on reasonable grounds to have committed an offence and to be escaping therefrom, and to be freshly pursued by one whom such private person believes on reasonable grounds to have authority to arrest the escaping person for such offence.

(3) If it is provided in any law with respect to an offence that the offender may be arrested without warrant by any private person particularly specified, any such person may arrest such offender without warrant.

Arrest by private person in case of an affray.

26. Every private person may, without warrant arrest any person whom he sees engaged in an affray in order to prevent such person from continuing the affray, and deliver him to the police to be dealt with according to law.

Owners of property may arrest in certain cases.

27. The owner of any property on or in respect to which any person is found committing any offence, or any person authorised by such owner, may without warrant arrest the person so found.

Arrest by private persons for certain offences on reasonable suspicion.

28. Any private person may, without warrant, arrest any other person upon reasonable suspicion that such other person has committed any of the offences specified in Part II of the First Schedule.

Arrest of persons offering stolen property for sale, etc.

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

Procedure after arrest without warrant.

30. (1) No person arrested without warrant shall be detained in custody for a longer period than in all the circumstances of the case is reasonable.

(2) Unless such person is released by reason that no charge is to be brought against him, he shall, as soon as possible, and without undue delay, be brought before a magistrate's court having jurisdiction upon a charge of an offence.

(3) This section shall not be construed as modifying the provisions of Part VIII or of any other law, whereby a person under detention may be released on bail.

(4) If a person effects an arrest without warrant, he shall forthwith inform the arrested person of the cause of such arrest.

(Amended P.6/1956; P.49/1964; L.N.38/67.)

B. — WITH WARRANT

Warrant of apprehension by magistrate.

31. (1) Any magistrate may issue a warrant for the arrest of any person or for the further detention of a person arrested without a warrant on a written application subscribed by the Attorney-General or by the local public prosecutor or any commissioned officer of police setting forth the offence alleged to have been committed and that, from information taken upon oath, there are reasonable grounds of suspicion against such person, or upon information to the like effect of any person made on oath before the magistrate issuing the warrant:

Provided that no magistrate may issue any such warrant except when the offence charged has been committed within his area of jurisdiction, or except when the person against whom such warrant is issued was, at the time when it was issued, known, or suspected on reasonable grounds, to be within his area of jurisdiction.

(2) Every such warrant may be issued on a Sunday as on any other day and shall remain in force until it is cancelled by the person who issued it, or until it is executed.

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

(Amended P.47/1959.)

32. (Repealed A.14/1991.)

Execution of warrants.

33. (1) Every peace officer is hereby authorised and required to obey and execute any warrant issued by a judge under this Act.

(2) Every peace officer is hereby authorised and required to obey and execute any warrant issued or endorsed by the magistrate or any justice of the district in which such officer has been appointed to act.

(3) Every warrant issued by any magistrate shall have effect and, when endorsed as provided in section 32 (if such endorsement is necessary), may lawfully be executed anywhere in Swaziland by any peace officer.

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

(5) Any person arrested by virtue of a warrant under this Act shall, as soon as possible, and without undue delay, be brought to a police station or charge office, unless any other place is specially mentioned in such warrant as the place to which such person shall be brought, and he shall thereafter be brought as soon as possible, and without undue delay before a magistrate upon a charge of the offence mentioned in such warrant.

(Amended P.47/1959; P.49/1964.)

Telegram stating issue of warrant authority for execution of the same.

34. (1) A telegram from any officer of any court or from any peace officer, stating that a warrant has been issued for the apprehension or arrest of any person accused of any offence, shall be sufficient authority to any peace officer for the arrest and detention of such person until a sufficient time, not exceeding fourteen days, has elapsed to allow the transmission of such warrant or writ to the place where such person has been arrested or detained unless the discharge of such person is previously ordered by a judicial officer:

Provided that any such judicial officer may, upon cause shown, order the further detention of any such person for a period to be stated in such order, not exceeding twenty-eight days from the date of his arrest.

(2) This section shall not be construed as derogating from the provisions of this Act or of any other law whereby a person so arrested may be admitted to bail.

Arresting wrong person.

35. (1) Any person duly authorised to execute a warrant of arrest, who thereupon arrests a person believing in good faith and on reasonable and probable grounds that he is the person named in such warrant, shall be protected from responsibility to the same extent and subject to the same provisions as if such person had been the person named in the warrant.

(2) Any person called on to assist the person making such arrest and believing that the person in whose arrest he is called on to assist is the person for whose arrest the warrant was issued, and every gaoler who is required to receive and detain such person, shall be protected to the same extent and subject to the same provisions as if the arrested person had been the person named in such warrant.

Irregular warrant or process.

36. Any person acting under a warrant or process which is bad in law on account of a defect in substance or in form apparent on the face of it, shall, if he believes in good faith and without culpable ignorance and negligence that such warrant or process is good in law, be protected from responsibility to the same extent and subject to the same provisions as if such warrant or process were good in law, and ignorance of the law shall in such case be an excuse:

Provided that it shall be a question of law whether the facts of which there is evidence may or may not constitute culpable ignorance or negligence in his so believing such warrant or process to be good in law.

Tenor of warrant.

37. Every warrant issued under this Act shall be to apprehend the person described therein and to bring him before a magistrate as soon as possible and without undue delay, upon a charge of an offence mentioned in such warrant.

C. — GENERAL

Assistance by private persons called on by officers of the law.

38. (1) Every male inhabitant of Swaziland between the ages of sixteen and sixty is, when called upon by any policeman, authorised and required to assist such policeman in making any arrest which by law he is authorised to make, of any person charged with or suspected of the commission of any offence, or to assist such policeman in retaining the custody of any person so arrested.

(2) Any such inhabitant who, without sufficient excuse, refuses or fails when called upon to do so shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand emalangeni, or to imprisonment not exceeding twelve months without the option of a fine. (Amended A.12/1988.)

Breaking open doors after failure in obtaining admission for the purpose of arrest or search.

39. Any peace officer or private person who by law is authorised or required to arrest any person known or suspected to have committed any offence, may for such purpose break open the doors and windows of, and enter and search, any premises in which the person whose arrest is required is known or suspected to be:

Provided that such officer or private person shall not act under this section unless he has previously failed to obtain admission after having audibly demanded the same and notified the purpose for which he seeks to enter such premises.

Arrest — how made, and search thereon of person arrested.

40. (1) In making an arrest the peace officer or other person authorised to arrest shall actually touch or confine the body of the person to be arrested unless there is a submission to the custody by word or action.

(2) A peace officer or other person arresting any person under this Part may search him and shall place in safe custody all articles (other than necessary wearing apparel) found on him.

(3) If a woman is searched on her arrest, the search shall only be made by a woman and shall be made with strict regard to decency.

(4) If no woman is available for such search who is a police or prison officer, such search may be made by any woman specially named for such purpose by a peace officer.

Resisting arrest.

41. (1) If any peace officer or private person authorised or required under this Act to arrest or assist in arresting any person who has committed or is on reasonable grounds suspected of having committed any of the offences mentioned in Part II of the First Schedule, attempts to make such arrest, and the person whose arrest is so attempted flees or resists and cannot be apprehended and prevented from escaping, by other means than by such officer or private person killing the person so fleeing or resisting, such killing shall be deemed in law to be justifiable homicide.

(2) This section shall not give a right to cause the death of a person who is not accused or suspected of having committed one of the offences mentioned in Part II of the First Schedule. (Amended A.14/1991.)

Power to retake on escape.

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

Penalties for escape or aiding escape from lawful custody other than from a prison, etc.

43. (1) Any person who has been arrested and is in lawful custody but has not yet been lodged in any prison, gaol, police cell, or lock-up, and who escapes or attempts to escape from such custody shall be guilty of an offence and liable on conviction to imprisonment not exceeding two years.

(2) Any person rescuing or attempting to rescue from lawful custody any other person who has been arrested but not yet lodged in any prison, gaol, police cell or lock-up, or aiding such other person to escape, or in an attempt to escape, from such custody, or harbouring or concealing or assisting in harbouring or concealing him, knowing him to have so escaped, shall be guilty of an offence and liable on conviction to imprisonment not exceeding two years.

Penalty for harbouring, concealing, etc.

43*bis*. A person who —

(*a*) harbours, conceals or assists in any manner whatsoever in harbouring or concealing any person whom he knows or has reason to believe has committed an offence or is sought by the Police in connection with the commission by that person of an offence; or

(*b*) knowing the whereabouts of any person whom he knows or has reason to believe has committed an offence or is sought by the Police in connection with the commission by that person of an offence, fails to report such whereabouts within reasonable time to a Police Officer or to the nearest Police Station;

shall be guilty of an offence and liable on conviction to a fine not exceeding three thousand emalangeni or to a term of imprisonment not exceeding three years or both.

(Added A.12/1988.)

Saving of other powers of arrest.

44. This Part shall not be construed as taking away or diminishing any authority specially conferred by any other law to arrest, detain, or put any restraint on, any person.

Saving of civil rights.

45. This Part shall not, save as otherwise expressly provided, take away or diminish any civil right or liability of any person in respect of a wrongful or malicious arrest.

PART VI

SEARCH WARRANTS, SEIZURE AND DETENTION OF PROPERTY CONNECTED WITH OFFENCES AND CUSTODY OF WOMEN UNLAWFULLY DETAINED FOR IMMORAL PURPOSES

Search warrants.

46. (1) If it appears to a magistrate on complaint made on oath that there are reasonable grounds for suspecting that there is upon any person or upon or at any premises or other place or upon or in any vehicle or receptacle of whatever nature within his jurisdiction —

(*a*) stolen property or anything with respect to which any offence has been, or is suspected on reasonable grounds to have been, committed;

(*b*) anything as to which there are reasonable grounds for believing that it will afford evidence as to the commission of any offence; or,

(*c*) anything as to which there are reasonable grounds for believing that it is intended to be used for the purpose of committing any offence;

he may issue his warrant directing a policeman or policemen named therein or all policemen to search any such person, premises, other place, vehicle, or receptacle and any person found in or upon such premises, other place, or vehicle, and to seize any such thing if found, and to take it before a magistrate to be dealt with according to law.

(2) Any such warrant shall be executed by day unless the judicial officer by such warrant specially authorises it to be executed by night, in which case it may be so executed.

(3) In the searching of any woman section 40(3) shall *mutatis mutandis* apply.

(4) Such warrant may be issued and executed on Sunday as on any other day.

Search by police without warrant.

47. (1) If a police officer believes on reasonable grounds that the delay in obtaining a search warrant would defeat the object of the search he may himself search any person, premises, other place, vehicle or receptacle of whatever nature, and any person found in or upon such premises, other place or vehicle, for anything mentioned in section 46 and may seize such thing if found and take it before a magistrate: (Amended A.14/1991.)

Provided that in the searching of any woman section 40(3) shall *mutatis mutandis* apply. (Amended P.6/1956.)

(2) Such search shall, as far as possible, be made in the daytime and in the presence of two or more respectable inhabitants of the locality in which such search is made.

(3) Any policeman of or above the rank of assistant superintendent, and any policeman below that rank having a special written authority from a magistrate or a policeman of or above the rank of assistant superintendent, may enter and inspect, without warrant, any drinking shop, gaming house or other place of resort of loose and disorderly persons.

Search for stolen stock or produce or liquor or habit-forming drugs.

48. (1) If a justice or any policeman of the rank of sub-inspector, or above, has reason to suspect that any stolen stock or produce (as defined in any law dealing with the theft of stock or produce) is upon any premises or at any place, or that any substance has been placed upon any premises or at any place or is in the custody or possession of any person upon any premises or at any place, in contravention of any law relating to intoxicating liquor or habit-forming drugs, he may at any time enter upon and search such premises or place and search any person thereupon or thereat, or grant written authority to any person applying therefor to make such entry and search. (Amended P.6/1956.)

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

(3) Any person who, under colour of this section, wrongfully and maliciously or without probable cause applies for, obtains, or acts upon any such written authority, or wrongfully and maliciously or without probable cause exercises the powers of search conferred by this section, shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred rand, or, in default of payment thereof, imprisonment not exceeding three months.

(4) Such person shall also be liable to pay to the person lawfully in occupation of the premises or place when the same was searched such sum by way of damages, not exceeding two hundred rand, as any court may award.

(5) Sub-section (4) shall not be construed as depriving any aggrieved person of the right to elect to take any other remedy allowed by law in lieu of the remedy thereunder.

Judicial officer may order seizure of books or documents in possession of any person.

49. (1) If it appears from information on oath that any person is in possession of any book of account or document or any other thing whatsoever which is necessarily required in evidence in any criminal proceedings, any judicial officer presiding at such proceedings may issue an order directing the officer to whom such order is addressed to take possession of such book or document or thing and hand it over to the person named in such order; and thereupon such officer may lawfully execute such order.

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

Production of account books, documents, etc., to the police for purposes of criminal investigation.

49*bis*. (1) If upon an application to the court by a police officer the Court is satisfied that any books of account, document, records or thing which is in the possession of any person including a company, bank or other financial institution is necessarily required in connection with any criminal investigation by the police, the Court shall make an order requiring that person, company, bank, or financial institution to produce such book, document, records or thing to the police subject to such conditions as the Court may impose.

(2) Any person who without reasonable excuse, proof of which shall be on him, refuses or fails to comply with an order of the Court under subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding ten thousand Emalangeni or to imprisonment not exceeding five years or to both.

(Added A.14/1991.)

Seizure of counterfeit coin, etc.

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

(*a*) counterfeit coin, forged bank-note or bank-note paper;

(*b*) tool, instrument, or machine, adapted and intended for making any such counterfeit coin, forged bank-note or bank-note paper; or,

(*c*) filings or clippings of gold or silver or any gold or silver in bullion, dust, solution or any other state which is suspected on reasonable grounds to have been obtained by dealing with any current gold or silver coin in such manner as to diminish its weight;

the person finding any such article may seize it and take it forthwith before a magistrate to be dealt with according to law.

Seizure of vehicle or receptacle used in connection with certain offences.

51. On the arrest of any person on a charge of an offence specified in Part I of the First Schedule the person making such arrest may seize any vehicle or receptacle in the possession or custody of the arrested person at the time of such arrest and used in the conveyance of or containing any article or substance in connection wherewith the said offence is alleged to be or to have been committed.

Disposal of property seized.

52. (1) If on the arrest of any person on a charge of an offence relating to property, the property in respect of which the offence is alleged to have been committed is found in his possession, or if anything is seized or taken under this Act, the person making the arrest or (as the case may be) the person seizing or taking the thing shall deliver such property or thing, or cause it to be delivered to a magistrate within such time as in all the circumstances of the case is reasonable.

(Amended P.37/1957.)

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

(3) The magistrate shall cause the property or thing so seized or taken to be detained in such custody as he may direct, taking reasonable care for its preservation until the conclusion of a summary trial or of any investigation that may be held in respect of it.

(4) If any person is committed for trial for any offence committed with respect to the property or thing so seized or taken, or for any offence committed under such circumstances that the property or thing so seized or taken is likely to afford evidence at the trial, the magistrate shall cause it to be further detained in like manner for the purpose of its being produced in evidence at such trial.

(5) (*a*) At the conclusion of a summary trial or if the Director of Public Prosecutions declines to prosecute, the Magistrate shall, in respect of the property or thing seized make one of the following orders:—

(i) that the property or thing be restored to the person from whom it was seized if that person satisfies the Magistrate that he is lawful owner of the property or thing or that he is lawfully in possession of the property or thing;

(ii) if that person fails to prove that he is the lawful owner or has lawful possession of the property or thing, that the property or thing be restored to any other person who is lawfully entitled to it upon proof to the Court;

(iii) if no person claims ownership or possession of the property or thing or if the person lawfully entitled to it cannot be traced or is unknown, that the property or thing be forfeited to the Crown.

(*b*) The Court shall for the purposes of an order under paragraph (*a*) hear such further evidence (whether by affidavit or orally) as it may consider necessary.

(Amended A.14/1991.)

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

Weapons seized under search warrants.

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

(2) Any person from whom any such weapon is so taken may, if the magistrate upon whose warrant it was seized refuses upon application made for such purpose to restore it, apply to the Deputy Prime Minister for the restoration of such weapon.

(3) Ten days' notice of such application shall be given to the magistrate and the Deputy Prime Minister shall make such order for the restoration or safe custody of such weapon as, upon such application, appears to him to be proper.

(Amended P.49/1964; L.N. 38/1967.)

Forfeiture of goods bearing forged trade or false merchandise mark.

54. (1) If goods or things in respect or by means of which it is suspected that an offence relating to the forgery of trade marks or fraudulent marking of merchandise has been committed are seized under a search warrant and brought before a magistrate, such magistrate shall determine summarily whether it shall be forfeited under the laws relating to the forgery of trade marks or the fraudulent marking of merchandise.

(2) If the owner of any goods or things which, if the owner thereof had been convicted, would be forfeited under such laws is not known or cannot be found, an information or complaint may be laid by a public prosecutor of the district in which such goods or things were seized for the purpose only of enforcing such forfeiture, and such magistrate shall cause a notice to be published in the Gazette and in a newspaper circulating in such district, or if no such newspaper is available by posting it in a visible place outside his office, stating that unless cause is shown to the contrary at the time and place named in such notice, such goods or things will be declared forfeited.

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

Women detained for immoral purposes.

55. (1) If it appears to a magistrate on complaint made on oath by a parent, husband, relative or guardian of a woman or girl, or any other person who in the opinion of such magistrate is acting in good faith in the interests of a woman or girl, that there is reasonable ground for suspecting that such woman or girl is unlawfully detained for immoral purposes by

any person in any place within the magistrate's jurisdiction, he may issue a warrant directed to a peace officer authorising him to search for such woman or girl and when found to take her to and detain her in a place of safety until she can be brought before a magistrate; and the magistrate before whom she is brought may cause her to be delivered up to her parents, husband, relatives or guardians, or otherwise deal with her as the circumstances may permit and require.

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

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

(*a*) under the age of sixteen years, and is detained for such purposes whether against her will or not;

(*b*) of, or over, the age of sixteen years and under the age of twenty-one years, and is, for such purposes, detained against her will or against the will of her father or mother or of any other person who has the lawful care or charge of her; or

(*c*) of, or above, the age of twenty-one years and is, for such purposes, detained against her will;

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

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

(5) Any such warrant shall be executed by the person mentioned in it, who shall, unless the magistrate otherwise directs, be accompanied by the parent, husband, relative, guardian, or other person by whom such complaint is made, if such person so desires.

PART VII

PREPARATORY EXAMINATION

Summons to appear at preparatory examination.

56. At the request of a public prosecutor who has decided to institute a preparatory examination against any person not in custody, the clerk of the court to which such public prosecutor is attached shall make out a summons, requiring such person to appear before the magistrate of such court for the purpose of undergoing a preparatory examination and shall deliver such summons to the person who is to serve it under section 57(2).

Contents of summons.

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

(2) Every summons shall be served by a person authorised to serve a criminal process in the district of the magistrate before whom such accused is required to appear, or by any other duly authorised person, upon the accused person to whom it is directed, either by delivering it to him personally, or, if he cannot conveniently be found, by leaving it for him at his place of business, or most usual or last known place of abode, with some inmate thereof.

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

(4) Neither this section nor section 56 shall be deemed to abrogate the custom whereby a Swazi accused person may be warned through his chief, sub-chief or headman to appear before a magistrates' court.

(5) If, upon the day appointed for the appearance of any person for the purpose of undergoing a preparatory examination, he fails to appear, and the magistrate is satisfied upon the return of service that he was duly summoned, or is satisfied by evidence upon oath that he was duly warned, such magistrate may, at the request of the prosecutor, issue a warrant for the apprehension of such person, and may impose on him for his default a fine not exceeding ten rand, or, in default of payment thereof, sentence him to imprisonment for a period not exceeding one month.

(6) The court may, upon cause shown, remit any fine or imprisonment imposed under this sub-section.

Jurisdiction of cadets to hold preparatory examinations.

58. (1) The Judicial Service Commission may, with the concurrence of the Minister for Local Administration, by notice in the Gazette appoint any cadet to hold any preparatory examination specified in such notice, or to hold preparatory examinations in a specified district for a specified period, and may, with like concurrence, specify in such notice what jurisdiction shall be exercisable by such cadet in the event of a remittal under section 86(1)(*d*), (*e*) or (*f*).

(2) If the Attorney-General, in pursuance of section 86(1)(*d*), (*e*) or (*f*) remits, to be dealt with in the magistrates' court, any case in which the preparatory examination has been held by a cadet appointed under sub-section (1), such case may be dealt with by such cadet in accordance with the jurisdiction specified in the notice appointing him.

(3) Such cadet shall have jurisdiction to deal with any case so remitted notwithstanding that his appointment may have expired by effluxion of time.

(4) A cadet appointed under sub-section (1) shall, for the purposes of any matter dealt with under his appointment, have all the powers conferred upon a magistrate by this Part, save those conferred by section 81(*d*).

Commencement of preparatory examination.

59. (1) When the accused is before a magistrate having jurisdiction, whether voluntarily or upon summons or after warning or after being apprehended with or without warrant or while in custody for the offence of which he is accused or any other offence, the local public prosecutor or other person charged with the prosecution of criminal cases shall institute a preparatory examination before the magistrate, and the magistrate shall proceed in the manner hereinafter described to enquire into the matters charged against such accused.

(2) Before proceeding to inquire into the matter charged against the accused, the magistrate shall read and explain the allegation to such accused and the procedure on a preparatory examination shall be made clear to him but he shall not be required to make any statement in reply to such allegation. (Amended P.49/1964.)

(3) The procedure described in subsection (2) shall be followed in the case of any person subsequently joined as an accused.

(4) At any stage after the commencement of a preparatory examination any person suspected of having committed or of having taken part in the commission of the offence in respect of which the preparatory examination was instituted may be joined with the accused, and thereupon the preparatory examination of the accused and such person shall proceed jointly:

Provided that the evidence given by every witness before such joinder shall be read over to such person, and if he or his representative requests the magistrate holding the preparatory examination to recall any such witness for the purpose of being cross-examined, the magistrate shall recall him and if necessary shall direct that he be subpoenaed to reappear before him, for the purpose of being cross-examined by such person or his representative, and re-examined by the public prosecutor.

Irregularities not to affect the proceedings.

60. No irregularity or defect in the substance or form of the summons or warrant or in the manner of arrest, and no variance between the charge contained in the summons or warrant and the charge contained in the information, or between either and the evidence adduced on the part of the prosecution at the enquiry, shall affect the validity of any criminal proceedings at or subsequent to the hearing.

Clerk of court to subpoena witness.

61. (1) A public prosecutor who has decided to institute or has instituted a preparatory examination, or an accused against whom a preparatory examination is being or is to be held (or the latter's representative), may compel the attendance of any person at such preparatory examination to give evidence, or to produce any book or document, by means of a subpoena, issued at the instance of the public prosecutor or accused, as the case may be, by the clerk of the court of the district in which such preparatory examination is being or is to be held. (Amended P.49/1964.)

(2) If a magistrate holding a preparatory examination believes that any person may be able to give evidence or to produce any book or document which is relevant to the subject of such examination, he may direct the clerk of the court to issue a subpoena in the manner described in subsection (1), requiring such person to appear before him at a time and place mentioned therein to give evidence or to produce any book or document.

(3) Any such subpoena shall be served upon the person to whom it is addressed in the manner prescribed by the rules of court.

(4) A magistrate holding a preparatory examination may call as a witness any person in attendance, although not subpoenaed as a witness, or may re-call and re-examine any person already examined as a witness.

(5) Every person subpoenaed to attend a preparatory examination shall obey the subpoena and remain in attendance throughout such examination unless excused by the magistrate holding such examination.

(6) This section shall not be deemed to abrogate the custom whereby a Swazi witness may be warned through his chief, sub-chief or headman to attend before a magistrate's court.

Arrest and punishment for failure to obey subpoena or to remain in attendance.

62. (1) If any person subpoenaed or warned to attend a preparatory examination fails without reasonable excuse to obey the subpoena or warning, and it appears from the return or from evidence given under oath that such subpoena was served upon or warning given to the person to whom it is directed or that he is evading service or warning, or if any person who attended in obedience to a subpoena or warning has failed to remain in attendance, the magistrate holding the preparatory examination may issue a warrant, directing that he be arrested and brought before him or any other magistrate at a time and place stated in such warrant, or as soon thereafter as possible.

(2) Such warrant may be executed anywhere within the area of jurisdiction of the magistrate who issued it, and if the person to be arrested thereunder is outside such area, section 32 shall *mutatis mutandis* apply in regard thereto.

(3) When the person in question has been arrested under the said warrant he may be detained thereunder before the magistrate who issued it or in any gaol or lock-up or other place of detention or in the custody of the person who is in charge of him, with a view to securing his presence as a witness at the preparatory examination:

Provided that the magistrate holding such examination may release him on a recognisance with or without sureties for his appearance to give evidence as required, and for his appearance at the enquiry mentioned in sub-section (4).

(4) The magistrate may in a summary manner enquire into such person's failure to obey the subpoena or warning or to remain in attendance, and unless it is proved that he had a reasonable excuse for such failure, the magistrate may sentence him to pay a fine not exceeding fifty rand or imprisonment not exceeding one month without the option of a fine.

(5) Such sentence shall be enforced and shall be subject to an appeal as if it were a sentence in a criminal case imposed by a magistrate's court of the district in which it was imposed.

(6) If a person who has entered into any recognisance for his appearance to give evidence at any preparatory examination or for his appearance at any enquiry referred to in sub-section (4) fails so to appear, he may, apart from the estreatment of his recognisance, be dealt with as if he had failed to obey a subpoena or warning to attend a preparatory examination.

Tender of witness's expenses not necessary.

63. No repayment or tender of expenses shall be necessary in the case of a person who is required to give evidence at a preparatory examination, and who is also residing within three miles of the premises in which such examination is being held.

(Amended P.49/1964.)

Witness refusing to be examined or to produce may be committed.

64. (1) If any person appears, either in obedience to a subpoena or warning or by virtue of a warrant, or is present and is verbally required by the magistrate to give evidence at a preparatory examination, and refuses to be sworn, or having been sworn, refuses to answer such questions as are put to him, or refuses or fails to produce any document or thing which he is required to produce, without in any such case offering any just excuse for such refusal or failure, the magistrate may adjourn the proceedings for any period not exceeding eight clear days and may, in the meantime, by warrant commit the person so refusing to gaol unless he sooner consents to do what is required of him.

(2) If such person upon being brought up on the adjourned hearing again refuses to do what is required of him, the magistrate may again adjourn the proceedings, and by order commit him for a like period, and so again from time to time until such person consents to do what is required of him.

(3) An appeal shall lie from any such order of committal to the High Court and the High Court may make such order on such appeal as it deems just.

(4) This section shall not prevent the magistrate from committing the accused for trial or otherwise disposing of the proceedings in the meantime according to any other sufficient evidence taken by him.

(5) No person shall be bound to produce at a preparatory examination any document or thing not specified or otherwise sufficiently described in the subpoena or of which he has not had adequate warning, unless he actually has it with him.

Procedure where trial in magistrate's court has been turned into a preparatory examination.

65. If any magistrate's court has stopped the summary trial of an accused person under the powers conferred by the law governing such court, and the proceedings have thereupon become those of a preparatory examination, it shall not be necessary for the magistrate to recall any witness who has already given evidence at such trial, but the magistrate's record of evidence so given certified by him to be correct shall, for all purposes whatsoever, have the same force and effect and shall be receivable in evidence in the same circumstances as the depositions made in the course of a preparatory examination in the manner provided in section 66:

Provided that if it appears to the magistrate himself or it is made to appear to him either by the prosecutor or the accused that the ends of justice might be served by having a witness already examined recalled for further examination, such witness shall be summoned and examined accordingly and the examination so taken shall be recorded in the manner hereinafter directed as to other examinations.

Evidence on oath at preparatory examination.

66. (1) All preparatory examinations shall, unless an oath is dispensed with by law, be taken upon oath, or by affirmation if it is allowed by law, and every witness, before giving his evidence, shall make oath or affirmation (as the case may be) before the magistrate by whom he is to be examined, that in the whole of his deposition he will tell the truth, the whole truth, and nothing but the truth, and each witness shall be examined apart from the others.

(2) Subject to the proviso to section 59(4) and to sections 91 and 92, the evidence given by a witness at a preparatory examination shall be given in the presence of the accused, shall be taken down in writing, and shall be read over to the witness who gave it.

(3) If such evidence was taken down in shorthand, any document purporting to be a transcript of the shorthand record of such evidence, and purporting to have been certified as correct under the hand of the person who took such evidence down, shall *prima facie* be equivalent to the shorthand record.

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

(5) Any evidence given under section 92 in the absence of the accused may be read over to him at the preparatory examination and shall be deemed to have been given at such examination, and thereupon the proviso to section 59(4) shall apply.

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

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

Recognisance of witness to appear at trial.

67. (1) Every magistrate before whom any preparatory examination is taken may lawfully require any witness, either alone or together with one or more sufficient sureties to the satisfaction of such magistrate to enter into a recognisance under condition that such witness shall at any time within twelve months from the date thereof, upon being served with a subpoena or upon being warned at some certain place within Swaziland to be selected by such witness, appear and give evidence at the trial of the person in respect of whom the preparatory examination was taken.

(2) Every recognisance so entered into shall specify the full name of the person entering into it, his occupation or profession (if any), the place of his residence and the name and number (if any) of the street in which it is, and whether he is the owner of such place of residence or a tenant thereof or a lodger therein.

(3) All such recognisances shall be liable to be estreated in the same manner as any forfeited recognisance is by law liable to be estreated by the court before which the principal party thereto was bound to appear.

Absconding witness may be arrested.

68. (1) If any person is bound by recognisance to give evidence or is likely to give material evidence in respect of any offence, any judicial officer before whom such offence is triable may, if he sees fit upon information being made in writing and on oath that such person is about to abscond or has absconded, issue his warrant for the arrest of such person.

(2) If such person is arrested such judicial officer may, if satisfied that the ends of justice would otherwise be defeated, commit such person to a gaol until the time at which he is required to give evidence, unless in the meantime he produces sufficient sureties; but any person so arrested shall be entitled on demand to receive a copy of the information upon which the warrant for his arrest was issued.

Witness refusing to enter into recognisance.

69. Any witness who refuses to enter into any such recognisance may, by warrant, be committed by the magistrate holding the examination to a gaol, there to be kept until after the trial, or until the witness enters into such recognisance before a magistrate having jurisdiction in the place where such gaol is situated:

Provided that, if the accused is afterwards discharged, any magistrate having jurisdiction shall order such witness to be discharged.

Accused at the close of examination in support of the charge to be cautioned that he is not obliged to make any statement incriminating himself.

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

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

(3) Before or after the accused's statement (if any) has been made under subsection (2) he may call and examine witnesses in his defence and, either before or after the examination of any such witness, may himself give evidence on oath.

(4) This section shall not prevent the magistrate receiving further evidence for the prosecution after hearing any evidence given on behalf of the accused, or re-opening the examination.

Binding over of Witnesses Conditionally.

71. (1) If any person is committed by a magistrate for trial by the High Court and such magistrate is satisfied after taking into account anything which may be said with reference thereto by the accused or the prosecutor, that the attendance at the trial of any witness who has

been examined before him is unnecessary, by reason of anything contained in any statement by such accused, or of the evidence of the witness being merely of a formal nature, the magistrate may, if such witness has not already been bound over, bind him over to attend the trial conditionally upon notice given to him and not otherwise, or may, if such witness has already been bound over direct that he shall be treated as having been bound over to attend only conditionally as aforesaid, and shall transmit to the High Court a statement in writing of the names, addresses and occupations of the witnesses who are or who are to be treated as having been, bound over to attend the trial conditionally.

(2) If a witness has been, or is to be treated as having been, bound over conditionally to attend the trial, the Attorney-General or the person committed for trial may give notice, at any time before the opening of the sessions of the High Court, to the committing magistrate, and, at any time thereafter, to the registrar of the High Court, that he desires such witness to attend at the trial, and any such magistrate or registrar to whom any such notice is given shall forthwith notify such witness that he is required so to attend in pursuance of his recognisance.

(3) The magistrate shall, on committing the accused person for trial, inform him of his right to require the attendance at the trial of any such witness as aforesaid, and of the steps which he is required to take for the purpose of enforcing such attendance.

(Amended P.49/1964.)

Admission of previous convictions by accused at conclusion of preparatory examination.

72. (1) As soon as the preparatory examination has been concluded, the prosecutor shall, if he has information or reasonable grounds for believing that the accused has previously been convicted of any offence, transmit direct to the registrar of the High Court for transmission to the Attorney-General particulars of any such alleged previous conviction.

(2) If the Attorney-General determines under section 86 to indict the accused for trial in the High Court, for an offence disclosed by the evidence taken at the preparatory examination, he may direct any magistrate to re-open the preparatory examination for the purpose of ascertaining whether the accused admits that he was so previously convicted.

(Amended P.49/1964.)

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

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

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

(6) Copies of any admission or denial by the accused made under this section shall be transmitted as soon as possible to the registrar of the High Court for transmission to the Attorney-General.

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

Discharge of accused when no sufficient case is made out.

73. (1) When all the witnesses for the prosecution and for the accused have been heard, the magistrate shall, if upon the whole of the evidence he is of opinion that no sufficient case is made out to put the accused upon his trial, discharge him, and in that case any recognisances taken in respect of such charge shall become void unless, within twenty-eight days, the Attorney-General, as hereinafter provided, orders that the accused be committed for trial or that a further examination shall take place.

(2) Notwithstanding that the accused has, after a preparatory examination, been so discharged, a warrant for his arrest may, upon information on oath (other than that recorded at such examination), be issued on the specific instructions of the Attorney-General by any person empowered under Part V to issue warrants of arrest; and upon his arrest a preparatory examination as to the offence charged and the complicity of such accused therein shall be commenced afresh.

(3) This section shall not prevent a magistrate from discharging the accused at any previous stage of the preparatory examination if for reasons to be recorded by such magistrate he considers the charge to be groundless.

Committal of accused for trial.

74. (1) If it appears to the magistrate that a sufficient case has been made out against the accused to justify his committal for trial for any offence, he shall commit such accused for trial to the High Court on a charge to be specified in his record of the proceedings and shall either release him on bail where authorized by law, or commit him to goal, there to be detained until brought to trial or until admitted to bail or liberated in due course of law. (Amended P.49/1964.)

(2) A magistrate may make an order of committal or discharge although part of the examination has been taken by another magistrate and he has not been present during the whole time during which such examination has been taken.

Proceedings on admission of guilt.

75. (1) Unless the charge is one of treason or murder, if the accused when questioned, as provided in section 70 states that he is guilty of the charge, then the magistrate shall further say to him the following words or words of like effect: "Do you wish the witnesses again to appear to give evidence against you at your trial? If you do not, you will now be committed for sentence instead of being committed for trial".

(2) If the accused in answer to such question states that he does not wish the witnesses to appear again to give evidence against him, his statement shall be taken down in writing and read to him and shall be signed by him and the magistrate, and shall be kept with the depositions of the witnesses and sent to the registrar of the High Court for transmission to the Attorney-General.

(3) In any case mentioned in sub-section (2) the magistrate shall, instead of committing the accused for trial, order him to be committed for sentence before the High Court, and in the meantime the magistrate shall by his warrant commit him to a gaol to be there safely kept until the sitting of such court or until he is admitted to bail or liberated in due course of law.

Committal by magistrate if the offence be committed in other than his own district.

76. If any person charged with any offence has been summoned or warned or arrested and brought before any magistrate of any district other than that in which such crime or offence is alleged to have been committed, and if such magistrate sees cause to commit such person for examination, such magistrate may issue a warrant to commit him either to a gaol in the district in which the offence is alleged to have been committed or to a gaol in the district within which such magistrate has jurisdiction to act, or to any other gaol.

Removal of accused from gaol of one district to that of another.

77. The magistrate of any district shall, on application to that effect signed by the Attorney-General, issue a warrant for the removal of any accused person detained on any criminal charge under any legal warrant within the gaol of such district to the gaol of another district specified in such application for detention therein for further examination, trial or sentence or until liberated or removed therefrom in due course of law.

Committal for further examination.

78. (1) The magistrate holding a preparatory examination may from time to time adjourn such examination, if necessary, for periods not exceeding fifteen days if the accused is remanded in custody and not exceeding one month if the accused is not remanded in custody. (Amended P.49/1964.)

(2) Every warrant of commitment for further examination shall specify the time when the accused is again to be brought before the magistrate for examination:

Provided that the magistrate may, with the consent of the accused, proceed with the examination before the expiry of the period mentioned in the warrant.

When offence committed on the boundaries of districts or on a journey.

79. (1) If an offence is committed on the boundary or boundaries of two or more districts, or within a distance of two miles beyond any such boundary or boundaries, the preparatory examination may be held in any such district.

(2) If an offence is committed in or upon any vehicle employed on any journey in Swaziland the preparatory examination may be held in any district through any part whereof or on or within a distance of two miles beyond the boundary whereof such vehicle has passed in the course of the journey during which such offence was committed.

Districts in which preparatory examinations may be held.

80. (1) If an accused is charged with committing any offence the preparatory examination may be held in any district within which such offence was committed or within which any act or omission or event which is an element of such offence has taken place or in which such accused was arrested or is in custody.

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

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

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

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

(6) In special cases not falling within subsections (1) to (5) inclusive the Attorney-General may authorise the preparatory examination to be held in any other district.

(7) In case of any doubt or dispute as to the district in which the preparatory examination should be held or of any objection on the part of the accused to the holding of such examination in any particular district, or where more than one offence is alleged to have been committed by the accused but in different districts, the matter shall be referred to the Attorney-General, who may direct in which district a preparatory examination or preparatory examinations shall be held, and his direction shall be conclusive and not subject to appeal to any court.

Discretionary powers of magistrate.

81. A magistrate holding a preparatory examination may —

(*a*) change the place of hearing of such examination to any other place within his jurisdiction if, through the inability, from illness or other cause, of the accused or a witness to attend at a place where such magistrate usually sits, or if, from any other reasonable cause, it appears desirable to do so, and may adjourn such examination for that purpose;

(*b*) if it appears to him to be in the interests of good order or public morals or of the administration of justice, direct that such preparatory examination shall be held with closed doors or that (with such exceptions as he may direct) females or minors or the public generally or any class thereof shall not be permitted to be present thereat, and if a preparatory examination is to be held or is being held on a charge referred to in section 66(6) such magistrate may, at the request of the person against or in connection with whom such offence charged is alleged to have been committed (or if he is a minor, at his request or that of his guardian) whether made in writing before the commencement of such preparatory examination or orally at any time during such preparatory examination, direct that every person whose presence is not necessary in connection with such preparatory examination or any person or class of person mentioned in such request shall not be allowed to be present thereat;

(*c*) regulate the course of such examination in any way which may appear to him desirable and which is not inconsistent with this Act or of any other law;

(*d*) if it appears to such magistrate that it is desirable to try the accused summarily, and —

(i) it appears in the course of such examination that the magistrate's court of the district in which such examination is held has jurisdiction to deal summarily with the offence which is the subject of such examination; or

(ii) the offence which is the subject of such examination is not an offence with which such court has jurisdiction to deal summarily, and the prosecutor substitutes a charge of an offence in respect of which it has such jurisdiction;

stop such examination and, with the consent of the prosecutor and the accused, place such accused on trial for such offence before such court presided over by such magistrate, and the evidence already taken at such examination shall thereupon be deemed to have been recorded as evidence at such trial; and either the prosecutor or such accused may require any person who has given evidence at such examination to be recalled for further examination; and if such accused so requests, any evidence already taken at such examination shall be read to him. (Amended P.37/1957.)

Bail before conclusion of examination in magistrate's discretion.

82. (1) Until the warrant for commitment for trial or sentence is made out no prisoner can insist on being admitted to bail; but unless the trial is one for treason or murder, the magistrate may admit an accused person to bail before the preparatory examination is concluded upon such conditions as may seem reasonable and necessary in each particular case. (Amended P.56/1962.)

(2) If such accused person is admitted to bail before the preparatory examination is concluded and does not appear at the time and place mentioned in the recognisance, the magistrate may dec1are such recognisance forfeited, adjourn such examination, and issue a warrant for his apprehension as hereinbefore provided.

Prosecutor or magistrate to make local inspection and to cause post mortem and other examinations to be made.

83. (1) The person charged with the prosecution or the magistrate who conducts the preparatory examination shall make any local inspections which the particular circumstances of the case may render necessary, or cause them to be made; and, in cases of homicide or of serious injury to the person of any individual, shall cause the dead body or the person injured to be examined by a duly registered medical practitioner, if such can be procured, and if not, then by the best qualified person or persons obtainable.

(2) Such practitioner or person, as the case may be, shall draw up and subscribe a written statement of the appearances and facts observed on such examination.

All articles to be used in evidence on the trial to be labelled for identification and to be kept in safe custody.

84. The magistrate conducting the preparatory examination shall cause all documents and any other articles whatsoever, exhibited by the witnesses in the course of such preparatory examination and likely to be used in evidence at the accused's trial, to be inventoried and labelled or otherwise marked, in the presence of the person producing them, so that they may be capable of being identified at such trial, and shall cause all such documents and articles to be kept in safe custody until such trial so that they may then be produced.

Records of preparatory examination to be sent to the Attorney-General.

85. (1) The magistrate shall, as soon as possible after the conclusion of a preparatory examination held by him, transmit a copy of the record thereof to the registrar of the High Court for transmission to the Attorney-General for his consideration.

(2) If the prosecution is by a private party the Attorney-General shall, if he declines to prosecute at the public instance, transmit such copy to such private party together with the certificate mentioned in section 13.

Powers of Attorney-General.

86. (1) After considering the preparatory examination transmitted to him under section 85 the Attorney-General may —

(*a*) decline to prosecute the accused and shall thereupon cause his decision to be transmitted to the magistrate, who, if the accused is in custody, shall cause him to be liberated forthwith, or, if he is not in custody, shall inform him of the Attorney-General's decision;

(*b*) if the magistrate has committed the accused for trial or sentence, indict the accused for trial before the High Court on a charge of any offence disclosed by the evidence taken at such preparatory examination and shall inform the magistrate accordingly;

(*c*) even if the magistrate has discharged the accused, indict such accused for trial before the High Court on a charge of any offence disclosed by the evidence taken at such preparatory examination and direct the magistrate so to commit the accused for trial if, in the Attorney-General's opinion, the accused ought to have been so committed, or he may remit the case under paragraph (*d*), and in either such case the Attorney-General may order the magistrate to issue a warrant for the re-arrest of such accused if he has been discharged from custody, or direct that the recognisance shall remain in operation if such accused has been admitted to bail, or give such other directions in respect of further proceedings against such accused as the Attorney-General may think right and determine;

(*d*) unless the offence to be charged is murder or treason, remit the case to be dealt with under its ordinary jurisdiction by the magistrate's court of the district in which such preparatory examination was held;

(*e*) unless the offence to be charged is murder or treason, remit the case to be dealt with by the magistrate's court of such district under any increased jurisdiction conferred upon it by any law governing magistrates' courts or by any other law;

(*f*) if any person has been committed for sentence under section 75, unless the offence to be charged is murder or treason, remit such case to be dealt with by the magistrate's court of such district, either under its ordinary jurisdiction or under any increased jurisdiction conferred upon it by any law governing magistrate's courts or by any other law;

(*g*) direct the magistrate to re-open such preparatory examination and take further evidence generally or in respect of any particular matter; or

(*h*) take any measures and give any directions for the trial of the prisoner before any court he deems most expedient.

(2) The Attorney-General in remitting any case to a magistrate's court shall state specifically whether he remits such case under sub-section (1)(*d*), (*e*) or (*f*) and shall also state specifically whether he remits such case to be dealt with under the ordinary jurisdiction of the magistrate's court or under any such increased jurisdiction.

(3) If a person has been committed to prison by a magistrate's court pending the signification of His Majesty's pleasure under section 163 or 165, the Attorney-General may direct the magistrate to re-open the proceedings and take any further evidence generally or in respect of any particular matter or give any other directions in respect of such reopening which he deems most expedient. (Amended P.56/1962; L.N. 38/1967.)

How remitted cases to be dealt with.

87. Any case remitted to a magistrate's court under section 86 shall be tried by such court in all respects in accordance with the relevant provisions of Parts IX, X, XII, XIII, XIV, XV, and XVI, and also in accordance with and subject to the law governing such court; and any conviction and any sentence imposed in respect thereof shall be subject to review or appeal as prescribed by such law.

Accused to be committed for trial by magistrate before trial in the High Court.

88. No person shall be tried in the High Court for any offence unless he has been previously committed for trial by a magistrate, whether or not such committal was on the direction of the Attorney-General under the powers conferred upon the Attorney-General by section 86(1)(*c*), for or in respect of the offence charged in the indictment:

Provided that in any case in which the Attorney-General has declined to prosecute, the High Court may, upon the application of any private party described in sections 10 and 11, direct any magistrate to take a preparatory examination against the accused person: (Amended P.37/1957.)

Provided further that an accused person shall be deemed to have been committed for trial for or in respect of the offence charged in the indictment, if the depositions taken before the committing magistrate contain an allegation of any fact or facts upon which such accused might have been committed upon the charge named in such indictment although the committing magistrate may, when committing such accused upon such depositions, have committed him for some offence other than that charged in such indictment or for some other offence not known to the law:

Provided also that an accused person who is in actual custody when brought to trial, or who appears to take his trial in pursuance of any recognisance entered into before any magistrate, shall be deemed to have been duly committed for trial upon the charge stated in such indictment unless he proves the contrary.

Summary trial in High Court.

88*bis*. (1) The Chief Justice may, on an *ex parte* application made to him in chambers by the Director of Public Prosecutions and on being satisfied that it is in the interests of the administration of justice so to do, direct that any person accused of having committed any offence shall be tried summarily in the High Court without a preparatory examination having been instituted against him.

(2) Such summary trial, in the High Court may be held at a time and, place, determined by the Chief Justice.

(3) The Director of Public Prosecutions shall not less than 4 days before the commencement of such summary trial cause to be served on the accused a copy of the charge upon which the accused is to be arraigned together with a brief summary of the substantial facts alleged against the accused as they appear from the statements of the witnesses for the prosecution against the accused, and a list of the names and addresses of the witnesses he intends calling at the summary trial on behalf of the prosecution:

Provided, further, however, that the omission of the name or address of any witness from such list shall in no way effect the validity of the trial.

(4) This section shall apply in respect of any offence committed before or after the commencement of this Order.

Persons committed for trial or sentence entitled to receive copy of depositions of witnesses.

89. Every accused person who is committed for trial or sentence for any offence, shall be entitled to demand, and to have within a reasonable time, from the person who has the lawful custody thereof, a copy of the depositions of the witnesses upon which he has been so committed and of his own statement and evidence (if any); and the person who has the lawful custody of such depositions, statements and evidence shall deliver a copy thereof to such person or his attorney or agent on payment of a reasonable sum not exceeding eight cents for each folio of one hundred words, or, if counsel is assigned by the court to defend the accused *pro deo*, shall deliver a copy thereof to the accused or such counsel free of charge:

Provided that, if such demand is not made before the day appointed for the commencement of the trial of the person on whose behalf such demand is made, such person shall not be entitled to have any such copy of depositions, unless the judge presiding at such trial is of opinion that such copy may be made and delivered without delay or inconvenience to such trial:

Provided further that such judge may, if he thinks fit, postpone such trial by reason of such copy not having been previously had by such accused.

Persons under trial may inspect depositions without charge at trial.

90. Every accused person shall be entitled at the time of his trial to inspect, without fee or reward, all depositions (or copies thereof) which have been taken, and the statement made or evidence given, at the preparatory examination by such person.

Record of evidence in absence of accused.

91. If it is proved after a preparatory examination has commenced that the accused has absconded and that there is no immediate prospect of arresting him, or if the accused conducts himself in such a manner that the preparatory examination cannot in the opinion of the magistrate properly proceed in the presence of such accused, the magistrate may on the instruction of the Attorney-General examine, in the absence of the accused, the witnesses (if any) produced on behalf of the prosecution and record their depositions.

Duty of magistrate to take depositions as to alleged offence in cases where the actual offender not known or suspected.

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

(2) Sections 61 to 64 inclusive shall apply in respect of persons required to attend and give evidence under this section.

Access to accused by friends and legal advisers.

93. (1) Subject to any law relating to the management of prisons or gaols, the friends and legal advisers of an accused person shall have access to him.

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

True copy of warrant of commitment to be furnished to prisoners under a penalty of one hundred rand.

94. (1) If an accused person is committed for trial or sentence, he shall be entitled to demand a true copy of the warrant from the officer who is the bearer thereof or keeper of the gaol in which he is detained, who shall be liable to pay by way of penalty a sum not exceeding one hundred rand if he refuses to give such copy within six hours after it is demanded by such accused or his legal adviser.

(2) Such penalty shall be recoverable by civil proceedings at the suit of such accused person.

PART VIII

BAIL

A. — AFTER PREPARATORY EXAMINATION IS CONCLUDED

Power of the High Court regarding bail.

95. (1) Notwithstanding any other law the High Court shall be the only Court of first instance to consider applications for bail where the accused is charged with any of the offences specified in the Fourth, the Fifth Schedules or under subsection 95 (6).

(2) Notwithstanding any other law the High Court may, subject to this section and section 96 of this Act, at any stage of any proceedings taken in any court or before any magistrate in respect of any offence, admit the accused to bail.

(3) Subject to the provisions of this Act, the High Court shall, where an accused person is charged with any of the offences listed in the Fourth Schedule, if it determines that the circumstances warrant that the accused may be admitted to bail, admit the accused to bail and fix the amount of bail in an amount not less than E15, 000 (Emalangeni fifteen thousand), in addition to any other conditions it deems fit.

(4) Where the court is satisfied that substantial and compelling circumstances exist which justify that the amount of bail be fixed in an amount less than E15 000, it shall enter these circumstances on the record of proceedings and may thereupon fix the amount of bail at such lesser amount.

(5) Where an accused person is charged with any of the offences listed in the Fourth Schedule and it appears to the Court, or the prosecution submits to the satisfaction of the Court, that aggravating circumstances exist, or where an accused person is charged with any of the offences listed in the Fifth Schedule, and the Court is of the opinion that the circumstances warrant that the accused may be admitted to bail, subject to the provisions of this Act, admit the accused to bail and fix the amount of bail in an amount not less than E50 000 (Emalangeni fifty thousand) in addition to any other conditions it deems fit.

(6) Where an accused person is charged with any offence, other than the offences covered by the provisions of this section but not excluding an offence under the Theft of Motor Vehicles Act, 1991, the amount of bail to be fixed by the Court shall not be less than half the value of the property or thing upon which the charge relates or is based upon and where the value cannot be ascertained without any form of speculation the Court may, for purposes of this subsection, without or with the assistance of any person the Court deems could be of assistance to it, also fix an amount to be the value of the property or such thing.

(7) Where the High Court refuses an application for bail, it may upon application give appropriate directives to expedite the procedure under section 88 *bis*.

(8) The refusal to grant bail and the detention of an accused in custody shall be in the interests of justice where one or more of the grounds under the provisions of section 96(4) are established. (Amended, A.4/2004)

Bail application of accused in court.

96. (1) In any court-

(a) an accused person who is in custody in respect of an offence shall, subject to the provisions of section 95 and the Fourth and Fifth Schedules, be entitled to be released on bail at any stage preceding the accused's conviction in respect of such offence, unless the court finds that it is in the interests of justice that the accused be detained in custody;

(b) subject to section 95, an accused who desires to be released on bail may make a written application in the form of a petition, or in any other form if the court so directs, to the appropriate court;

(c) subject to the provisions of section 95, the court referring an accused to any other court for trial or sentencing retains jurisdiction relating to the powers, functions and duties in respect of bail in terms of this Act until the accused appears in such other court for the first time and where the commitment is on a warrant issued by the High Court, it shall only be competent to apply for bail to the High Court;

(d) if the question of the possible release of the accused on bail is not raised by the accused or the prosecutor, the court shall ascertain from the accused whether the accused wishes that question to be considered by the court.

(2) In bail proceedings the court-

(a) may postpone any such proceedings;

(b) may, in respect of matters that are in dispute between the accused and the prosecutor, enquire in an informal manner the information that is needed for its decision or order regarding bail;

(c) may, in respect of matters that are in dispute between the accused and the prosecutor, require of the prosecutor or the accused, as the case may be, that evidence be adduced;

(d) shall, where the prosecutor does not oppose bail applications in the High Court in respect of matters referred to in subsections (12)(a) and (12)(b), require of the crown's counsel to place on record the reasons for not opposing the bail application.

(3) If the court is of the opinion that it does not have reliable or sufficient information or evidence at its disposal or that it lacks certain important information to reach a decision on the bail application, the presiding officer shall order that such information or evidence be placed before the court.

(4) The refusal to grant bail and the detention of an accused in custody shall be in the interests of justice where one or more of the following grounds are established-

(a) where there is a likelihood that the accused, if released on bail, may endanger the safety of the public or any particular person or may commit an offence listed in Part II of the First Schedule; or

(b) where there is a likelihood that the accused, if released on bail, may attempt to evade the trial;

(c) where there is a likelihood that the accused, if released on bail, may attempt to influence or intimidate witnesses or to conceal or destroy evidence;

(d) where there is a likelihood that the accused, if released on bail, may undermine or jeopardise the objectives or the proper functioning of the criminal justice system, including the bail system; or

(e) where in exceptional circumstances there is a likelihood that the release of the accused may disturb the public order or undermine the public peace or security.

(5) In considering whether the ground in subsection (4) (a) has been established, the court may, where applicable, take into account the following factors, namely-

(a) the degree of violence towards others implicit in the charge against the accused;

(b) any threat of violence which the accused may have made to any person;

(c) any resentment the accused is alleged to harbour against any person;

(d) any disposition to violence on the part of the accused, as is evident from past conduct;

(e) any disposition of the accused to commit offences referred to in Part II of the First Schedule as is evident from the accused's past conduct;

(f) the prevalence of a particular type of offence;

(g) any evidence that the accused previously committed an offence referred to in Part II of the First Schedule while released on bail; or

(h) any other factor which in the opinion of the court should be taken into account.

(6) In considering whether the ground in subsection (4)(b) has been established, the court may, where applicable, take into account the following factors, namely-

(a) the emotional, family, community or occupational ties of the accused to the place at which the accused shall be tried;

(b) the assets held by the accused and where such assets are situated;

(c) the means, and travel documents held by the accused, which may enable the accused to leave the country;

(d) the extent, if any, to which the accused can afford to forfeit the amount of bail which may be set;

(e) the question whether the extradition of the accused could readily be effected should the accused flee across the borders of the Kingdom of Swaziland in an attempt to evade trial;

(f) the nature and the gravity of the charge on which the accused shall be tried;

(g) the strength of the case against the accused and the incentive that the accused may in consequence have to attempt to evade his or her trial;

(h) the nature and gravity of the punishment which is likely to be imposed should the accused be convicted of the charges against him or her;

(i) the binding effect and enforceability of bail conditions which may be imposed and the ease with which such conditions could be breached; or

(j) any other factor which in the opinion of the court should be taken into account.

(7) In considering whether the ground in subsection (4)(c) has been established, the court may, where applicable, take into account the following factors, namely-

(a) the fact that the accused is familiar with the identity of witnesses and with the evidence which they may bring against him or her;

(b) whether the witnesses have already made statements and agreed to testify;

(c) whether the investigation against the accused has already been completed;

(d) the relationship of the accused with the various witnesses and the extent to which they could be influenced or intimidated;

(e) how effective and enforceable bail conditions prohibiting communication between the accused and witnesses are likely to be;

(f) whether the accused has access to evidentiary material which is to be presented at his or her trial;

(g) the ease with which evidentiary material could be concealed or destroyed; or

(h) any other factor which in the opinion of the court should be taken into account.

(8) In considering whether the ground in subsection (4)(d) has been established, the court may, where applicable, take into account the following factors, namely-

(a) the fact that the accused, knowing it to be false, supplied false information at the time of his or her arrest or during the bail proceedings;

(b) whether the accused is in custody on another charge or whether the accused is on parole (where applicable);

(c) any previous failure on the part of the accused to comply with bail conditions or any indication that he or she will not comply with any bail conditions; or

(d) any other factors which in the opinion of the court should be taken into account.

(9) In considering whether the ground in subsection (4)(e) has been established, the court may, where applicable, take into account the following factors, namely-

(a) whether the nature of the offence or the circumstances under which the offence was committed is likely to induce a sense of shock or outrage in the community where the offence was committed;

(b) whether the shock or outrage of the community might lead to public disorder if the accused is released;

(c) whether the safety of the accused might be jeopardized by his or her release;

(d) whether the sense of peace and security among members of the public will be undermined or jeopardized by the release of the accused;

(e) whether the release of the accused will undermine or jeopardize the public confidence in the criminal justice system; or

(f) any other factor which in the opinion of the court should be taken into account.

(10) In considering the question in subsection (4) the court shall decide the matter by weighing the interests of justice against the right of the accused to his or her personal freedom and in particular the prejudice the accused is likely to suffer if he or she were to be detained in custody, taking into account, where applicable, the following factors, namely-

(a) the period for which the accused has already been in custody since his or her arrest;

(b) the probable period of detention until the disposal or conclusion of the trial if the accused is not released on bail;

(c) the reason for any delay in the disposal or conclusion of the trial and any fault on the part of the accused with regard to such delay;

(d) any financial loss which the accused may suffer owing to his or her detention;

(e) any impediment to the preparation of the accused's defence or any delay in obtaining legal representation which may be brought about by the detention of the accused;

(f) the state of health of the accused;

(g) the age of the accused, especially where the accused is under sixteen (16) years;

(h) where a woman has murdered her newly born child; or

(i) any other factor which in the opinion of the court should be taken into account.

(11) Notwithstanding the fact that the prosecution does not oppose the granting of bail, the court has the duty, contemplated in subsection (10) to weigh up the personal interests of the accused against the interest of justice.

(12) Notwithstanding any provision of this Act, where an accused is charged with an offence referred to-

(a) in the Fifth Schedule the court shall order that the accused be detained in custody until he or she is dealt with in accordance with the law, unless the accused, having been given a reasonable opportunity to do so, adduces evidence which satisfies the court that exceptional circumstances exist which in the interest of justice permit his or her release;

(b) in the Fourth Schedule but not in the Fifth Schedule the court shall order that the accused be detained in custody until he or she is dealt with in accordance with the law, unless the accused, having been given a reasonable opportunity to do so, adduces evidence which satisfies the court that the interests of justice permit his or her release.

(13) Notwithstanding any law to the contrary-

(a) if the Director of Public Prosecutions intends charging any person with an offence referred to in the Fourth Schedule or Fifth Schedule, the Director of Public Prosecutions may, irrespective of what charge is noted on the charge sheet, at any time before such person pleads to the charge, issue a written confirmation to the effect that the Director of Public Prosecutions intends to charge the accused with an offence referred to in the Fourth Schedule or Fifth Schedule;

(b) the written confirmation shall be handed in at the court in question by the prosecutor as soon as possible after the issuing thereof and forms part of the record of that court; and

(c) whenever the question arises in a bail application or during bail proceedings whether any person is charged or is to be charged with an offence referred to in the Fourth Schedule or Fifth Schedule, a written confirmation issued by the Director of Public Prosecutions under paragraph (a) shall, upon its mere production at such application or proceedings, be *prima facie* proof of the charge to be brought against that person.

(14) Notwithstanding any law to the contrary-

(a) in bail proceedings the accused, or the legal representative, is compelled to inform the court whether-

(i) the accused has previously been convicted of any offence; and

(ii) there are any charges pending against the accused and whether the accused has been released on bail in respect of those charges;

(b) where the legal representative of an accused on behalf of the accused submits the information contemplated in paragraph (a), whether in writing or orally, the accused shall be required by the court to declare whether he or she confirms such information or not;

(c) the record of the bail proceedings, excluding the information in paragraph (a) shall form part of the record of the trial of the accused following upon such bail proceedings and where the accused elects to testify during the course of the bail proceedings the court shall inform the accused of the fact that anything the accused says, may be used against him or her at the trial and such evidence becomes admissible in any subsequent proceedings; and

(d) an accused who intentionally or wilfully-

(i) fails or refuses to comply with the provisions of paragraph (a); or

(ii) furnishes the court with false information required in terms of paragraph (a), commits an offence and is liable on conviction to a fine not exceeding E5000 (Emalangeni five thousand) or to imprisonment for a period not exceeding two years, or to both the fine and imprisonment.

(15) The court may make the release of an accused on bail subject to conditions which, in the court's opinion, are in the interests of justice.

(16) The court releasing an accused on bail in terms of this section, may order that the accused-

(a) files a Government Revenue Office receipt with the clerk of the court or the registrar of the court, as the case may be, or with a Correctional Services Department official at the prison where the accused is in custody or with a police official at the place where the accused is in custody, reflecting that the sum of money determined by the court in question has been paid; or

(b) shall furnish a guarantee, with or without sureties, that he or she will pay and forfeit to the State the amount that has been set as bail, or that which has been increased or reduced in terms of subsection (19), in circumstances in which the amount would, had it been deposited, have been forfeited to the State.

(17) Notwithstanding anything to the contrary contained in any law, no accused shall, for the purposes of bail proceedings, have access to any information, record or document relating to the offence in question, which is contained in, or forms part of, a police docket, including any information, record or document which is held by any police official charged with the investigation in question, unless the court otherwise directs and this subsection shall not be construed as denying an accused access to any information, record or document to which the accused may be entitled for purposes of the trial, at the time of the trial.

(18) Any court before which a charge is pending in respect of which bail has been granted, may at any stage, whether the bail was granted by that court or any other court, on application by the prosecutor, add any further condition of bail-

(a) with regard to the reporting in person by the accused at any specified time and place to any specified person or authority;

(b) with regard to any place to which the accused is forbidden to go;

(c) with regard to the prohibition of or control over communication by the accused with witnesses for the prosecution;

(d) with regard to the place at which any document may be served on him under this Act;

(e) which, in the opinion of the court, will ensure that the proper administration of justice is not placed in jeopardy by the release of the accused;

(f) which provides that the accused shall be placed under the supervision of a probation officer or a correctional official.

(19) Subject to the provisions of this Act-

(a) any court before which a charge is pending in respect of which bail has been granted may, upon the application of the prosecutor or the accused, subject to the provisions of sections 95 (3) and 95 (4),increase or reduce the amount of bail so determined, or amend or supplement any condition imposed under subsection (15) or (18) whether imposed by that court or any other court, and may, where the application is made by the prosecutor and the accused is not present when the application is made, issue a warrant for the arrest of the accused and, when the accused is present in court, determine the application;

(b) if the court referred to in paragraph (a) is a superior court, an application under that paragraph may be made to any judge of that court if the court is not sitting at the time of the application.

(20) The court dealing with bail proceedings as contemplated herein or which imposes any further condition under subsection (18) or which, under subsection (19), amends the amount of bail or amends or supplements any condition or refuses to do so, shall record the relevant proceedings in full, including the conditions imposed and any amendment or supplementation thereof and where such court is a magistrate's court, any document purporting to be an extract from the record of proceedings of that court and purporting to be certified as correct by the clerk of the court, and which sets out the conditions of bail and any amendment or supplementation thereof, shall, on its mere production in any court in which the relevant charge is pending, be *prima facie* proof of such conditions or any amendment or supplementation thereof.

(21) In this section, a refusal to admit an accused to bail after commitment to trial shall be without prejudice to the rights of the private party mentioned in sections 10 and the proviso to section 108 is subject section 95 and this section.

Rules and regulations.

97. The Minister, in consultation with the Chief Justice, may make regulations respecting the operation of sections 95, 96 and for this Part, and may also amend any Schedule to this Act

for the better carrying into effect the objectives of this Act and where necessary the Chief Justice may make rules to give effect to the objectives of this Part.

Magistrate to determine whether the offence is bailable and notify the bail in twenty-four hours.

98. (1) Every magistrate to whom an application for bail is made under section 96 shall within five days thereof if the offence is bailable by him, fix the amount of the bail to be given or after consideration of such application may refuse to grant bail. (Amended P.73/1961.)

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

Refusal of bail from the uncertain issue of act committed.

99. If a doubt arises concerning the degree and quality of the offence from the uncertain issue in the case of an injury of which it cannot be foretold whether the person injured will die or recover, every judicial officer to whom application for bail is made may refuse to grant it until all danger to the life of the person injured is at an end.

Conditions of recognisances.

100. (1) The recognisance which is taken on the admission of an accused person to bail under the preceding sections of this Part shall be taken by the court or judicial officer (as the case may be) either from such accused alone or from such accused and one or more sureties in the discretion of the court or judicial officer according to the nature and circumstances of the case.

(2) The conditions of such recognisance shall be that the prisoner shall appear and undergo any further examination which the magistrate or the Attorney-General may consider desirable and also answer to any indictment that may be presented, or charge that may be made, against him in any court for the offence with which he is charged at any time within a period of twelve months from the date of such recognisance; that he will also attend during the hearing of the case and to receive sentence; and that he will accept service of any summons or warning to undergo further examination and any such indictment or charge, notice of trial, and summons thereon and any other notice under this Act at some certain and convenient place within Swaziland by him chosen and therein expressed, and in addition the court or judicial officer may impose such further conditions upon such recognisance as may seem reasonable and necessary. (Amended P.56/1962.)

(3) Such recognisance shall continue in force notwithstanding that for any reason, when the trial takes place, no verdict is then given, unless the indictment or charge is with-drawn.

On failure of accused to appear at trial, recognisance to be forfeited.

101. If upon the day appointed for the hearing of a case it appears by the return of the proper officer or by other sufficient proof that a copy of the indictment and notice of trial or, in case of a remittal to a magistrate's court, the summons or warning has been duly served or given and the accused does not appear after he has been three times, in or near the court premises, called by name, the prosecutor may apply to the court for a warrant for the apprehension of

such accused, and may also move the court that such accused and his sureties (if any) be called upon their recognisance, and, in default of his appearance, that it may be then and there declared forfeited; and any such declaration of forfeiture shall have the effect of a judgment on such recognisance for the amounts therein named against such accused and his sureties respectively.

B (1). — IN CASES TRIED BY MAGISTRATE'S COURTS

(Amended A.14/1991.)

Power to admit to bail, nature of bail and provision in case of default.

102. (1) **Subject to the provisions of section 95 and 96, i**f a criminal case before a magistrate's court is adjourned or postponed and the accused remanded, such court or any officer presiding over it may, in its or his discretion, admit the accused to bail in manner herein provided: (Added, A.4/2004)

Provided that the accused shall not be remanded for more than fifteen days if not in custody, or for more than eight days if in custody. (Amended P.73/1961.)

(2) **Subject to the provisions of section 95 and 96, i**f a magistrate's court or any officer presiding over it decides to admit an accused person to bail under this section, a recognisance shall be taken from such accused alone or from such accused and one or more sureties, as such court or presiding officer may determine, regard being had to the nature and circumstances of the case. (Added, A.4/2004)

(3) The conditions of such recognisance shall be that such accused shall appear at a time and place to be specified in writing and as often as, and at such intervals not exceeding fifteen days as may be necessary thereafter within a period of six months, until final judgment in his case has been given, to answer the charge of the offence alleged against him or the charge of any other offence which may appear to the Attorney-General or the local prosecutor to have been committed by him and in addition such court or judicial officer may impose such further conditions upon such recognisance as may seem reasonable and necessary in each particular case. (Amended P.56/1962; P.49/1964.)

(4) If it appears to such court or officer that default has been made in the conditions of any recognisance taken before it or him, it or he may issue an order declaring such recognisance forfeited, and such order shall have the effect of a judgment on such recognisance for the amounts therein named against the person admitted to bail and his sureties respectively.

B (2). – BAIL IN RESPECT OF THEFT AND KINDRED OFFENCES

(Added A.14/1991.)

Conditions of bail for theft and kindred offences.

102A. (1) Notwithstanding the provisions of subparts A and B(1) of this Part the amount of bail to be given by a magistrate in respect of theft or any kindred offence shall be —

(*a*) E500 if the value of the property in respect of which the offence is committed is E2,000; or

(*b*) one half of the value of the property in respect of which the offence is committed if the value of the property exceeds E2,000.

(1*bis*) Notwithstanding any provisions of this Act the deposit of the amount of bail given under subsection (1) shall be made in cash only. (Added A.8/1992.)

(2) Notwithstanding the provisions of subparts A and B(1) of this Part a magistrate shall not admit to bail on recognisance any person charged with theft or any kindred offence, if the value of the property in respect of which the offence is committed is E2,000 or more.

(3) For the purposes of this section theft and kindred offences include the following offences —

(*a*) theft either at common law or under any statute;

(*b*) robbery;

(*c*) arson;

(*d*) breaking or entering any premises with intent to commit an offence either at common law or under any statute;

(*e*) receiving of any stolen goods or property knowing the same to have been stolen;

(*f*) fraud; or

(*g*) forgery or uttering of forged document knowing it to be forged.

(Added A.14/1991.)

C. — GENERAL FOR ALL CRIMINAL CASES

Excessive bail not required.

103. Subject to section 102A, the amount of bail to be taken in any case shall be in the discretion of the Court or judicial officer to whom the application to be admitted to bail is made:

Provided that no person shall be required to give excessive bail **and the amounts specified under section 95 shall not be construed as excessive.** (Added, A.4/2004)

(Amended A/14/1991.)

Appeal to High Court against refusal of or excessive bail.

104. **Subject to the provisions of section 95 and 95, i**f an accused person considers himself aggrieved by the refusal of any magistrate or magistrate's court to admit him to bail, or by such magistrate or court having required excessive bail, he may apply in writing to a judge who shall make such order thereon as to him in the circumstances of the case seems just. (Added, A.4/2004)

Power of the High Court to admit to bail.

105. **(Repealed, A.4/2004)**

Insufficiency of sureties.

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

Release of sureties.

107. (1) All or any sureties for the attendance and appearance of an accused person released on bail may at any time apply to the court or judicial officer before whom the recognisance was entered into to discharge such recognisance either wholly or so far as it relates to them.

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

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

Render in court.

108. The sureties may bring the accused into the court at which he is bound to appear during any sitting thereof and then, by leave of such court, render him in discharge of such recognisance at any time before sentence, and such accused shall be committed to a gaol there to remain until discharged by due course of law:

Provided that such court may admit such accused person to bail for his appearance at any time it deems meet.

Sureties not discharged until sentence or discharge of the accused.

109. The pleading or conviction of any accused person so released on bail shall not discharge the recognisance which shall be effectual for his appearance during the trial and until sentence is passed or he is discharged:

Provided that the court may commit such accused to a gaol upon his trial or may require new or additional sureties for his appearance for trial or sentence, as the case may be, notwithstanding such recognisance; and such commitment shall be a discharge of the sureties.

Death of surety.

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

Person released on bail may be arrested if about to abscond.

111. If an accused person has been released on bail under this Part, any magistrate may, if he sees fit, upon the application of any peace officer and upon information being made in writing and upon oath by such officer or by some person on his behalf that there is reason to believe that such accused is about to abscond for the purpose of evading justice, issue his warrant for the arrest of such accused, and afterwards, upon being satisfied that the ends of justice would otherwise be defeated, commit him, when so arrested, to gaol until his trial.

Deposit instead of recognisance.

112. (1) If any person is required by any court or judicial officer to enter into recognisances with or without sureties under this Act, such court or judicial officer may, except in the case of a bond for good behaviour, instead of causing such recognisances to be entered into, permit him or some person on his behalf to deposit such sum of money as such court or judicial officer may fix.

(2) Conditions in writing shall be made, in respect of such deposit of money, of the same nature as the conditions prescribed by this Part in respect of recognisances, and all the provisions of this Part prescribing the circumstances in which recognisances taken from the accused alone shall be forfeited and his arrest if about to abscond, shall apply *mutatis mutandis* in respect of any such deposit of money. (Amended P.49/l964.)

(3) Unless, the accused person is under arrest —

(*a*) as the result of a warrant of a court; or

(*b*) on a charge of treason, murder, sedition or subversive activities or a conspiracy or an attempt to commit any such offence;

a policeman of or above the rank of sergeant may, if a judicial officer is not readily available, admit him to bail at a police station, upon his entering into a recognisance containing such terms and conditions including those relating to sureties or a deposit of a sum of money, as such policeman may fix; and the provisions of subsection (1) and (2) as to conditions and forfeiture shall, *mutatis mutandis*, apply in respect of a recognisance made under this subsection.

(Amended A.15/1967; P.49/1964.)

Review of forfeiture of bail.

113. The High Court may on the application of any aggrieved person or of its own motion review any order of forfeiture made under this Part and may confirm such order or may remit the whole or any part of the amount ordered to be forfeited thereunder.

(Amended P.49/1964.)

PART IX

INDICTMENTS AND SUMMONSES

A. — INDICTMENTS IN THE HIGH COURT

Charge in the High Court to be laid in an indictment.

114. (1) If a person charged with an offence has been committed for trial or sentence before the High Court, the charge shall be in writing in a document called an indictment.

(2) If the prosecution is at the public instance such indictment shall be in the name of, and shall be signed by, the Attorney-General.

(3) If the prosecution is a private one, such indictment shall be in the name of the party at whose instance it is preferred (who must be described therein with certainty and precision) and shall be signed by such private party or by counsel on his behalf.

(4) Two or more persons may not prosecute in the same indictment, unless they have been injured by the same offence.

(5) The service upon an accused person of any indictment, together with any notice of trial thereof, shall be made by the person and in the manner provided by rules of court.

When the case is pending.

115. As soon as the indictment in any criminal case brought in the High Court has been duly lodged with the registrar thereof, such case shall be deemed to be pending in such court.

B. — SUMMONSES AND CHARGES IN MAGISTRATES' COURTS

Lodging of charges in a magistrate's court.

116. If a public prosecutor has, by virtue of his office, determined to prosecute any person in a magistrate's court for any offence within the jurisdiction of such court, he shall forthwith lodge with the clerk of such court a statement in writing of the charge against such person, describing him by his name, place of abode and occupation or degree, and setting forth shortly and distinctly the nature of such offence and the time and place at which it was committed.

Summons in magistrate's court.

117. (1) The clerk of the magistrate's court shall, upon or after the lodging of any charge, at the request of the prosecutor, issue and deliver to the messenger of the court a summons to the person charged to appear to answer such charge, together with so many copies of such summons as there are persons to be summonsed.

(2) Subject to any law, the service upon accused persons of any summons or other process in a criminal case in a magistrate's court shall be made by the prescribed officer, either by delivering it to the accused personally or, if he cannot conveniently be found, by leaving it at his place of business, or most usual or last known place of abode with some adult inmate thereof. (Amended P.49/1964.)

(3) If, upon the day appointed for the appearance of any person to answer any charge, he fails to appear, and the court is satisfied upon the return of the person required to serve the summons that he was duly summoned, such court may, at the request of the prosecutor, issue a warrant for the apprehension of such person, and may also impose on him for his default a fine not exceeding ten rand or in default of payment thereof imprisonment not exceeding one month.

(4) Such court may, upon cause shown, remit any fine or imprisonment imposed under this sub-section.

(5) If the accused is a Swazi ordinarily resident in Swaziland it shall be regarded as a sufficient summons to attend such court if such accused is duly warned through his chief, sub-chief or headman to appear; and proof of such warning shall render the accused liable to the penalties prescribed in this section in the event of his failure to appear at the appointed time.

Charge in magistrate's courts.

118. (1) Unless the accused is warned in the manner described in section 117(5), in all summary trials in any magistrate's court, the charge shall be entered upon the summons, containing the name of every accused person, with the name of the offence with which he is charged and the necessary particulars thereof concisely stated.

(2) At the trial such charge shall be read out to the person charged, who shall be called upon to plead thereto, and his plea shall be recorded thereon.

(3) The accused or his legal adviser shall be entitled at all reasonable times to inspect the charge stated in the summons.

Charges in remitted cases.

119. (1) If any case has been remitted by the Attorney-General to be dealt with by a magistrate's court, it shall, with all convenient dispatch, cause the accused to be brought before it.

(2) If the accused has been released on bail, such court shall cause a notice to be served on him stating that such case has been remitted to it to be dealt with and requiring him to appear on the day appointed for the trial.

(3) Such notice shall be served in the same manner as a criminal summons; and if such accused does not so appear, his bail shall be estreated and he may be apprehended and brought before such court as in the case of a person who has not appeared upon a criminal summons.

C. — General for all Courts

Joinder of counts.

120. (1) Any number of counts for any offences whatever may be joined in the same indictment or summons. (Amended K.O-I-C. 35/1975.)

(2) If there are more counts than one in an indictment or summons they shall be numbered consecutively and each count may be treated as a separate indictment or summons.

(3) If the court thinks it conducive to the ends of justice to do so, it may direct that the accused shall be tried upon any one or more of such counts separately.

(4) Such order may be made either before or in the course of the trial.

(5) The counts in the indictment or summons which are not then tried shall be proceeded with in all respects as if they had been found in a separate indictment or summons.

(6) If it is alleged that, on divers occasions during any period, any person has committed against or in respect of any one person an offence of which unlawful carnal connection or any indecent act of whatever nature is an element, the indictment or summons may charge in one count that the accused committed the offence on divers occasions during such period.

Where it is doubtful what offence has been committed.

121. If by reason of any uncertainty as to the facts which can be proved, or for any other reason whatever, it is doubtful which of several offences is constituted by the facts which can be proved, the accused may be charged with having committed all or any of such offences and any number of such charges may be tried at once, or such accused may be charged in the alternative with having committed some or one of such offences.

Essentials of indictment or summons.

122. (1) Subject to the provisions hereinafter contained and subject also to any special provision contained in any law relating to any particular offence, each count of the indictment or summons shall set forth the offence with which the accused is charged, in a manner, and with sufficient particulars as to the alleged time and place of committing such offence and the person (if any) against whom and the property (if any) in respect of which such offence is alleged to have been committed, as are reasonably sufficient to inform such accused of the nature of the charge.

(2) In criminal proceedings in the High Court or any magistrate's court —

(*a*) the description of any offence in the words of any statutory enactment or statutory regulation creating such offence, or in similar words, shall be sufficient; and

(*b*) any exception, exemption, proviso, excuse or qualification, whether it does or does not in the same section accompany the description of the offence in the statutory enactment or statutory regulation creating such offence, may be proved by the accused but need not be specified or negatived in the indictment or summons, and, if so specified or negatived, no proof in relation to the matter so specified or negatived shall be required on the part of the prosecution.

(3) If any of the particulars herein referred to are unknown to the prosecutor it shall be sufficient to state such fact in the indictment or summons.

It shall be sufficient to allege the dates between which thefts took place.

123. Any indictment or summons in respect of theft may allege that the property stated to have been stolen was taken at divers times between any two certain days named therein, and, upon such indictment or summons, proof may be given of the theft of such property upon any day or days between such two certain days.

Indictment, etc., may charge general deficiency.

124. In an indictment or summons in respect of the theft of money or in respect of the theft of any property by a person entrusted with the custody or care of such property, the accused may be charged and proceeded against for the amount of a general deficiency, notwithstanding that such general deficiency is made up of any number of specific sums of money or of any number of specific articles, the taking of which extended over any space of time.

Not necessary to specify particular coin or bank-note stolen.

125. In every indictment or summons in which it is necessary to make averment as to any money or any bank-note it shall be sufficient to describe such money or bank-note simply as money, without specifying any particular coin or bank-note, and such averment, so far as regards the description of such property, shall be sustained by proof of any amount of coin or of any bank-note, although the particular species of coin of which such amount was composed

or the particular nature of such bank-note is not proved, and, in cases of money or bank-notes obtained by false pretences or by any other unlawful act, by proof that the offender obtained any coin or any bank-note or any portion of the value thereof, although such coin or bank-note may have been delivered to him in order that some part of the value thereof should be returned to the party delivering it or to any other person, and such part has been returned accordingly.

Indictments, etc., for giving false evidence.

126. (1) In an indictment or summons in respect of an offence which relates to taking or administering an oath or engagement, or to giving false testimony, or to making a false statement on solemn declaration or otherwise, or to procuring the giving of false testimony or the making of a false statement, it shall not be necessary to set forth the words of such oath or engagement or testimony or statement, but it shall be sufficient to set forth the purport thereof or so much of the purport thereof as is material; nor shall it be necessary to allege in any indictment or summons, or to establish at the trial, that such false testimony or statement was material to any issue to be tried in the proceedings in connection wherewith it was given or made, or that it was to the prejudice of any person.

(2) In an indictment or summons which relates to giving false testimony or procuring or attempting to procure the giving of false testimony, it shall not be necessary to allege the jurisdiction or state the nature of the authority of the Court or tribunal before which or the officer before whom such false testimony was given or intended or proposed to be given.

(3) If a person has made any statement on oath whether orally or in writing, and he thereafter on another oath makes another such statement which is in conflict with any such first-mentioned statement, he shall be guilty of an offence and may, on an indictment or summons alleging that he made the two conflicting statements and upon proof of those two statements and without proof as to which of such statements was false, be convicted of such offence and punished with the penalties prescribed by law for the crime of perjury, unless it is proved that when he made each statement he believed it to be true. (Amended A.41/1968.)

Presumption that accused possessed particular qualification or acted in a particular capacity.

127. If an act or omission constitutes an offence only if committed by a person possessing a particular qualification or quality, or vested with a particular authority, or acting in a particular capacity, a person charged with such offence upon an indictment or summons alleging that he possessed such qualification or quality or was vested with such authority or was acting in such capacity shall, at his trial, be deemed to have possessed such qualification or quality or to have been vested with such authority or to have been acting in such capacity at the time of the commission of the alleged offence, unless at any time during the trial he or his representative expressly denies such allegation in the court trying the case, or such allegation is disproved:

Provided that if after the prosecutor has closed his case such allegation is so denied or evidence is led to disprove it, the prosecutor may adduce any evidence and submit any argument in support of such allegation as if he had not closed his case.

Rules applicable to particular indictments, etc.

128. (1) In an indictment or summons in respect of an offence relating to a testamentary instrument, it shall not be necessary to allege that such instrument is the property of any person.

(2) In an indictment or summons in respect of an offence relating to anything fixed in a square, street or open place or in a place dedicated to public use or ornament or to anything in or taken from a public place or office, it shall not be necessary to allege that the thing in respect of which such offence was committed is the property of any person.

(3) In an indictment or summons in respect of an offence relating to a document which is evidence of title to land or an interest in land, such document may be described as being evidence of the title of the person or one of the persons having an interest in such land to which such document relates, and the land or part thereof shall be described in a manner sufficient to identify it.

(4) In an indictment or summons in respect of the theft of anything whatsoever let on hire to the offender, such thing may be described as the property of the person who actually let it on hire.

(5) In an indictment or summons against a person employed in the public service in respect of an offence committed with respect to anything which came into his possession by virtue of his employment, the thing in question may be described as the property of the Government. (Amended L.N.38/1967.)

(6) In an indictment or summons in respect of an offence committed as to anything in the occupation or under the management of any public officer or commissioner, such thing may be described as belonging to such officer or commissioner without naming him.

(7) In an indictment or summons in respect of an offence committed as regards any property, movable or immovable, whereof any body corporate has by law the management, control or custody, such property may be described as belonging to such body corporate.

(8) In an indictment or summons in respect of an offence as regards any property, if it is uncertain to which of two or more persons such property belonged at the time such offence was committed, such property may be described as being the property of one or other of such persons, naming each of them, but without specifying which of them, and such indictment or summons shall be sustained, so far as regards such allegation of ownership, upon proof that at the time when such offence was committed such property belonged to one or other of those persons without ascertaining which of them.

(9) In an indictment or summons in respect of the theft of any property, if such property was not in the physical possession of the owner thereof at the time when such theft was committed, but was in the physical possession of another person who had the custody thereof on behalf of such owner, it shall be sufficient to allege that such property was in the lawful custody or under the lawful control of such other person.

(10) In an indictment or summons, in which any trade mark or forged trade mark is intended to be mentioned, it shall be sufficient, without further description and without any copy or facsimile, to state that such trade mark or forged trade mark is a trade mark or forged trade mark.

(11) In an indictment or summons for house-breaking, or for entering any house or premises with intent to commit an offence, whether the charge be made under the common law or under a statute, such indictment or summons may either state the offence which it is alleged the accused intended to commit or may aver an intent to commit an offence to the prosecutor unknown.

(12) In an indictment or summons for robbing or theft from any grave, whether in a cemetery or burial place or not, it shall not be necessary to allege that any dead body or portion thereof or anything whatever in the grave is the property of any person.

Companies and co-partnerships may be named in indictments by their style or firm.

129. (1) If it is necessary in any indictment or summons to name any company, firm or partnership, it shall be sufficient to state the name of such company or the style or title of such firm or partnership without naming any of the officers or shareholders of such company, or any of the partners in such firm or partnership, and an individual trading under the style or title of a firm may be described by such style or title.

(2) If two or more persons are not partners but are joint owners of property it shall be sufficient to name one of them adding the words "and another" or "and others", as the case may be, and to state that such property belonged to the person so named and another or others, as the case may be.

Means or instrument by which act is done need not be stated.

130. It shall not be necessary to set forth in any indictment or summons the manner in which, or the means or instrument by which, any act is done, unless such manner, means or instrument is an essential element of the offence.

In indictment for murder or culpable homicide charge as to fact sufficient.

131. It shall be sufficient in every indictment for murder to charge that the defendant did wrongfully, unlawfully, and maliciously kill and murder the deceased, and it shall be sufficient in every indictment for culpable homicide to charge that the defendant did wrongfully and unlawfully kill the deceased.

In indictment for forgery and other cases copy of instrument not necessary.

132. (1) In an indictment or summons in respect of forging, uttering, stealing, destroying, concealing, or otherwise unlawfully dealing with any instrument, it shall be sufficient to describe such instrument by any name or designation by which it is usually known or by the purport thereof, without setting out any copy or facsimile thereof, or otherwise describing it or stating its value.

(2) In all other cases, if it is necessary to make any averment, in any indictment or summons as to any instrument, whether such instrument consists wholly or in part of writing, print or figures, it shall be sufficient to describe it by any name or designation by which it is usually known or by the purport thereof, without setting out any copy or facsimile or the whole or any part thereof, unless its wording is an element of the offence.

Certain particulars not required in case of an offence relating to insolvency.

133. In an indictment or summons in respect of an offence relating to an insolvent, it shall not be necessary to set forth any debt, act of insolvency, adjudication or other proceedings in any court, or any order, warrant or document made or issued out of or by the authority of any court.

Allegation of intent to defraud without alleging whom it is intended to defraud.

134. (1) It shall be sufficient in any indictment or summons in respect of —

(*a*) forging, uttering, offering, disposing of or putting off any instrument whatsoever;

(*b*) theft by means of false pretences;

(*c*) obtaining anything by means of a fraudulent trick or device or any other fraudulent means;

(*d*) inducing, by means of any such trick or device or fraudulent means, the payment or delivery of any money or thing; or,

(*e*) attempting to commit or procure the commission of any such offence;

to allege that the accused did the act with intent to defraud without alleging the intent of the accused to be to defraud any particular person.

(2) In any such offence it shall not be necessary to mention the owner of the property in question or to set forth the details of the trick or device.

Persons implicated in same offence or transaction may be charged together.

135. (1) Any number of persons charged with committing or with procuring the commission of the same offence, although at different times, or with having, after the commission of such offence, harboured or assisted the offender, and any number of persons charged with receiving although at different times, any property which has been obtained by means of an offence or any part of any property so obtained, may be charged with substantive offences in the same indictment or summons and may be tried together, notwithstanding that the principal offender or the person who so obtained the property is not included in the same indictment or summons or is not amenable to justice.

(2) Any person who counsels or procures another to commit an offence, or who aids another in committing an offence, or who after the commission of an offence harbours or assists the offender, may be charged in the same indictment or summons with the principal offender and may be tried with him or separately or may be indicted and tried separately, whether such principal offender has or has not been convicted, or is or is not amenable to justice.

(3) If any person in taking part or being concerned in any transaction commits an offence and any other person in taking part or being concerned in the same transaction commits a different offence, both such persons may be charged with such offences in the same indictment or summons and may be tried thereon jointly.

PART X

PROCEDURE BEFORE COMMENCEMENT OF TRIAL

A. — IN THE HIGH COURT

Persons committed to be brought to trial at the first session provided 31 days have elapsed from commitment.

136. (1) Subject to the provisions of this Act as to the adjournment of a court, every person committed for trial or sentence whom the Attorney-General has decided to prosecute before the High Court shall be brought to trial at the first session of such court for the trial of criminal cases held after the date of his commitment, or else shall be admitted to bail, if thirty-one days have elapsed between such date of commitment and the time of holding such session, unless —

(*a*) the court is satisfied that, in consequence of the absence of material evidence or for some other sufficient cause, such trial cannot then be proceeded with without defeating the ends of justice; or

(*b*) before the close of such first session an order has been obtained from the court under section 137 for his removal for trial elsewhere.

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

(3) For the purposes of this section a person shall not be deemed to have been committed for trial in any case in which the Attorney-General has, under section 86, ordered a further examination to be taken, until such further examination has been completed.

(4) The accused, with his own consent in writing and with the consent of the Attorney-General, may be brought to trial at any time after his commitment notwithstanding that such period of thirty-one days has not expired.

Change of place of trial.

137. (1) If an indictment has been presented against an accused person in the High Court, the judge may, upon application by or on behalf of the Attorney-General or by or on behalf of the accused, order that the trial shall be held at some place other than that specified in such indictment and at a time to be named in the order.

(2) If any order is made under this section, the consequences shall be the same in all respects and with regard to all persons as if the Attorney-General had decided to prosecute the accused at the place named in the order and at the time specified therein, and if he has been admitted to bail, the recognisances of such bail are to be deemed to be extended to such time and place accordingly.

(3) The recognisances of any person bound to attend as witness are in like manner to be deemed to be extended to such time and place.

(4) Notice of such time and place must be given to any persons bound by the recognisances, otherwise their recognisances cannot be forfeited.

Such prisoners not brought to trial at second session after commitment entitled to discharge from imprisonment.

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

(2) The accused shall be brought to trial at the next criminal session of the court to which the case has been removed, or otherwise shall be discharged from his imprisonment for the offence for which he was transmitted for trial.

B. — MAGISTRATE'S COURT

Commencement of proceedings if accused is in custody.

139. If a person who was arrested upon a criminal charge is brought up before a magistrate's court in terms of section 30 or 33(5), such magistrate's court shall forthwith commence his trial or a preparatory examination upon such charge or, if the matter is cognisable by another court, remand him to such court.

(Amended P.49/1964.)

C. — GENERAL FOR ALL COURTS

Persons brought before wrong court.

140. (1) If on the trial of a person charged with any offence before the High Court or any magistrate's court it appears that he is not properly triable before such court, he is not by reason thereof entitled to be acquitted, but such court may, at the request of the accused, direct that he be tried before a proper court and may remand him for trial accordingly.

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

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

Trial of pending case may be postponed.

141. Subject to section 136 in a case to be tried by the High Court, and subject to section 102 in a case to be tried by a magistrate's court, any court before which a criminal trial is pending may, if it is necessary or expedient, postpone such trial until a time, and place, and upon terms, which to such court seem proper, and further postponements may, if necessary and expedient, be made from time to time.

(Amended P.49/1964.)

Adjournment of trial.

142. If it is necessary and expedient, a trial be adjourned at any period thereof, whether evidence has or has not been given.

Powers of court on postponement or adjournment.

143. (1) If a trial is so postponed or adjourned, the court may direct the accused to be detained until liberated in accordance with law or admit him to bail or extend his bail, if he has already been admitted to bail, and may extend the recognisances of the witnesses.

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

Accused to plead to the indictment or summons.

144. Subject to section 312, the accused shall, upon the day appointed for his trial or sentence upon any indictment or summons, appear in court, or if he is in custody he shall be brought into court, and shall be informed in open court of the offence with which he is charged as set forth in the indictment or summons, and shall be required to plead instantly thereto, unless there is an indictment or summons and the accused has objected so to plead, and the court finds that he has not been duly served with a copy thereof:

Provided that such court may at the request of the prosecution or the accused or of its own motion, postpone the taking of a plea if it considers this to be necessary in the interests of justice. (Amended P.49/1964.)

Effect of plea.

145. If the accused is indicted in the High Court after having been admitted to bail, his plea to the indictment shall, unless the court otherwise directs, have the effect of terminating his bail and he shall thereupon be detained in custody until the conclusion of the trial in the same manner in every respect as if he had not been admitted to bail.

Objections to indictment, etc., how and when to be made.

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

(2) Every court before which any such objection is taken for any formal defect may, if it is thought necessary, and the accused is not prejudiced in his defence, cause the indictment or summons to be forthwith amended in such particular by some officer of the court or other person, and thereupon the trial shall proceed as if no such defect had appeared.

Exception.

147. (1) If the accused excepts only and does not plead, the court shall proceed to hear and determine the matter forthwith.

(2) If such exception is overruled he shall be called upon to plead to the indictment or summons.

(3) If the accused pleads and excepts together, the court shall decide whether the plea or exception is first disposed of.

Certain omissions or imperfections not to invalidate an indictment, etc.

148. No indictment or summons in respect of any offence shall be held insufficient —

(*a*) for want of the averment of any matter which it is unnecessary to prove;

(*b*) because any person mentioned therein is designated by a name of office or other descriptive appellation instead of by his proper name;

(*c*) because of an omission to state the time at which such offence was committed, if time is not of the essence of such offence;

(*d*) because the offence is stated to have been committed on a day subsequent to the lodging of the indictment or the service of the summons or on an impossible day or on a day that never happened;

(*e*) for want of, or imperfection in, the addition of any accused or any other person; or,

(*f*) for want of the statement of the value or price of any matter or thing or the amount of damage, injury or spoil if such value or price or amount of damage, injury or spoil is not of the essence of the offence:

Provided that if any particular day or period is alleged in any indictment or summons as the day or period during which any act or offence was committed, proof that such act or offence was committed on any other day or time not more than three months before or after the day or period laid therein shall be taken to support such allegation if time is not of the essence of the offence:

Provided further that in the case described in the last preceding proviso, proof may be given that the act or offence in question was committed on a day or time more than three months before or after the day or period stated in such indictment or summons, unless it is made to appear to the court before which the trial is being held that the accused is likely to be prejudiced thereby in his defence upon the merits: and

Provided also that if the court considers that the accused is likely to be thereby prejudiced in his defence upon the merits it shall reject such proof, and the accused shall be in the same plight and condition as if he had not pleaded.

Proceedings if defence be an alibi.

149. (1) If in any case the defence of the accused is that commonly called an alibi, and the court before which the trial is held considers that such accused might be prejudiced in making such defence if proof were admitted that the act or offence in question was committed on some day or time other than the day or time stated in the indictment or summons, then, although the day or time proposed to be proved is within a period of three months before or after the day stated in such indictment or summons, such court shall not withstanding section 148, reject such proof and thereupon the same consequence shall take place as is mentioned in the last proviso to that section.

(2) If in any case no day is stated in the indictment or summons or an impossible day or a day that never happened, the accused may, at any time before pleading, apply to the court in which he is indicted or charged, and such court shall, upon being satisfied by affidavit or otherwise that such accused is likely to be prejudiced in his defence upon the merits, unless some day or time were stated, make such order in that behalf as in the circumstances of the particular case may seem just.

Indictments, etc., for libel.

150. No count for publishing a blasphemous, seditious, obscene, or defamatory libel, or for selling or exhibiting any obscene book, pamphlet, newspaper or other printed or written matter, shall be open to objection or deemed insufficient on the ground that it does not set out the words thereof:

Provided that the court may order the particulars to be furnished by the prosecutor stating what passages in such book, pamphlet, newspaper, printing or writing are relied on in support of the charge.

Court may order delivery of particulars.

151. (1) Either before or at the trial, the court may, if in any case it thinks fit, direct particulars to be delivered to the accused of any matter alleged in the indictment or summons, and may, if necessary, adjourn such trial for the purpose of the delivery of such particulars.

(2) Such particulars shall be delivered to the accused or to his counsel or attorney or agent without charge, and shall be entered in the record; and the trial shall proceed in all respects as if the indictment or summons had been amended in conformity with such particulars.

(3) In determining whether a particular is required or not, and whether a defect in an indictment before the High Court or on remittal to a magistrate's court is material to the substantial justice of the case or not, the court may have regard to the preparatory examination.

Motion to quash indictment, etc.

152. (1) The accused may, before pleading, apply to the court to quash the indictment or summons on the ground that it is calculated to prejudice or embarrass him in his defence.

(2) Upon such motion the court may quash the indictment or summons, or may order it to be amended in such manner as the court thinks just, or may refuse to make any order thereon.

(3) If the accused alleges that he is wrongfully named in the indictment or summons, the court may, on being satisfied by affidavit or otherwise of such error, order it to be amended.

Notice of motion to quash indictment, etc., and of certain pleas to be given.

153. (1) If the accused intends to apply to have an indictment or summons quashed under section 152, or to except, or to plead any of the pleas mentioned in section 155, except the plea of guilty or not guilty, he shall give reasonable notice (regard being had to the circumstances of each particular case) to the Attorney-General or his representative if the trial is before the High Court, or to the public prosecutor if the trial is before a magistrate's court, or if the prosecution is a private one, to the private prosecutor, stating the grounds upon which he seeks to have the indictment or summons quashed or upon which he bases his exception or plea.

(2) Any such notice may be waived by the Attorney-General, or such prosecutor as the case may be:

Provided that, on good cause shown, the court may dispense with such notice or adjourn the trial to enable such notice to be given.

Certain discrepancies between indictment, etc., and evidence may be corrected.

154. (1) If, on the trial of any indictment or summons, there appears to be any variance between the statement therein and the evidence offered in proof of such statement, or if it appears that any words or particulars which ought to have been inserted in the indictment or summons have been omitted, or that any words or particulars which ought to have been omitted have been inserted, or that there is any other error in such indictment or summons, the court may at any time before judgment, if it considers that the making of the necessary amendment in such indictment or summons will not prejudice the accused in his defence, order such indictment or summons to be amended, so far as it is necessary, by some officer of the court or other person, both in that part thereof where the variance, omission, insertion, or error occurs, and in every other part thereof which it may become necessary to amend.

(2) Such amendment may be made on any terms as to postponing the trial which the Court thinks reasonable.

(3) The indictment or summons shall thereupon be amended in accordance with the order of the court and, after any such amendment, the trial shall proceed at the appointed time upon the amended indictment or summons, in the same manner and with the same consequences in all respects as if it had been originally in its amended form.

(4) The fact that an indictment or summons has not been amended as provided in this section shall not, unless the court has refused to allow the amendment, affect the validity of the proceedings thereunder.

Pleas.

155. (1) If the accused does not object that he has not been duly served with a copy of the indictment or summons, or apply to have it quashed under section 152, he shall either plead to it, or except to it on the ground that it does not disclose any offence cognisable by the court.

(2) If he pleads he may plead either —

(*a*) that he is guilty of the offence charged or, with the concurrence of the prosecutor, of any other offence of which he might be convicted on such indictment or summons;

(*b*) that he is not guilty;

(*c*) that he has already been convicted of the offence with which he is charged;

(*d*) that he has already been acquitted of the offence with which he is charged;

(*e*) that he has received the Royal pardon for the offence charged;

(*f*) that the court has no jurisdiction to try him for such offence; or

(*g*) that the prosecutor has no title to prosecute.

(3) Two or more pleas may be pleaded together except that the plea of guilty cannot be pleaded with any other plea to the same charge.

(4) The accused may plead and except together.

(5) Any person who has once been called upon to plead to any indictment or summons shall, save as is specifically provided in this Act or in any other law, be entitled to demand that he be either acquitted or found guilty.

Truth of defamatory matter to be specially pleaded.

156. (1) Any person charged with the unlawful publication of defamatory matter, who sets up as a defence that the defamatory matter is true and that it was for the public benefit that the publication should be made, shall plead that matter specially, and may plead it with any other plea except the plea of guilty.

(2) Notice of such plea shall, unless waived, be given as provided in section 155.

Person committed or remitted for sentence.

157. (1) If a person has been committed to the High Court by a magistrate's court for sentence, or his case has been remitted by the Attorney-General to a magistrate's court for sentence, he shall be called upon to plead to the indictment or summons in the same manner as if he had, in the case of such committal, been committed for trial, and, in the case of such remittal, as if he were being tried summarily, and may plead either that he is guilty of the offence charged or, with the concurrence of the prosecutor, of any other offence of which he might be convicted on such indictment or summons.

(2) If he pleads that he is not guilty, the High Court shall, upon being satisfied that he duly admitted before the magistrate's court that he was guilty of the offence charged, and was so guilty, direct a plea of guilty to be entered or enter such plea notwithstanding his plea of not guilty.

(3) A plea so entered has the same effect as if it had been actually pleaded.

(4) If the High Court is not so satisfied, or if notwithstanding that the accused pleads guilty it appears upon an examination of the depositions of the witnesses that he has not in fact committed the offence charged or any other offence of which he might be convicted on the indictment or summons, the plea of not guilty shall be entered and the trial shall proceed as in other cases when that plea is entered.

Accused refusing to plead.

158. (1) If the accused, when called upon to plead to an indictment or summons, will not plead or answer directly thereto, the court may, if it thinks fit, order a plea of not guilty to be entered on behalf of the accused.

(2) A plea so entered has the same effect as if it had been actually pleaded.

Statement of accused sufficient plea of former conviction or acquittal.

159. In any plea of a former conviction or acquittal it shall be sufficient for an accused to state that he has been lawfully convicted or acquitted (as the case may be) of the offence charged.

Trial on plea to the jurisdiction.

160. Upon a plea to the jurisdiction of the court, the court shall proceed to satisfy itself in such manner and upon such evidence as it thinks fit, whether it has jurisdiction or not.

Issues raised by plea to be tried.

161. If the accused pleads any plea or pleas, other than the plea of guilty or a plea to the jurisdiction of the court, he shall, by such plea without any further form, be deemed to have demanded that the issue raised by such plea or pleas be tried by the court.

PART XI

PROCEDURE IN CASE OF THE INSANITY OR OTHER INCAPACITY OF AN ACCUSED PERSON

Interpretation in Part XI.

162. For the purposes of this Part unless the context otherwise requires —

"medical practitioner" means a medical officer attached to any place of safe custody or any medical practitioner from whom a judicial officer requires an opinion; and,

"place of safe custody" means any mental or other hospital, prison or any other place of safe custody.

(Amended P.49/1964.)

Enquiry by court as to insanity of accused.

163. (1) If in the course of a trial or preparatory examination the judicial officer has reason to believe that the accused is of unsound mind and consequently incapable of making his defence, he shall enquire into the fact of such unsoundness.

(2) If the judicial officer is of opinion that the accused is of unsound mind, and consequently incapable of making his defence, he shall postpone further proceedings in the case.

(3) If the case is one in which bail may be granted, the judicial officer may release the accused person on sufficient security being given that he will be properly taken care of and prevented from doing injury to himself or to any other person and for his appearance before the judicial officer or such other officer as the judicial officer may appoint in that behalf.

(4) If the case is one in which bail may not be granted or if sufficient security is not given, the judicial officer may remand the accused in custody and shall report to the Attorney-General for the information of His Majesty who may order the accused to be confined during His pleasure in a place of safe custody.

(Amended P.49/1964; L.N.38/1967.)

Defence of insanity at preparatory examination.

164. If the accused person appears to be capable of making his defence at the time of a preparatory examination the magistrate, notwithstanding that it is alleged that such accused person was insane at the time when the act in respect of which he is charged was committed so as not to be responsible according to law for such act, shall proceed with the case and if the accused person ought in the opinion of the magistrate otherwise to be committed for trial, the magistrate shall so commit him.

(Amended P.49/1964.)

Defence of insanity at trial.

165. (1) If an act either of commission or omission is charged against any person as an offence and it is given in evidence on the trial of such person for such offence that he was insane so as not to be responsible according to law for his act at the time when it was done, and if it appears to the court before which such a person is tried that he did the act but was insane as aforesaid at the time when he did it, the court shall return a special finding to the effect that the accused did the act charged, but was insane as aforesaid when he did it.

(2) If a special finding is returned the court shall report to the Attorney-General for the information of His Majesty and shall meanwhile order the accused to be kept in custody as a criminal lunatic in such place and in such manner as it directs.

(3) His Majesty may order such person to be confined during His pleasure in a place of safe custody. (Amended P.49/1964; L.N. 38/1967.)

(4) Notwithstanding anything in this section, in the case of such special finding by a magistrate, his finding shall be subject in the ordinary course to review by the High Court and the provisions of section 89 of the Magistrate's Court Act, No. 67 of 1938, shall *mutatis mutandis* apply thereto. (Added K.O-I-C. 34/1976.)

(5) Any person in respect of whom a special finding has been made under this section shall have the same right of appeal or review as if he had been convicted of the offence with which he has been charged. (Added K.O-I-C. 34/1976.)

Resumption of examination or trial.

166. (1) If any preparatory examination or trial is postponed under section 163, the court may, at any time, resume such preparatory examination or trial and require the accused person to appear or to be brought before the judicial officer, and if the judicial officer considers him capable of making his defence, such preparatory examination or trial shall proceed.

(2) If the judicial officer considers the accused to be still incapable of making his defence, he shall act as if the accused were brought before him for the first time.

(Amended P.49/1964.)

Certificate of medical officer as to fitness to plead.

167. (1) If the medical officer in charge of the place of safe custody in which an accused person is confined under section 163 certifies to the Attorney-General that the accused person is capable of making his defence, the Attorney-General shall direct that the —

(*a*) preparatory examination or trial be resumed under section 166; or

(*b*) prosecution be stopped under section 6.

(2) The certificate of the medical officer under subsection (1) shall be receivable in evidence.

(Amended P.49/1964.)

Enquiry in absence of accused.

168. Any enquiry into the fact of the unsoundness of mind of any person under this Part may be held in the absence of the accused person if the judicial officer is satisfied that owing to the state of such accused's mind it would be in the interests of the safety of such accused or of other persons or in the interests of public decency that he should be absent.

(Amended P.49/1964.)

Transfers from place of safe custody.

169. An accused person in one place of safe custody may be transferred to another place of safe custody by any person having authority to make a transfer between such places.

(Amended P.49/1964.)

PART XII

PROCEDURE AFTER COMMENCEMENT OF TRIAL

A. — IN THE HIGH COURT AND MAGISTRATE'S COURTS

Separate trials.

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

Defence by counsel, etc.

171. Every person charged with an offence is entitled to make his defence at his trial and to have the witnesses examined or cross-examined by his counsel, or other legal representative:

Provided that an accused person under the age of sixteen years may be assisted at his trial before a magistrate's court, by his natural or legal guardian, and any accused person who in the opinion of the court requires the assistance of another person may, with the permission of such court, be so assisted.

172. (1) Every criminal trial shall take place, and the witnesses shall, subject to this Act or any other law, give their evidence *viva voce*, in open court in the presence of the accused, unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable.

(2) In such event the court may order him to be removed and may direct the trial to proceed in his absence.

(3) If the accused absents himself during the trial without leave, the court may direct a warrant to be issued to arrest him and bring him before the court forthwith.

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

(5) The High Court may, if it thinks fit, and any magistrate's court may, if it appears to such court to be in the interests of good order or public morals or of the administration of justice, direct that a trial shall be held with closed doors or that (with such exceptions as the court may direct) females or minors or the public generally or any class thereof shall not be permitted to be present thereat; and if an accused person is to be tried or is on trial on a charge referred to in section 66(6), the court may, at the request of the person against or in connection with whom the offence charged is alleged to have been committed (or if he is a minor, at the request of such person or of his guardian), whether made in writing before such trial or orally at any time during such trial, direct that every person whose presence is not necessary in connection with such trial, or any person or class of person mentioned in the request, shall not be permitted to be present thereat.

No information of trial of certain offences to be published.

173. (1) If an accused is tried upon a charge referred to section 66(6) no person shall subject to subsection (3) at any time publish by radio or any document produced by printing or any other method of multiplication any information relating to such trial or any information disclosed thereat, unless the judge or officer presiding at such trial has, after having consulted the person against or in connection with whom the offence charged is alleged to have been committed (or if he is a minor, his guardian), given his consent, conveyed in a document signed by himself or by the registrar or clerk of the court, to such publication.

(2) Any person contravening sub-section (1) shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred rand or imprisonment not exceeding three months or both.

(3) The prohibition contained in sub-section (1) shall not apply to the publication in the form of a *bona fide* law report of any information relating to or disclosed at any such trial which is necessary to report any question of law raised during such trial or during any proceedings resulting therefrom, and any decision or ruling given by any court on such question:

Provided that such report does not mention the name of the person tried or of the person against or in connection with whom or the place where the offence in question was alleged to have been committed or of any witnesses at the trial.

Conduct of trial.

174. (1) In any trial, before any evidence is given, the prosecutor is entitled to address the court for the purpose of explaining the charge and opening the evidence intended to be adduced for the prosecution, but without comment thereon.

(2) The prosecutor shall then examine the witnesses for the prosecution and put in and read any documentary evidence which may be admissible.

(3) The prosecutor may also, in the case of a trial before the High Court and in a case remitted to a magistrate's court to be dealt with, read any evidence given by the accused as well as his statement made in the presence of the magistrate at the preparatory examination.

(4) If at the close of the case for the prosecution the Court considers that there is no evidence that the accused committed the offence charged or any other offence of which he might be convicted thereon, it may acquit and discharge him. (Amended P.49/1964, A.14/1991.)

(5) At the close of the evidence for the prosecution the proper officer of the court is required to ask the accused, or if more than one, each of them, or his legal representative, if any, whether he intends to adduce evidence in his defence.

(6) If the accused or his legal representative answers in the affirmative such accused may by himself or his legal representative address the court for the purpose of opening the evidence intended to be adduced for his defence, but without comment thereon.

(7) The accused or his legal representative shall then examine the witnesses for the defence and put in and read any documentary evidence which may be admissible.

Summing up by counsel, etc.

175. (1) After all the evidence has been adduced, the prosecutor shall be entitled to address the court, summing up the whole case; and every accused shall be entitled by himself or his legal representative to address the court.

(2) If in his address the accused or his legal representative raises any matter of law, the prosecutor shall be entitled to reply but only on the matter of law so raised.

Judgment.

176. After the evidence is concluded and the legal representatives or accused (as the case may be) have addressed the court or stated that they do not wish to do so, the presiding officer may give judgment or may postpone it to a future time.

Validity of judgment.

177. (1) The judgment of a court, or other proceeding whatever of a court in a criminal case, shall not be invalid by reason of it happening on a Sunday.

(2) If by mistake a wrong judgment or sentence is delivered, the court may before or immediately after it is recorded, amend it, and it shall stand as ultimately amended.

Judgment as valid as if indictment, etc., had been originally correct.

178. Every judgment which is given after the making of any amendment under this Act shall be of the same force and effect in all respects as if the indictment or summons had originally been in the same form in which it was after such amendment was made.

B. — IN CASES REMITTED TO A MAGISTRATE'S COURT

Remittal on confession of the accused.

179. (1) In a case remitted to a magistrate's court on the confession of the accused, the presiding officer shall, when such person is brought before his court, inform him that the preparatory examination in the course of which he voluntarily admitted his guilt, having been transmitted to the Attorney-General, has been remitted by such officer to the court and section 157 shall *mutatis mutandis* be observed by such court; and if such accused is convicted such presiding officer shall ask him whether he has anything to say why sentence should not then be passed upon him for the offence of which he has been found or confessed himself guilty.

(2) If, in answer to such question, the accused desires to have any witness formerly examined recalled, or any person not yet examined called as a witness, or if the accused states any other ground why sentence should not then be passed upon him, the court shall consider what is urged by him in support of his application for further evidence or his objection to be then sentenced and shall pass or postpone sentence as it deems to be most in accordance with real and substantial justice.

(3) If the court in any such case deems it proper to pass sentence at once, a note of the application or objection made by the accused and of the reasons for disallowing it shall be noted upon the record.

Remittal otherwise than on confession of accused.

180. (1) In a case remitted by the Attorney-General but not upon the confession of the accused, the accused shall, when brought before the court, be required to plead and the case shall, save as hereinafter provided, be proceeded with in the manner prescribed by law in respect of criminal cases which have not been remitted.

(2) If the officer who presides at the trial of any such case is himself the magistrate before whom such preparatory examination was taken, it shall not be imperative upon him to recall any witness who formerly gave evidence in his presence and that of the accused, but it shall be competent and sufficient to read as evidence the evidence or deposition of such witness:

Provided that with the consent of the accused or his representative, the magistrate may dispense with the reading of any such evidence or deposition.

(3) If it appears to the court that the ends of justice might be served by having a witness, formerly examined in the presence of the presiding officer and of the accused, summoned again for further examination, then such witness shall be summoned and examined accordingly.

(4) Except where specially provided in Part XIII or in any law no deposition of any witness not previously examined in the presence of both the presiding judicial officer and such accused shall be read or used at the subsequent trial, but such witness, if a necessary one, shall be again summoned and examined in like manner as if he had not before been examined in the case.

(5) If the Attorney-General has remitted a case for trial under the powers conferred on him by section 86, the accused shall be entitled, at the time of such trial, to inspect, without fee or reward, all evidence and depositions (or copies thereof) which have been taken and the statement made by him at the preparatory examination.

C. — VERDICTS POSSIBLE ON PARTICULAR INDICTMENT OR SUMMONS

On trial for commission of an offence accused may be found guilty of attempt.

181. (1) If, on the trial of any person charged with any offence, it appears upon the evidence that the accused did not complete the offence charged, but that he was guilty only of an attempt to commit such offence, he shall not by reason thereof be entitled to be acquitted, but a verdict may be given that he is not guilty of the offence charged but is guilty of an attempt to commit such offence or of an attempt to commit any other offence of which he might under this Act be convicted on the indictment or summons.

(2) No person so tried shall afterwards be liable to be prosecuted for an attempt to commit the offence for which he was so tried.

(3) Any person charged with an offence, may be found guilty as an accessory after the fact in respect of such offence if such be the facts proved, and shall on conviction, in the absence of any penalty expressly provided by law, be liable to punishment at the discretion of the court convicting him:

Provided that in no case shall such punishment exceed that to which the principal offender would under any law be subject.

(4) Any person who attempts to commit any offence against a statute or a statutory regulation shall be guilty of an offence and, if no punishment is expressly provided thereby for such attempt, be liable on conviction to the punishment to which a person convicted of actually committing such offence would be liable.

(5) Any person who —

(*a*) conspires with any other person to aid or procure the commission of or to commit; or

(*b*) incites, instigates, commands or procures any other person to commit;

any crime or offence, whether at common law or against a statute or statutory regulation shall be guilty of an offence and liable on conviction to the punishment to which a person convicted of actually committing such crime or offence would be liable. (Amended P.50/1947.)

On fraud charge court may convict of certain other offences.

182. If an accused is tried upon an indictment, summons or charge alleging the commission of an offence in which an element consists of false representations as to the nature or quality of a certain article or substance, and if such accused would by the transactions in which those representations were made, have committed some other offence if his representations had been true, the court trying him may, if it acquits him of the first-mentioned offence, convict him as having committed or attempted to commit such other offence as if he had been charged therewith. (Amended P.6/1956.)

Charge of robbery.

183. (1) If upon the trial of any person upon an indictment or summons for robbery, it appears upon the evidence that the accused did not commit the crime of robbery but that he committed an assault with intent to rob, or an assault or theft forming part of the crime of robbery charged in the indictment or summons, he shall not by reason thereof be entitled to be acquitted, but a verdict may be given that he is guilty of an assault with intent to rob, or of an assault, or of theft.

(2) No person so tried shall afterwards be liable to be prosecuted for an assault with intent to commit the robbery for which he was so tried or for the assault or theft forming part of such crime of robbery.

Charge of assault with intent to murder or to do grievous bodily harm.

184. (1) Any person charged with assault with intent to murder may be found guilty of an assault with intent to do grievous bodily harm, or of common assault, if such be the facts proved.

(2) Any person charged with assault with intent to do grievous bodily harm or with assault with any other particular intent specified in the indictment may be found guilty of common assault, if such be the facts proved.

Charge of rape, etc.

185. (1) Any person charged with rape may be found guilty of assault with intent to commit rape; or of indecent assault; or of assault with intent to do grievous bodily harm; or of assault; or of the statutory offence of unlawful carnal knowledge of, or committing any immoral or indecent acts with, a girl of or under the specified age; or of the statutory offence of having or attempting to have unlawful carnal connection with a female idiot or imbecile under circumstances which do not amount to rape, or an attempt to commit rape, or of committing or attempting to commit any immoral or indecent act with such female, if such be the facts proved.

(2) Any person charged with assault with intent to commit rape, or with an attempt to commit rape, may be found guilty of indecent assault or assault with intent to do grievous bodily harm, or assault, or of *crimen injuria*, or of any statutory offence referred to in sub-section (1) except an act of unlawful carnal knowledge, if such be the facts proved. (Amended P.6/1956.)

(3) Any person charged with indecent assault may be found guilty of assault or of *crimen injuria* or any statutory offence of committing any immoral or indecent act with a girl of or under the specified age; or of the statutory offence of attempting to have unlawful carnal connection with a female idiot or imbecile under circumstances which do not amount to an attempt to commit rape, or of committing or attempting to commit any immoral or indecent act with such female, if such be the facts proved. (Amended P.6/1956.)

(4) Any person charged with any statutory offence referred to in sub-section (1) may be found guilty of indecent assault, or assault, if such be the facts proved.

(5) Any person charged with sodomy or assault with intent to commit sodomy may be found guilty of indecent assault or common assault, if such be the facts proved.

Sentence for rape etc.

185*bis*. (1) A person convicted of rape shall, if the Court finds aggravating circumstances to have been present, be liable to a minimum sentence of nine years without the option of a fine and no sentence or part thereof shall be suspended.

(2) The proceedings in a case of rape, including the proceedings where a person is charged with having unlawful carnal connection with a girl under the age of sixteen years or with a female idiot or imbecile shall be held in camera if at any time the victim so requests or the Court so determines.

(3) A person who in connection with proceedings under this section publishes any information as to —

(*a*) the identity of a victim of rape or of a girl under the age of sixteen years or of a female idiot or imbecile;

(*b*) the place where the offence in question was alleged to have been committed; or

(*c*) the name of any witness,

shall be guilty of an offence and liable on conviction to a fine of one thousand Emalangeni or imprisonment for two years.

(Added A.6/1986.)

Indictment for murder or culpable homicide.

186. (1) Any person charged with murder in regard to whom it is proved that he wrongfully caused the death of the person whom he is charged with killing, but without intent, may be found guilty of culpable homicide.

(2) Any person charged with murder or culpable homicide in regard to whom it is not proved that he caused the death of the person whom he is charged with killing may, if it is proved that he is guilty of having assaulted such deceased person, be found guilty, if charged with murder, of assault with intent to murder or of assault with intent to do grievous bodily harm, or of common assault, and, if charged with culpable homicide, may be found guilty of assault with intent to do grievous bodily harm or common assault. (See section 24 of Act 59/1954.)

(3) If at the trial of any person upon an indictment or summons alleging that he killed or attempted to kill or assaulted any other person, it has not been proved that he committed the offence charged, but it has been proved that he pointed a firearm or an airgun or air pistol at the person against whom the offence is alleged to have been committed in contravention of any law, the accused may be convicted of having contravened such law.

Exposing an infant or concealment of birth.

187. If at the trial of any accused person upon a charge of murder or culpable homicide, it has been proved that the person alleged to have been killed was a recently born child and it has not been proved that the accused killed such child, he may be convicted of exposing an infant or of disposing of the body of a child with intent to conceal the fact of its birth, if the evidence establishes that he committed such offence.

Charge of housebreaking with intent to commit an offence.

188. Any person charged, either at common law or under any statute, with breaking into any premises with intent to commit an offence specified in the indictment or summons, may be found guilty of housebreaking with intent to commit some other offence than that specified, or some offence unknown, if an intent to commit such specified offence is not proved but an intent to commit such other offence or an offence unknown is sufficiently proved.

Charge of statutory offences of entering or being upon premises.

189. If by statute breaking and entering or entering premises with intent to commit an offence or being without lawful excuse between sunset and sunrise in or upon any dwelling premises or enclosed area is declared to be an offence, a person charged with entering premises with intent to commit an offence specified in the indictment or summons may be found guilty of entering premises with intent to commit another offence than that specified, or an offence unknown, if an intent to commit such specified offence is not proved, but an intent to commit some offence is sufficiently proved, or he may be found guilty of being without lawful excuse between sunset and sunrise in or upon any dwelling, premises or enclosed area, if such be the facts proved.

Person indicted for theft may on such indictment be convicted of receiving stolen goods knowing them to have been stolen.

190. On the trial of any person upon any indictment or summons in respect of theft if the evidence, though not sufficient to substantiate the charge of theft, is sufficient to show that the accused was guilty of receiving stolen goods knowing them to have been stolen, he may be found guilty of receiving stolen goods knowing them to have been stolen; and upon any such finding the prisoner shall be liable to the same punishment as if convicted of the like offence on an indictment or summons specially framed for the offence of receiving stolen goods knowing them to have been stolen.

Joint charges of theft and receiving stolen property knowing it to be stolen.

191. (1) If charges of theft of any property and of receiving such property or any part thereof knowing it to have been stolen are joined in the same indictment or summons, the accused may, according to the evidence, be convicted either of theft of such property or of receiving it or any part of it knowing it to have been stolen.

(2) Upon an indictment or summons alleging that two or more persons jointly committed an offence of which the receiving of any property is an element, if the evidence establishes that one or more of them separately received any part or parts of such property under circumstances which constitute an offence, such one or more of the persons charged may be convicted of the offence or offences so established by the evidence.

(3) If such an indictment or summons alleges such offence by two or more persons, all or any of those persons may, according to the evidence, be convicted of the theft of the property, or of receiving it or any part of it knowing it to have been stolen, or according to the evidence one or more of them may be convicted of theft of the property, and the other or others of them of receiving it or any part of it, knowing it to have been stolen.

Proceedings if property alleged to have been stolen at one time shall have been stolen at different times.

192. If, upon an indictment or summons in respect of theft, it appears that the property alleged therein to have been stolen at one time was stolen at different times, the prosecutor shall not, by reason thereof, be required to elect upon which taking he will proceed, and the accused shall be liable to be convicted of every such taking in like manner as if every such taking had been separately charged.

Proof of intent to defraud sufficient without alleging whom it was intended to defraud.

193. On the trial of any offence in which the accused is charged with having —

(*a*) forged or uttered, offered, disposed of or put off any forged instrument knowing it to be forged;

(*b*) obtained anything by means of false pretences;

(*c*) obtained anything by means of a fraudulent trick or device or any other fraudulent means; or,

(*d*) induced, by means of any such trick or device or fraudulent means, the payment or delivery of any money or thing;

or that he attempted to commit or procure the commission of any such act, it shall not be necessary to prove an intent on the part of the accused to defraud any particular person, but it shall be sufficient to prove that the accused did the act charged with intent to defraud.

Conviction for part of crime charged.

194. In other cases not hereinbefore specified, if the commission of the offence with which the accused is charged as defined in the statutory enactment or statutory regulation creating the offence, or as set forth in the indictment or summons, includes the commission of any other offence, the accused person may be convicted of any offence so included which is proved, although the whole offence charged is not proved.

When evidence shows offence of a similar nature.

195. (1) If, on the trial of a person charged with an offence, the evidence establishes that he is guilty of another offence of such a nature that, upon an indictment or summons alleging that he committed such other offence, he might have been convicted of the offence with which he is actually charged, he may be convicted of the offence with which he is so charged.

(2) Any person so tried shall afterwards not be liable to be prosecuted for the offence so established by the evidence.

PART XIII

WITNESSES AND EVIDENCE IN CRIMINAL PROCEEDINGS

A. — SECURING THE ATTENDANCE OF WITNESSES

Process for securing the attendance of witnesses.

196. (1) Either party desiring to compel the attendance of any person to give evidence or to produce any book, paper or document, in any criminal case, may take out of the office prescribed by rules of court the process of court for such purpose.

(2) If the accused desires to have any witnesses subpoenaed or warned and satisfies the prescribed officer of the court that —

(*a*) he is unable to pay the necessary costs and fees; and,

(*b*) such witnesses are necessary and material for his defence;

such prescribed officer shall subpoena such witnesses or cause them to be warned.

(3) If the prescribed officer of the court is not so satisfied, he shall, upon the request of the accused, refer the application to the officer presiding over the court, who may grant or refuse such application or may defer giving his decision until he has heard the other evidence in the case or any part thereof.

(4) For the purposes of this Part "prescribed officer" means the registrar, assistant registrar, clerk of the court or any officer prescribed by rules of court.

Service of subpoenas.

197. Service of subpoenae in criminal cases shall be effected in the manner provided by rules of court.

Duty of witness to remain in attendance.

198. Every witness duly subpoenaed or warned to attend and give evidence at any criminal trial shall be bound to attend and to remain in attendance throughout the trial unless excused by the court.

Subpoenaing of witnesses or examination of persons in attendance by the court.

199. (1) The court may at any stage subpoena any person as a witness or examine any person in attendance though not subpoenaed as a witness, or may recall and re-examine.

(2) The court shall subpoena and examine or recall and re-examine any person if his evidence appears to it essential to the just decision of the case.

Powers of court in case of default of witness in attending or giving evidence.

200. (1) If any person appears either in obedience to a subpoena or warning or by virtue of a warrant, or is present and is verbally required by the court to give evidence, refuses to be sworn or, having been sworn, and refuses to answer such questions as are put to him, or refuses or fails to produce any document or thing which he is required to produce, without in any such case offering any just excuse for such refusal or failure, such court may adjourn the proceedings for any period not exceeding eight days, and may, in the meantime, by warrant commit the person so refusing or failing to a gaol, unless he sooner consents to do what is required of him.

(2) If such person upon being brought up at the adjourned hearing again refuses or fails to do what is so required of him, the court, if it sees fit, may again adjourn the proceedings and commit him for the like period, and so again from time to time until such person consents to do what is required of him.

(3) This section shall not prevent the court from giving judgment in any case or otherwise disposing of it in the meantime according to any other sufficient evidence taken.

(4) No person shall be bound to produce any document or thing not specified or otherwise sufficiently described in the subpoena unless he actually has it in court.

Requiring witness to enter into recognisance.

201. (1) Every court before which a trial is proceeding may lawfully require any witness, either alone or together with one or more sufficient sureties to the satisfaction of such court, to enter into a recognisance under condition that such witness shall at any time within twelve months from the date thereof appear and give evidence at such trial upon being served with a subpoena or upon being warned at some certain place to be selected by such witness.

(2) If any witness being so required to enter into any such recognisance refuses or fails so to do, the court may commit to and detain him in a gaol until such recognisance has been so entered into.

(3) Every recognisance so entered into shall specify the name and surname of the person entering into it, his occupation or profession (if any), the place of his residence and the name and number (if any) of the street in which such place is, and whether he is an owner or tenant thereof or a lodger therein.

(4) All such recognisances shall be liable to be estreated in the same manner as any forfeited recognisance is by law liable to be estreated by the court before which the principal party thereto was bound to appear.

Absconding witnesses.

202. (1) If any person is bound by recognisance to give evidence or is likely to give material evidence before any court in respect of any offence, any magistrate may, upon information in writing and on oath that such person is about to abscond or has absconded, issue his warrant for the arrest of such person.

(2) If such person is arrested, any magistrate, upon being satisfied that the ends of justice would otherwise be defeated, may commit him to a gaol until the time at which he is required to give evidence, unless in the meantime he produces sufficient sureties; but any person so arrested shall be entitled on demand to receive a copy of the information upon which the warrant for arrest was issued.

Committal of witness who refuses to enter into recognisance.

203. Any witness who refuses to enter into any such recognisance may be committed by the court by warrant to the gaol for the place where the trial is to be held, there to be kept until after such trial, or until the witness enters into such recognisance before a magistrate having jurisdiction in the place where such gaol is situated:

Provided that, if the accused is afterwards discharged, any magistrate having jurisdiction shall order such witness to be discharged.

Compelling witness to attend and give evidence.

204. Section 62 shall *mutatis mutandis* apply in connection with any person subpoenaed or warned to attend any trial as a witness.

Witnesses from prison.

205. (1) If the attendance of any person confined in any prison or gaol in Swaziland is required in any court of criminal jurisdiction in any criminal case cognisable therein or at a preparatory examination, the court before which such prisoner is required to attend, or a judge may before or during the sittings or session of the court at which the attendance of such person is required, or the magistrate holding the preparatory examination (as the case may be) may make an order upon the gaoler or other person having the custody of such prisoner to deliver him to the person named in such order to receive him; and the person so named shall, at the time prescribed in such order, convey such prisoner to the place at which he is required to attend, there to receive and obey such further order as to such court seems fit.

(2) A judge may at any time order to be brought before the court any person confined in any prison or gaol in Swaziland for the purpose of taking such evidence as such judge may consider necessary.

(3) If the attendance of any person confined in a prison or gaol is required as a witness on behalf of a private prosecutor or an accused (other than an accused to whose defence the evidence of such witness is deemed material and who has not sufficient means to make the deposit) there shall be deposited with the gaoler or other officer having the custody and control of the person so confined such sum as may be necessary to cover the expenses to be occasioned by the person so confined and his necessary escort to and from the court and his maintenance during such period as the person so confined and his escort are likely by reason of the attendance to be detained outside the prison or gaol, and no person shall be required or allowed to obey any such summons unless such sum has previously been deposited.

(4) The expenses mentioned in sub-section (3) shall be determined in accordance with a scale prescribed by the Deputy Prime Minister.

Service of subpoena to secure the attendance of a witness residing outside the jurisdiction of court.

206. (1) If a subpoena to give evidence in any criminal case has been issued out of any court and it appears that the person whose attendance is thereby required resides or is for the time being in a district outside the area of jurisdiction of such court, a magistrate of such district shall endorse on such subpoena his order that it be served on the person named therein, and such subpoena so endorsed shall, when delivered to the proper officer within such district, be served by him as soon as possible on such person:

Provided that —

(*a*) the necessary expenses to be incurred by the person subpoenaed, in going to and returning from the court whereat the subpoena was issued and his detention at the place whereat and for the purpose of which his attendance is required, shall be tendered to him with such subpoena; and,

(*b*) if such subpoena is not sued out by the Crown a sum sufficient to cover the expenses of serving such subpoena shall be lodged with the registrar or clerk of the court by the person suing out such subpoena.

(2) If any person who has been so served with a subpoena and to whom has been tendered such expenses fails, without lawful excuse, to attend at the time and place mentioned in such subpoena, a magistrate of such district may issue a warrant for the apprehension of such person, who shall be liable to be dealt with in the same manner as he might have been dealt with if he had failed to attend without lawful excuse when served with a subpoena to attend a like court in the area wherein he resides or is for the time being.

(3) The return of the proper officer showing that service of the subpoena has been duly effected, together with a certificate under the hand of the registrar or clerk of the court that the person whose attendance was required by such subpoena failed to attend when called upon, and has established no lawful excuse for his non-attendance, shall be deemed sufficient proof of such non-attendance for the purpose of dealing with the said person under sub-section (2):

Provided that, in the case of a warning through a chief, sub-chief or headman, the court shall satisfy itself that the person concerned was duly warned.

(4) "Proper officer" in this section includes a sheriff, deputy-sheriff, messenger, deputy-messenger, or other officer who by law or rule of court is charged with the duty of serving subpoenas to witnesses in criminal cases.

Payment of expenses of witnesses.

207. (1) Any person who has attended any criminal proceedings as a witness for the Crown shall be entitled to any allowance therefor prescribed by regulation under subsection (3):

Provided that the officer presiding at such proceedings may if he thinks fit direct that no such allowance or only a part of such allowance shall be paid to any such witness.

(2) Subject to any regulations under sub-section (3) the officer presiding at any criminal proceedings may, if he thinks fit, direct that any person who has attended such proceedings as a witness for the accused shall be paid such allowance as may be prescribed by such regulation, or such lesser allowance as such officer may determine.

(3) The Deputy Prime Minister may, by regulation, prescribe a tariff of allowances which may be paid out of public moneys to witnesses in criminal cases and may, by regulation, prescribe different tariffs for witnesses according to their several callings, occupations or stations in life, and according also to the distances to be travelled by them to reach the place of trial, preparatory examination or other criminal proceeding, and may, by regulation, further prescribe the circumstances in which any such allowance may be paid to any witness for the accused. (Amended L.N. 38/1967.)

B. — EVIDENCE ON COMMISSION

Taking evidence on commission.

208. (1) If in the course of a trial, preparatory examination or any other criminal proceeding it appears to a court that the examination of a witness is necessary for the ends of justice and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience, which under the circumstances of the case would be unreasonable, such court may dispense with such attendance and may issue a commission to any magistrate or, where the witness is resident outside Swaziland to any person authorised by such court to take evidence on commission in civil cases outside Swaziland, within the local limits of whose jurisdiction such witness resides:

Provided that, in any such application, the specific fact or facts with regard to which the evidence of such witness is required shall be set out, and the court may by its order confine the examination of the witness to such facts:

Provided further that when the application is on behalf of the Crown, the court may, if it thinks fit so to do, direct as a condition of such order that the expense necessary to the representation of accused by attorney or counsel at such examination shall be paid by the Government.

(2) The magistrate or other person to whom such commission is issued shall proceed to the place where the witness is or shall summon such witness before him, and shall take down his evidence in the same manner as in the case of an ordinary preparatory examination taken before him or, if the commission is executed outside Swaziland, in the same manner as a commission to take evidence in civil cases is executed.

(Amended L.N. 38/1967.)

Parties may examine witnesses.

209. (1) Any party to any criminal proceedings in which a commission is issued may transmit any interrogatories in writing which the court directing the commission may think relevant to the issue, and the magistrate or other person to whom such commission is directed shall examine the witness upon such interrogatories.

(2) Any such party may appear before such magistrate or other person by counsel, attorney or agent, or, if not in custody, in person, and may examine, cross-examine and re-examine (as the case may be) such witness.

Return of commission.

210. (1) After a commission under section 208 has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the court which issued it.

(2) The commission, the return thereto, and the deposition shall be open at all reasonable times to the inspection of the parties, and may, subject to all just exceptions, be read in evidence in the case by either party and shall form part of the record.

(3) Any deposition so taken may also be received in evidence at any subsequent stage of the case before another court.

Adjournment of enquiry or trial.

211. In every case in which a commission is issued under section 208 the trial, preparatory examination, or other criminal proceeding may be adjourned for a specified time, reasonably sufficient for the execution and return of such commission.

C. — COMPETENCY OF WITNESSES

No person to be excluded from giving evidence except under this Act.

212. Every person not expressly excluded by this Act from giving evidence shall be competent and compellable to give evidence in a criminal case in any court or before a magistrate on a preparatory examination.

Court to decide questions of competency of witnesses.

213. The court in which any criminal case is depending or, in the case of a preparatory examination, the magistrate may decide upon all questions concerning the competency or compellability of any witness to give evidence.

Incompetency from insanity or intoxication.

214. No person appearing or proved to be afflicted with idiocy, lunacy, or insanity, or labouring under any imbecility of mind arising from intoxicating or otherwise, whereby he is deprived of the proper use of reason, shall be competent to give evidence while under the influence of any such malady or disability.

Evidence for prosecution by husband or wife of accused.

215. (1) The wife or husband of an accused is competent and compellable to give evidence for the prosecution without the consent of such accused if such accused is prosecuted for any offence against the person of either of them or any of the children of either of them or the offence of bigamy or incest or perjury committed in connection with or for the purpose of any judicial proceedings instituted or to be instituted or contemplated by one of them against the other, or in connection with or for the purpose of any criminal proceeding in respect of any offence included in this section, or the offence of abduction or any contravention of any law in force in Swaziland in regard to indecency or immorality.

(2) The wife or husband of an accused is competent but not compellable to give evidence for the prosecution without the consent of such accused if such accused is prosecuted for an offence against the separate property of such wife or husband.

(3) In this section, "wife" and "husband" include persons married according to Swazi or other law or custom recognised within Swaziland, and if under such law or custom more marriages than one validly existed at the time of the alleged offence, then any of the wives of the accused person shall be competent —

(*a*) and compellable to give evidence for the prosecution as provided in sub-section (1) if the alleged offence is against the person of another wife or her children; and,

(*b*) but not compellable to give evidence for the prosecution as provided in sub-section (2) where the alleged offence is against the separate property of another wife. (Amended P.6/1956.)

Evidence of accused and husband or wife on behalf of accused.

216. (1) Every accused and his wife or husband (as the case may be), shall be a competent witness for the defence at every stage of the proceedings, whether such accused is charged solely or jointly with any other person:

Provided that —

(*a*) an accused shall not be called as a witness except upon his own application; and,

(*b*) the wife or husband of an accused shall not be called as a witness for the defence, except upon the application of such accused.

(2) Every accused called as a witness in pursuance of this section shall, unless otherwise ordered by the court or by the magistrate holding a preparatory examination, give his evidence from the witness box or other place from which the other witnesses give their evidence.

(3) This section shall not affect any right of an accused to make a statement without being sworn:

Provided that, if he gives evidence on his own behalf at the preparatory examination, such evidence may be read and put in at his trial by the prosecutor.

D. — OATHS AND AFFIRMATIONS

Oaths.

217. (1) Any person other than a person described in section 218 or 219 shall not be examined as a witness except upon oath.

(2) The oath to be administered to any witness shall be administered in the form which most clearly conveys to him the meaning of such oath, and which he considers to be binding on his conscience.

Affirmations in lieu of oaths.

218. (1) If any person who is, or may be, required to take an oath objects to do so, he may make an affirmation in the following words: "I do truly affirm and declare that" (here insert the matter to be affirmed or declared).

(2) Such affirmation or declaration shall be of the same force and effect as if such person had taken such oath.

(3) Every person authorised, required, or qualified by law to take or administer an oath shall accept, in lieu thereof, such affirmation or declaration.

(4) The same penalties, punishments and disabilities which are respectively in force and are attached to any neglect, refusal or false or corrupt taking or subscribing of any oath administered under section 217, shall apply and attach in like manner in respect of the neglect, refusal, and false or corrupt making or subscribing respectively, of any such affirmation or declaration mentioned in this section.

When unsworn or unaffirmed testimony admissible.

219. Any person produced for the purpose of giving evidence who, from ignorance arising from youth, defective education, or other cause, is found not to understand the nature, or to recognise the religious obligations, of an oath or affirmation, may be admitted to give evidence in any court or on a preparatory examination without being sworn or being upon oath or affirmation:

Provided that before any such person proceeds to give- evidence the presiding officer before whom he is called as a witness shall admonish him to speak the- truth, the whole truth, and nothing but the truth, and shall further administer or cause to be administered to him any form of admonition which appears, either from his own statement or other source of information, to be calculated to impress his mind and bind his conscience, and which is not, as being of an inhuman, immoral, or religious nature, obviously unfit to be administered; and,

Provided further that any such person who wilfully and falsely states anything which, if sworn, would have amounted to the crime of perjury, or any offence declared by any statute to be equivalent to perjury, or punishable as perjury, shall be deemed to have committed such crime or offence, and shall, upon conviction, be liable to such punishment as is provided by law as a punishment for such crime or offence.

E. — ADMISSIBILITY OF EVIDENCE

Proof of certain facts by affidavit.

220. (1) If in any criminal proceedings the question arises whether any particular act, transaction or occurrence did or did not take place in any particular department or sub-department or branch thereof or office of the Government or in a particular court of law or in a particular bank, or whether any particular officer of the Government did or did not perform any particular act or take part in any particular transaction, a document purporting to be an affidavit made by a person who alleges in such statement that —

(*a*) he is in the service of the Government or of such bank, as the case may be;

(*b*) if the said act, transaction or occurrence had taken place in such department or sub-department or branch thereof or office, court or bank, or if such official had performed such act or taken part in such transaction, it would in the ordinary course of events have come to his, the deponent's knowledge, and a record thereof, available to him, would have been kept; and,

(*c*) no such act, transaction or occurrence came to his knowledge or that he satisfied himself that no such record was kept or that no such act, transaction or occurrence took place;

shall, subject to sub-section (5), be *prima facie* proof on its mere production in such proceedings by any person that no such act, transaction or occurrence took place.

(2) If in any criminal proceedings the question arises whether any person bearing a particular name did or did not furnish any particular officer in the service of the Government with any particular information or document, a document purporting to be an affidavit made by a person who, in such affidavit, alleges that he is such officer and that no person bearing such name furnished him with any such information or document, shall, subject to sub-section (5), be *prima facie* proof on its mere production in such proceedings by any person, that such person did not furnish such officer with any such information or document.

(3) In any criminal proceedings in which the registration of any matter or the recording of any fact or transaction under any law is relevant to the issue, such registration or recording and any matter connected therewith may, subject to sub-section (5), be proved *prima facie* by the production of a document purporting to be an affidavit made by the person upon whom such law confers the power or imposes the duty to effect any such registration or to record any such fact or transaction.

(4) If any fact ascertained by any examination or process requiring any skill in bacteriology, biology, chemistry, physics, astronomy, or geography is or may become relevant to the issue in any criminal proceedings, a document purporting to be an affidavit made by a person who alleges in such affidavit that he is in the service of the Republic of South Africa, or in the service of, or attached to, the South African Institute for Medical Research or any

university in the Republic or any other institutions designated by the Deputy Prime Minister for the purposes of this section by notice in the Gazette, and that he has ascertained any such fact by means of any such examination or process, shall subject to sub-section (5), on its mere production in such proceedings by any person, be admissible to prove such fact:

Provided that such affidavit shall not be so admissible in a magistrate's court (if objected to by an accused or his representative, if the affidavit is produced by the prosecutor, or if, objected to by the prosecutor or by an accused or his representative, if the affidavit is produced by another accused or his representative) unless the objector or his representative has received, not later than three days after the day upon which the accused was summoned or otherwise notified of his trial, a notice in writing that such affidavit will be tendered in evidence at such trial, and has not within three days of the day of the receipt of such notice given notice in writing to the person who gave such first-mentioned notice, that he will object to the production of such affidavit. (Amended L.N. 46/1 969.)

(5) The court in which any such affidavit is adduced in evidence may in its discretion cause the person who made it to be summoned to give oral evidence in the proceedings in question, or may cause written interrogatories to be submitted to him for reply, and such interrogatories and any reply thereto, purporting to be a reply from such person, shall like-wise be admissible in evidence in such proceedings.

(6) This section shall not affect any provision of any law under which any certificate or other document is made admissible in evidence, and this section shall be deemed to be additional to, and not in substitution for, any such provision:

Provided that, if any provision of any law in operation upon the date when this Act comes into force, which deals with any matter dealt with in this section, is at variance with this section, this section shall prevail.

Reports by medical and veterinary practitioners.

221. (1) In any criminal proceedings in which any facts are ascertained —

(*a*) by a medical practitioner in respect of any injury to, or state of mind or condition of the body of, a person, including the results of any forensic test or his opinion as to the cause of death of such person; or

(*b*) by a veterinary practitioner in respect of any injury to, or the state or condition of the body of, any animal including the results of any forensic test or his opinion as to the cause of death of such animal,

such facts may be proved by a written report signed and dated by such medical or veterinary practitioner, as the case may be, and that report shall be *prima facie* evidence of the matters stated therein:

Provided that the court may of its own motion or on the application of the prosecution or the accused require the attendance of the person who signed such report but such court shall not so require if —

(i) the whereabouts of the person are unknown; or

(ii) such person is outside Swaziland and, having regard to all the circumstances, the justice of the case will not be substantially prejudiced by his non-attendance.

(2) Where a person who has made a report under subsection (1) has died, or the court in accordance with the proviso to subsection (1) does not order his attendance, such report shall be received by the court as evidence upon its mere production, notwithstanding that such report was made before the coming into operation of this Act.

(Amended P.49/1964; A.14/1985.)

Inadmissibility of irrelevant evidence.

222. No evidence as to any fact, matter or thing shall be admissible which is irrelevant or immaterial and cannot conduce to prove or disprove any point or fact at issue in the case which is being tried.

Hearsay evidence.

223. No evidence which is in the nature of hearsay evidence shall be admissible in any case in which such evidence would be inadmissible in any similar case depending in the Supreme Court of Judicature in England.

Evidence through intermediaries.

223*bis*. (1) In this section, whenever criminal proceedings are pending before any court and it appears to such court that it would expose any witness under the age of eighteen years to undue mental stress or suffering if such person testifies at such proceedings, the court may, subject to subsection (4), appoint a competent person as an intermediary in order to enable such witness to give the evidence through that intermediary.

(2) In these proceedings-

(a) no examination, cross-examination or re-examination of any witness in respect of whom a court has appointed an intermediary under subsection (1), except examination by the court, shall take place in any manner other than through that intermediary; and

(b) the said intermediary may, unless the court directs otherwise, convey the general purport of any question to the relevant witness.

(3) If a court appoints an intermediary under subsection (1), the court may direct that the relevant witness shall give the evidence at any place –

(a) which is informally arranged to set that witness at ease;

(b) which is so situated that any person whose presence may upset that witness, is outside the sight and hearing of that witness; and

(c) which enables the court and any person whose presence is necessary at the relevant proceedings to see and hear, either directly or through the medium of any electronic or other devices, that intermediary as well as that witness during his testimony.

(4) In this section-

(a) the Minister may by notice in the Gazette determine the persons or the category or class of persons who are competent to be appointed as intermediaries; and

(b) an intermediary who is not in the full-time employment of the Government shall be paid such travelling and subsistence and other allowances in respect of the services rendered by him or her as the Minister, with the concurrence of the Minister of Finance, may determine. (Amended, A.4/2004)

Admissibility of dying declarations.

224. The declaration made by any deceased person upon the apprehension of death shall be admissible or inadmissible in evidence in every case in which such declaration would be admissible or inadmissible in any similar case depending in the Supreme Court of Judicature in England.

Admissibility of depositions at preparatory examination of witness since deceased or kept away by the contrivance of the accused.

225. (1) The deposition of any witness taken upon oath before any magistrate at a preparatory examination in the manner directed and required by section 66 in the presence of any person who has been brought before such magistrate on a charge of having committed an offence, or the deposition of a witness taken in the circumstances described in section 91, shall be admissible in evidence on the trial of such person for any offence charged in an indictment by the Attorney-General on a preparatory examination at which such deposition was taken or on such person's trial before a magistrate's court or on the remittal of such person's case by the Attorney-General after considering such preparatory examination:

Provided that it is proved on oath to the satisfaction of the court that such deponent is dead, or is incapable of giving evidence, or that he is too ill to attend, or that he is kept away from the trial by the means and contrivance of the accused or that he is absent from Swaziland and his attendance cannot be obtained without an amount of delay or expense which in the circumstances of the case the court considers unreasonable and that the deposition offered in evidence is the same which was sworn before such magistrate without alteration: and,

Provided further that it appears on the record or is proved to the satisfaction of the court that such accused, by himself, his counsel, attorney or law agent, had a full opportunity of cross-examining such witness.

(2) The evidence of a witness given at a former criminal trial shall, under like circumstances, be admissible on any subsequent trial of the same person upon the same charge.

(3) If the witness cannot be found after diligent search or cannot be compelled to attend, the court may, in its discretion, allow his deposition to be read as evidence at the trial subject to the conditions mentioned in this section.

(Amended P.49/1964.)

Admissibility of confessions by accused if freely and voluntarily made without undue influence and, if judicial, after due caution.

226. (1) Any confession of the commission of any offence shall, if such confession is proved by competent evidence to have been made by any person accused of such offence (whether before or after his apprehension and whether on a judicial examination or after commitment and whether reduced into writing or not), be admissible in evidence against such person:

Provided that such confession is proved to have been freely and voluntarily made by such person in his sound and sober senses and without having been unduly influenced thereto:

Provided further that if such confession is shown to have been made to a policeman, it shall not be admissible in evidence under this section unless it was confirmed and reduced to writing in the presence of a magistrate or any justice who is not a police officer: and,

Provided also that if such confession has been made on a preparatory examination before any magistrate, such person must previously, according to law, have been cautioned by such magistrate that he is not obliged, in answer to the charge against him, to make any statement which may incriminate himself, and that what he then says may be used in evidence against him.

(2) In any proceedings any confession, which is under sub-section (1) inadmissible in evidence against the person who made it, shall become admissible against him if he or his representative adduces in such proceedings any evidence, either directly or in cross-examining a witness, of any statement, verbal or in writing, made by the person who made such confession, either as part thereof or in connection therewith, if such evidence is, in the opinion of the officer presiding at such proceedings, favourable to the person who made such confession.

Admissibility of facts discovered by means of inadmissible confessions.

227. (1) Evidence may be admitted of any fact otherwise admissible in evidence notwithstanding that such fact has been discovered and come to the knowledge of the witness giving evidence respecting it, only in consequence of information given by the accused person in a confession or in evidence which by law is not admissible against him, and notwithstanding that such fact has been discovered and come to the knowledge of the witness against the wish or will of such accused.

(2) Evidence that any fact or thing was discovered in consequence of the pointing out of anything by the accused person or in consequence of information given by him may be admitted notwithstanding that such pointing out or information forms part of a confession or statement which by law is not admissible against him.

(Amended A.20/1968.)

Confession not admissible against other persons.

228. No confession made by any person shall be admissible as evidence against any other person.

Evidence of character when admissible.

229. Except as provided in section 248 no evidence as to the character of the accused or as to the character of any woman on whom any rape or assault with intent to commit rape or indecent assault is alleged to have been committed shall be admissible or inadmissible in any such case, if such evidence would be inadmissible or admissible in any similar case depending in the Supreme Court of Judicature in England.

Evidence of genuineness of disputed writings.

230. Comparison of a disputed writing with any writing proved to the satisfaction of the court, or of a magistrate holding a preparatory examination, to be genuine may be made by witnesses; and such writings and the evidence of witnesses respecting it may be submitted to the court or magistrate as the case may be, as evidence of the genuineness or otherwise of the writing in dispute.

Certified copy of criminal proceedings sufficient without production of record.

231. If it is necessary to prove the trial and conviction or acquittal of any person charged with any offence, it shall not be necessary to produce the record of the conviction or acquittal of such person, or a copy thereof, but it shall be sufficient that it is certified or purports to be certified under the hand of the registrar or clerk of the court or other officer having the custody of the records of the court where such conviction or acquittal took place, or by the deputy of such registrar, clerk or other officer, that the paper produced is a copy of the record of the indictment, summons or charge and of the trial, conviction, and judgment or acquittal, as the case may be, omitting the formal parts thereof.

Gazette evidence in certain cases.

232. (1) If proof is required of the contents of any law, or of any other matter which has been published in the Gazette of Swaziland, or a former High Commission Territory or the Republic or Union of South Africa or a province of such Republic or Union or Lesotho or Botswana, judicial notice shall be taken of such law, or other matter. (Amended L.N. 38/1967; L.N. 8/1969.)

(2) A copy of a Gazette, referred to in subsection (1), or a copy of such law, or other matter purporting to be printed under the superintendence or authority of the Government Printer of such Gazette, shall, on its mere production, be evidence of the contents of such law, or other matter as the case may be.

(Amended P.49/1964.)

Appointment to a public office.

233. Any evidence which would be admissible in any criminal case depending in the Supreme Court of Judicature in England as evidence of the appointment of any person to any public office, or of the authority of any person to act as a public officer, shall be admissible in criminal cases in Swaziland and before a magistrate holding a preparatory examination.

F. — EVIDENCE OF ACCOMPLICES

Freedom from liability to prosecution of accomplices giving evidence.

234. (1) If any person who to the knowledge of the public prosecutor has been an accomplice, either as principal or accessory, in the commission of any offence alleged in any indictment or summons, or the subject of a preparatory examination, is produced as a witness by and on behalf of such public prosecutor and submits to be sworn as a witness, and fully answers to the satisfaction of the court or magistrate all lawful questions put to him while under examination, he shall thereby be absolutely freed and discharged from all liability to prosecution for such offence, either at the public instance or at the instance of any private party; or, when he has been produced as a witness by and on behalf of any private prosecutor who is aware of such person's complicity, from all prosecution for such offence at the instance of any such private prosecutor.

(2) The said court or magistrate shall thereupon cause such discharge to be duly entered on the record of the proceedings:

Provided that such discharge shall be of no force and effect and the entry thereof on the record of such proceedings shall be deleted if, when called as a witness at a re-opening of the preparatory examination or at the trial of any person upon a charge of having committed such offence, the person in respect of whom such discharge was made fails to submit to be sworn as a witness or fully to answer, to the satisfaction of the magistrate holding such preparatory examination or of the court trying such charge, all such questions put to him while under examination as a witness.

(3) No such accomplice produced as a witness by and on behalf of any private prosecutor shall, in any case, be bound or legally compellable to answer any question whereby he may incriminate himself in respect of any offence alleged in the indictment or summons, or the subject of a preparatory examination, unless there is produced to him, and put on record, a writing under the hand of the officer who by law is entitled to prosecute at the public instance in such court or at such preparatory examination, discharging such accomplice from all liability to prosecution at the instance of the public prosecutor for such offence.

Evidence of accomplice not to be used against him if he should thereafter be tried for the offence.

235. If any accomplice in any offence alleged in any indictment or summons, or the subject of a preparatory examination, has, as described in section 234, been produced as a witness by and on behalf of the public prosecutor, or of any private prosecutor (by whom there has been obtained from such officer as aforesaid, a written discharge of any such accomplice from liability to prosecution) and has given evidence upon a trial or preparatory examination, no part of the testimony which has been so given by him at such trial or preparatory examination may be given in evidence against him, if he is thereafter tried for such offence:

Provided this section shall not be construed as freeing or exempting any such accomplice who has been guilty of wilful and corrupt perjury while under examination as a witness in any such trial or preparatory examination from any penalties or forfeitures to which persons guilty of wilful and corrupt perjury are liable by law or as rendering incompetent or inadmissible any evidence which would otherwise be competent and admissible in the trial of such accomplice on a charge of wilful and corrupt perjury on his examination as a witness in any such trial or preparatory examination.

G. — SUFFICIENCY OF EVIDENCE

Sufficiency of one witness in criminal cases, except perjury and treason.

236. The court by which any person prosecuted for any offence is tried, may convict him of any offence alleged against him in the indictment or summons on the single evidence of any competent and credible witness:

Provided that no court may convict any person of —

(*a*) perjury on the evidence of any one witness unless, in addition to and independent of the testimony of such witness, some other competent and credible evidence as to the guilt of such person is given to such court; or

(*b*) treason except upon the evidence of two witnesses where one overt act is charged in the indictment, or, where two or more such overt acts are so charged, upon the evidence of one witness to each such overt act.

Conviction on single evidence of accomplice.

237. Any court which is trying any person on a charge of any offence may convict him of any offence alleged against him in the indictment or summons on the single evidence of any accomplice:

Provided that such offence has, by competent evidence, other than the single and unconfirmed evidence of such accomplice, been proved to the satisfaction of such court to have been actually committed. (Amended P.14/1944.)

Conviction of accused on plea of guilty or evidence of confession.

238. (1) If a person arraigned before any court upon any charge has pleaded guilty to such charge, or has pleaded guilty to having committed any offence (of which he might be found guilty on the indictment or summons) other than the offence with which he is charged, and the prosecutor has accepted such plea, the court may, if it is —

(*a*) the High Court **or a principal magistrate's court**, and the accused has pleaded guilty to any offence other than murder, sentence him for such offence without hearing any evidence; or, (Added, A.4/2004)

(*b*) a magistrate's court **other than a principal magistrate's court**, sentence him for the offence to which he has pleaded guilty upon proof (other than the unconfirmed evidence of the accused) that such offence was actually committed: (Amended, A.4/2004)

Provided that if the offence to which he has pleaded guilty is such that the court is of opinion that such offence does not merit punishment of imprisonment without the option of a

fine or of whipping or of a fine exceeding **two thousand Emalangeni**, it may, if the prosecutor does not tender evidence of the commission of such offence, convict the accused of such offence upon his plea of guilty, without other proof of the commission of such offence, and thereupon impose any competent sentence other than imprisonment or any other form of detention without the option of a fine or whipping or a fine exceeding **two thousand Emalangeni**, or it may deal with him otherwise in accordance with law.(Amended, A.4/2004)

(2) Any court which is trying any person on a charge of any offence may convict him of any offence alleged against him in the indictment or summons by reason of any confession of such offence proved to have been made by him, although such confession is not confirmed by any other evidence:

Provided that such offence has, by competent evidence, other than such confession, been proved to have been actually committed.

Admission in writing before trial of minor offence.

239. (1) If a public prosecutor causes an accused to be summoned otherwise than under section 312(5) to appear in a magistrate's court upon a charge of having committed any offence, and he has reasonable grounds for believing that the court which will try such charge will, on convicting such accused, not impose a sentence of imprisonment or whipping or a fine exceeding thirty Emalangeni, he may attach to such summons to be served therewith upon such accused, a form of declaration for signature by such accused, wherein the latter admits having committed such offence, expresses his intention of pleading guilty to the charge, and agrees to be convicted of the offence charged upon his plea of guilty without the calling of any evidence in support of such charge.

(2) Such form shall contain a notice for the information of the accused that when appearing in court to answer the charge upon which he is summoned he may, in spite of having signed such declaration, plead not guilty to such charge, and that he will thereupon be tried, upon a future date to be determined by the court, as if he had not signed such declaration, and that such declaration will, at such trial, not be admissible in evidence against him.

(3) Such form shall also contain a notice for the information of the accused directing his attention to the provisions of section 312 and setting forth the purport of such provisions.

(4) The person serving such summons shall, if service is upon the accused personally, explain such form of declaration to such accused and ascertain from him whether he will or will not sign such declaration, and if he signs such declaration such person shall countersign it and transmit it forthwith to the public prosecutor who caused the summons to be issued.

(5) If the accused, on appearing in court in answer to the summons, pleads guilty to the charge, the court may deal with him under the proviso to section 238(1) or it may direct that evidence be led to prove the commission of the offence charged.

(6) If the accused, on so appearing in court, pleads not guilty, or if after having pleaded guilty the court directs that evidence be led to prove the commission of the offence, the court shall, at the request of the public prosecutor or of the accused, postpone the trial of the case to such date as it may fix to enable the public prosecutor (and also the accused, if he so desires) to subpoena witnesses.

(7) If the accused has so pleaded not guilty, the admission of guilt signed by him shall not be admissible in evidence against him at such trial.

Sufficiency of proof of appointment to a public office.

240. Any evidence which would, if credible, be deemed in any criminal case depending in the Supreme Court of Judicature in England to be sufficient proof of the appointment of any person to any public office, or of the authority of any person to act as a public officer, shall, if credible, be deemed in criminal cases in Swaziland, and before any magistrate holding a preparatory examination, sufficient proof of such appointment or authority.

H. — DOCUMENTARY EVIDENCE

Certified copies or extracts of documents admissible.

241. If any book or other document is of such a public nature as to be admissible in evidence on its mere production from the proper custody, any copy thereof or extract therefrom shall be admissible in evidence in any court or before a magistrate on a preparatory examination, if it is proved to be an examined copy or extract, or purports to be signed and certified as a true copy or extract by the officer to whose custody the original is entrusted; and such officer is hereby required to furnish such certified copy or extract to any person applying at a reasonable time for it, upon payment of a reasonable sum for it not exceeding ten cents for every hundred words.

Production of official documents.

242. Any original document in the custody or under the control of any public officer by virtue of his office shall only be produced in any criminal proceeding before any court, or before a magistrate on a preparatory examination, upon the order of the Attorney-General.

Copies of official documents sufficient.

243. (1) Unless the original is ordered to be produced as provided in section 242, it shall be sufficient to produce a copy of or extract from a document described in such section certified as a true copy by the head of the department in whose custody or under whose control such document is.

(2) Such copy or extract so certified shall be admissible in evidence before any court or before a magistrate holding a preparatory examination, and shall be of like value and effect as the original document.

(3) It shall not be necessary for any head of a Government department or office to appear in person to produce any original document in his custody or under his control as such, but it shall be sufficient if such document is produced by some person authorised by him to do so.

(4) Certified copies or extracts may be handed in to the court by the party who desires to avail himself thereof.

(5) If any officer authorised or required by this Act to furnish any certified copies or extracts wilfully certifies any document as being a true copy or extract, knowing that it is not a true copy or extract, as the case may be, he shall be guilty of an offence and liable upon conviction to imprisonment not exceeding two years.

J. — SPECIAL PROVISIONS AS TO BANKER'S BOOKS

Entries in bankers' books admissible in evidence in certain cases.

244. The entries in ledgers, day-books, cash-books and other account books of any bank (including a savings bank) shall be admissible as *prima facie* evidence of the matters, transactions and accounts therein recorded, on proof being given by the affidavit in writing of one of the directors, managers, or officers of such bank, or by other evidence, that such ledgers, day-books, cash-books or other account books are or have been the ordinary books of such bank, and that such entries have been made in the usual and ordinary course of business, and that such books are in or come immediately from the custody or control of such bank.

Examined copies also admissible after due notice.

245. (1) Copies of all entries in any ledgers, day-books, cash-books or other account books used by any such bank, may be proved in any criminal proceeding as evidence of any such entries, without production of the originals, by means of the affidavit of a person who has examined them stating the fact of such examination and that the copies sought to be put in evidence are correct:

Provided that no ledger, day-book, cash-book or other account book, of any such bank, and no copies of entries therein contained, shall be adduced or received in evidence under this Act unless ten days' notice in writing, or such other notice as may be ordered by the court or a magistrate holding a preparatory examination, containing a copy of the entries proposed to be adduced, and stating the intention to adduce them in evidence, has been given by the party proposing to adduce them in evidence to the other party and that such other party is at liberty to inspect the original entries and the accounts of which such entries form a part.

(2) On the application of any party who has received such notice the court or a magistrate holding a preparatory examination may order that such party be at liberty to inspect and take copies of any entry or entries in the ledger, day-books, cash-books, or other account books of any such bank relating to the matters in question in the criminal proceeding, and such orders may be made by such court or magistrate in its or his discretion, either with or without summoning before it or him such bank or the other party, and shall be intimated to such bank at least three days before such copies are required.

(3) On the application of any party who has received notice the court or a magistrate holding a preparatory examination may order that such entries and copies mentioned in such notice shall not be admissible as evidence of the matters, transactions, and accounts recorded in such ledgers, day-books, cash-books, and other account books.

Bank not compelled to produce any books unless ordered by court or magistrate.

246. No such bank shall be compelled to produce the ledgers, day-books, cash-books, or other account books of such bank in any criminal proceeding unless the court or the magistrate holding the preparatory examination specially orders that such ledgers, day-books, cash-books or other account books shall be produced.

Last three preceding sections not to apply to proceedings to which bank is a party.

247. Sections 244 to 246 inclusive, shall not apply to any criminal proceedings to which any such bank whose ledgers, day-books or other account books may be required to be produced in evidence is a party.

K. — PRIVILEGES OF WITNESSES

Privileges of accused persons when giving evidence.

248. An accused person called as a witness upon his own application shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed, or has been convicted of, or has been charged with, any offence other than that wherewith he is then charged, or is of bad character, unless —

(*a*) he has personally or by his counsel, attorney or law agent, asked questions of any witness with a view to establishing, or has himself given evidence of, his own good character, or unless the nature or conduct of the defence is such as to involve the imputation of the character of the prosecutor or the witnesses for the prosecution;

(*b*) he has given evidence against any other person charged with the same offence;

(*c*) the proceedings against him are such as are described in section 262 or 263 and the notice required by those sections has been given to him; or

(*d*) the proof that he has committed or has been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged.

Privilege arising out of the marital state.

249. (1) A husband shall not be compelled to disclose any communication made to him by his wife during the marriage, and a wife shall not be compelled to disclose any communication made to her by her husband during the marriage.

(2) A person whose marriage has been dissolved or annulled by a court shall not be compelled to give evidence as to any matter or thing which occurred during the subsistence of the marriage or supposed marriage, and as to which he or she could not have been compelled to give evidence if such marriage were subsisting.

No witness compellable to answer question which the witness's husband or wife might decline.

250. No person shall be compelled to answer any question or to give any evidence, if the question or evidence is such as under the circumstances the husband or wife of such person, if under examination as a witness, might lawfully refuse and could not be compelled to answer or give.

Witness not excused from answering questions by reason that the answer would establish a civil claim against him.

251. A witness in criminal proceedings may not refuse to answer a question relevant to the issue, the answering of which has no tendency to accuse himself, or to expose him to penalty or forfeiture of any nature whatsoever, by reason only or on the sole ground that the answering of such question may establish or tend to establish that he owes a debt or is otherwise subject to a civil suit.

Privilege of professional advisers.

252. No advocate, attorney, or other legal practitioner duly qualified to practice in any court, whether within Swaziland or elsewhere, shall be competent to give evidence against any person by whom he has been professionally employed or consulted, without the consent of such person, as to any fact, matter or thing, as to which such legal practitioner, by reason of such employment or consultation, and without such consent would not be competent to give evidence in any similar proceeding depending in the Supreme Court of Judicature in England:

Provided that no such legal practitioner shall, in any proceeding, by reason of any such employment or consultation, be incompetent or not legally compellable to give evidence as to any fact, matter or thing relative to or connected with the commission of any offence for which the person, by whom such legal practitioner has been so employed or consulted, is prosecuted in such proceeding, whenever such fact, matter or thing has come to the knowledge of such legal practitioner before he was professionally employed for or consulted with reference to the defence of such person against such prosecution.

Privilege from disclosure of facts on the grounds of public policy.

253. No witness shall, except as provided in this Act, be compellable or permitted to give evidence in any criminal proceeding as to any fact, matter or thing, or as to any communication made to or by such witness, as to which, if the case were depending in the Supreme Court of Judicature in England, such witness would not be compellable or permitted to give evidence, by reason that such fact, matter or thing, or communication, on grounds of public policy and from regard to public interest, ought not to be disclosed and is privileged from disclosure:

Provided that any person, in any criminal proceeding, may adduce evidence of any communication alleging the commission of an offence if the making of such communication *prima facie* constituted an offence, and it shall be competent for the officer presiding at such proceeding to determine whether the making of such communication *prima facie* did or did not constitute an offence, and such determination shall, for the purposes of such proceedings, be final.

Witness excused from answering questions the answers to which would expose him to penalties, or degrade his character.

254. No witness in any criminal proceeding shall, except as provided by this Act or any other law, be compelled to answer any question which, if he were under examination in any similar case depending in the Supreme Court of Judicature in England, he would not be compelled to answer by reason that his answer might have a tendency to expose him to any pains, penalty, punishment or forfeiture, or to a criminal charge, or to degrade his character:

Provided that, notwithstanding this section, an accused person called as a witness on his own application in accordance with section 216 may be asked any question in cross-examination, notwithstanding that it would tend to incriminate him as to the offence charged against him.

L. — SPECIAL RULES OF EVIDENCE IN PARTICULAR CRIMINAL CASES

Evidence on charge of treason.

255. On the trial of a person charged with treason, evidence cannot be admitted of any overt act not alleged in the indictment, unless relevant to prove some overt act alleged therein.

Evidence on charge of giving false evidence or subornation.

256. If a person gives evidence in the course of proceedings in the High Court or in a magistrate's court or at a preparatory examination and is subsequently charged with giving false evidence in such proceedings, or if a person is charged with the offence of procuring or attempting to procure the giving of false evidence in the course of any such proceedings a certificate setting out the substance and effect of the charges and purporting to be signed by the officer having the custody of the records of the court in which such judicial proceedings were held, or by his deputy or assistant, together with the record of such proceedings shall be sufficient evidence of such proceedings without proof of the signature or official character of the person who appears to have signed the certificate. (Amended P.49/1964.)

Evidence on a charge of bigamy.

257. (1) On the trial of a person charged with bigamy, it shall be proved that a lawful and binding marriage between the accused and another person existed at the time when the offence is alleged to have been committed:

Provided that it shall be presumed till the contrary is proved that the marriage between the accused and such other person was at the date of such marriage lawful and binding if the marriage is alleged to have been solemnised —

(*a*) in Swaziland when an extract from a marriage register has been produced to the court which is either a duplicate original, or a copy, and which purports to be certified as such by the officer or minister of religion having for the time being the custody of such register, or by an official registrar of marriages; and,

(*b*) outside Swaziland, when a document has been produced to the court which purports to be an extract from a marriage register kept according to law in the country where such marriage is alleged to have been solemnised, and which also purports to be certified as such by an officer or person having the custody of such register, if the signature of such officer or person to the certificate is authenticated in accordance with any law or statutory regulations of Swaziland governing the authentication of documents executed outside Swaziland.

(2) On the trial of a person charged with bigamy, if the fact of a marriage ceremony in Swaziland between the accused and another person is proved, the marriage shall be deemed to have been lawful and binding as between them at the date thereof until it is shown that they were within the prohibited degrees of consanguinity or affinity, or that owing to a then subsisting marriage one of them was incapable of contracting a lawful and binding marriage with the other.

(3) On the trial of a person on a charge of bigamy, if the alleged bigamous marriage, wherever solemnised, is proved, the fact that shortly before the alleged bigamous marriage the accused had been cohabiting with the person to whom he is alleged to be lawfully married and had been treating and recognising such person as a spouse shall, if in addition there is evidence of the performance of a marriage ceremony between the accused and such person, be *prima facie* evidence that there was a lawful and binding marriage subsisting between the accused and such person at the time of the solemnisation of the alleged bigamous marriage.

Evidence of relationship on charge of incest.

258. (1) On the trial of a person charged with incest —

(*a*) it shall be sufficient to prove that the woman or girl on whom or by whom the offence is alleged to have been committed is reputed to be the lineal ascendant, descendant, or sister, step-mother, or step-daughter, of the other party to the incest; and,

(*b*) the accused shall, until the contrary is proved, be presumed to have had knowledge, at the time of the alleged offence, of the relationship existing between himself and the other party to such incest.

(2) If the fact that any lawful and binding marriage was contracted is relevant to the issue at the trial of a person charged with incest, such fact may be proved *prima facie* in the manner provided in section 257 for the proof of the existence of a lawful and binding marriage of a person charged with bigamy.

Evidence on charge of infanticide or of concealment of birth.

259. (1) On the trial of a person charged with murder or culpable homicide of a newly born child, such child shall be deemed to have been born alive if it is proved to have breathed whether or not it has had an independent circulation, and it shall not be necessary to prove that such child was, at the time of its death, entirely separated from the body of its mother.

(2) On the trial of a person charged with the concealment of the birth of a child, it shall not be necessary to prove whether the child died before, at, or after its birth.

Evidence as to counterfeit coin.

260. If upon the trial of any person it becomes necessary to prove that any coin produced in evidence against him is false or counterfeit, it shall not be necessary to prove it to be false or counterfeit by the evidence of any officer of Her Brittanic Majesty's Mint or other person employed in producing the lawful coin in Her Brittanic Majesty's dominions, the Commonwealth or elsewhere, whether the coin counterfeited is current coin of any part of Her Brittanic Majesty's dominions, the Commonwealth or of any foreign country, but it shall be sufficient to prove it to be false or counterfeit by the evidence of any credible witness.

(Amended L.N. 38/1967.)

Evidence of gambling house.

261. (1) When any cards, dice, balls, counters, tables, or other instruments of gaming used in playing any unlawful game are found in or on any premises suspected to be used as a gambling house and entered under a warrant or order issued under any law, or about the person of any of those found therein or thereon, it shall be *prima facie* evidence on a prosecution under any statute or under the common law for keeping a gambling house that such premises are used as a gambling house and that the persons found in or on such premises were playing therein or thereon, although no play was actually going on in the presence of the person entering such premises under such warrant or order, or in the presence of those persons by whom he is accompanied.

(2) In any prosecution under any statute or under the common law for keeping a gambling house it shall be *prima facie* evidence that premises are used as a gambling house if —

(*a*) any policeman authorised to enter upon such premises is wilfully prevented from or obstructed or delayed in entering them or any part thereof; or,

(*b*) such premises or any part thereof are found fitted or provided with any means or contrivance for unlawful gaming or with any means or contrivance for concealing, removing, or destroying any instruments of gaming.

(3) On the trial of any person charged with an offence mentioned in this section, it shall not be necessary to prove that any person found on any premises playing at any game was playing for any money, wager or stake.

Evidence on charge of receiving.

262. (1) If proceedings are taken against any person for having received stolen goods knowing them to be stolen, or for having in his possession stolen property, or anything obtained by means of an offence knowing it to have been stolen or so obtained, evidence may be given at any stage of the proceedings that there was found in his possession other property stolen or obtained by some such offence within the period of twelve months preceding the time when he was first charged before a magistrate with the offence in respect of which proceedings are being taken.

(2) Such evidence may be taken into consideration for the purpose of proving that such person knew the property forming the subject of the proceedings taken against him to be stolen or obtained by some such offence:

Provided that not less than three days' notice in writing has been given to the accused that proof is intended to be given of such other property stolen or obtained by some such offence within the preceding period of twelve months having been found in his possession; and such notice shall specify the nature or description of such other property and the person, if known, from whom it was stolen or obtained by means of an offence.

Evidence of previous conviction on charge of receiving.

263. If proceedings are taken against any person for having received stolen goods knowing them to be stolen, or for having in his possession stolen property or property obtained by means of an offence, and evidence has been given that the stolen property or property obtained by means of an offence has been found in his possession, then if such person has

been convicted of an offence involving fraud or dishonesty within five years immediately preceding the time when he was first charged before a magistrate with the offence for which he is being proceeded against, evidence of such previous conviction may be given at any stage of the proceedings and may be taken into consideration for the purpose of proving that the accused knew that the property which was proved to be in his possession was stolen or property obtained by means of an offence:

Provided that not less than three days' notice in writing has been given to the accused that proof is intended to be given of such previous conviction.

Evidence of counterfeit coin.

264. Upon the trial of any person accused of any offence respecting currency or coin, no difference in the date or year or in any legend marked upon the lawful coin described in the indictment and the date or year or legend marked upon the false coin counterfeited to resemble or pass for such lawful coin, or upon any die, plate, press, tool, or instrument used, constructed, devised, adapted, or designed for the purpose of counterfeiting or imitating any such lawful coin, shall be considered a just or lawful cause or reason for acquitting any such person of such offence; and it shall be sufficient to prove any general resemblance to the lawful coin which will show an intention that the counterfeit should pass for it.

Evidence on trial for defamation.

265. On the trial of any person charged with the unlawful publication of defamatory matter which is contained in a periodical, after evidence sufficient in the opinion of the court has been given of such publication by the accused of the number or part of the periodical containing the matter complained of, other writings or prints purporting to be other numbers or parts of the same periodical previously or subsequently published and containing a printed statement that they were published by or for such accused, shall be admissible in evidence on either side without further proof of their publication.

Evidence on charge of stealing against clerk or servant.

266. (1) At the trial of any person charged with theft, while employed in any capacity in the public service or by the Government, of money or any other property which belonged to Her Brittanic Majesty or His Majesty, or which came into such person's possession by virtue of his employment, or charged with theft, while a clerk, servant or agent, of money or any other property which belonged to his employer or principal, or which came into his possession on account of his employer or principal, an entry in any book of account kept by the accused or kept under or subject to his charge or supervision, purporting to be an entry of the receipt of any money or other property shall be evidence that the money or other property so purporting to have been received was so received by him.

(2) On the trial of a person charged with any such offence it shall not be necessary to prove the theft by the accused of any specific sum of money if, on the examination of the books of account or entries kept or made by him or kept or made in, under, or subject to his charge or supervision, or by any other evidence, there is proof of a general deficiency, and the court is satisfied that such accused stole the deficient money or any part of it.

(Amended L.N. 38/1967.)

Evidence on charges relating to seals and stamps.

267. On the trial of a person charged with any offence relating to any seal or stamp used for the purposes of the public revenue or of the post office in any part of Her Brittanic Majesty's dominions, the Commonwealth or in any foreign country, a despatch from one of Her Brittanic Majesty's Principal Secretaries of State or from the Governor or officer administering the government of the dominion of the Commonwealth or colony affected, transmitting to the Deputy Prime Minister any stamp, mark, or impression, and stating it to be a genuine stamp, mark, or impression of a die, plate or other instrument provided, made, or used by or under the direction of the proper authority of the country, dominion of the Commonwealth or colony in question for the purpose of expressing or denoting any stamp duty or postal charge, shall be admissible as evidence of the facts stated in such despatch; and the stamp, mark, or impression so transmitted may be used by the court and by witnesses for the purposes of comparison.

M. — MISCELLANEOUS MATTERS RELATING TO EVIDENCE IN CRIMINAL PROCEEDINGS

Impounding documents.

268. If any instrument which has been forged or fraudulently altered is admitted in evidence, the court or judicial officer who admits such instrument may, at the request of the crown or of any person against whom it is admitted in evidence, direct that it shall be impounded and kept in the custody of some officer of the court or other proper person, for such period and subject to such conditions as the court or judicial officer admitting such instrument deems fit.

269. (Repealed K.O-I-C. 31/1974.)

Unstamped instruments admissible in criminal cases.

270. Every instrument liable to stamp duty shall be admitted in evidence in any criminal proceedings, although it may not be stamped as required by law.

Onus of proof in prosecutions under laws imposing licences, etc.

271. If a person carries on an occupation or business or performs an act or has in his possession or custody or owns any article or is present at any place and he would commit or have committed an offence by carrying on such occupation or business, or performing such act, or having such article in his possession or custody or owning it, or being present at such place or entering it, if he were not the holder of a licence, permit, permission or other authorisation or qualification (referred to in this section as the necessary authorisation), to carry on such occupation or business or to perform such act or to have such article in his possession or custody or to own it or to be present at such place or to enter it, he shall, if charged with having committed such offence, be deemed not to have been the holder of the necessary authorisation unless the contrary is proved. (Amended P.6/1956.)

Admissions.

272. (1) In any criminal proceedings the accused or his representative in his presence may admit any fact relevant to the issue, and any such admission shall be sufficient evidence of such fact.

(2) An admission made by an accused or his representative in his presence at a preparatory examination, which the magistrate presiding thereat noted on the record, may be proved at the subsequent trial of such accused by the production, by any person, of the documents purporting to constitute such record.

Impeachment and support of witness's credibility.

273. Any party in criminal proceedings may impeach or support the credibility of any witness called against him or on his behalf in any manner and by any evidence in and by which, if the proceedings were depending before the Supreme Court of Judicature in England, the credibility of such witness might be impeached or supported by him and in no other manner and by no other evidence whatever:

Provided that any such party who has called a witness who has given evidence in any such proceedings (whether such witness is or is not, in the opinion of the judicial officer presiding at such proceedings, adverse to the party calling him) may, after such party or such judicial officer has asked the witness whether he has or has not previously made a statement with which his testimony in the said proceedings is inconsistent, and after sufficient particulars of the alleged previous statement to designate the occasion when it was made, have been mentioned to the witness, prove that he previously made a statement with which such testimony is inconsistent.

Onus of proof in prosecutions under taxation laws.

274. If a person is charged with any offence whereof failure to pay any tax or impost to the Government, or failure to furnish any information to any public officer, is an element, he shall be deemed to have failed to pay such tax or impost or to furnish such information, unless the contrary is proved.

Cases not provided for by this Part.

275. In criminal proceedings, in any case not provided for in this Part, the law as to admissibility of evidence and as to the competency, examination, and cross-examination of witnesses in force in criminal proceedings in the Supreme Court of Judicature in England shall be followed in like cases by the courts of Swaziland and by magistrates holding preparatory examinations.

Saving as to special provisions in any other law.

276. This Part shall not be construed as modifying those provisions of any law whereby in any criminal matter specifically referred to or provided in such law a person is deemed a competent witness, or certain specified facts and circumstances are deemed to be evidence, or a particular fact or circumstance may be proved in a manner specified therein.

PART XIV

DISCHARGE OF ACCUSED PERSONS

Dismissal of charge in default of prosecution.

277. (1) If the prosecutor (whether public or private) in the case of a trial by the High Court has given notice of trial and does not appear to prosecute the indictment against the accused before the close of the session of the court before which he gave notice of trial or, in the case of a trial by a magistrate's court, does not appear on the court day appointed for such trial, the accused may move the court to discharge him and the indictment or summons may be dismissed, and, if the accused or any other person on his behalf has been bound by recognisance or the appearance of the accused so to take his trial, may further move the court that such recognisance be discharged, and such recognisance may thereupon be discharged.

(2) If the indictment is at the instance of a private party the accused may move the court that the private prosecutor and his sureties shall be called on their recognisance, and, in default of his appearance, that it be estreated.

(3) The accused may also apply for an order directing that such private prosecutor pay the costs incurred by the accused in preparing his defence.

(4) This section shall not be construed as depriving the Attorney-General, or the public prosecutor with his authority or on his behalf, of the right of withdrawal of any indictment or summons at any time before the accused has pleaded, and lodging a fresh indictment or issuing and serving a fresh summons for hearing before the same or any other competent court.

Liberation of accused persons.

278. (1) The High Court shall, at the close of each of its criminal sessions, discharge from custody all accused persons who are then in custody and by law are entitled to be discharged.

(2) Any person who has been acquitted on any indictment or summons in a magistrate's court or whose case has been dismissed for want of prosecution shall forthwith be discharged from custody.

General gaol delivery and returns.

279. For the purposes of sections 136 and 278, the High Court may have regard to any general gaol return delivered under the provisions of the Prison Act No. 40 of 1964, or any regulations made thereunder. (Amended P.37/1957.)

Discharge from imprisonment or expiration of recognisance no bar to trial.

280. Neither discharge from imprisonment nor the expiry of the recognisance shall be a bar to any person being brought to trial in any court for any offence for which he was formerly committed to prison or admitted to bail.

Accused not brought to trial not obliged to find further bail.

281. No person who has been admitted to bail and who has not been duly brought to trial or discharged from custody under section 278 shall be obliged to find further bail or shall be liable to be committed to custody either for examination or trial for the same offence in respect of which he was formerly admitted to bail:

Provided that notwithstanding the discharge of the accused from custody under section 278 or the expiry of his bail the Attorney-General may at any time before the period of prescription for such offence has run out, indict the accused in any court, and if such accused, having been duly served with such indictment and notice of trial, fails to appear at the time mentioned in such notice, the court in which he is indicted may, on the application of the Attorney-General, issue a warrant for the accused's arrest and detention in prison until he can be brought to trial or until he finds bail for his appearance to stand his trial on such indictment.

PART XV

PREVIOUS CONVICTIONS

Previous conviction not to be charged in indictment, etc.

282. It shall not be lawful in any indictment or summons against any person for any offence to allege that such person has been previously convicted of any offence whether in Swaziland or elsewhere.

Previous conviction not to be proved, etc., except in certain circumstances.

283. Except in circumstances specifically described in this Act, no person may prove at the trial of any accused for any offence that such accused has been previously convicted of any offence, whether within Swaziland or elsewhere, or ask any accused, charged and called as a witness, whether he has been so convicted.

Tendering admission of previous conviction after accused has pleaded guilty, or been found guilty.

284. If any person indicted before the High Court for any offence has been previously convicted of any offence, whether within Swaziland or elsewhere, the prosecutor may, if the accused has under section 72 admitted that he has been so previously convicted and his admission has also been subscribed by the magistrate in accordance with that section, and if further he has pleaded guilty to or been found guilty of such offence, and before sentence is pronounced, may tender the admission in proof of such previous conviction, and such admission shall be received by the court upon its mere production as proof of such previous conviction unless it is shown that such admission was not in fact duly made or that the signatures or marks thereto are not in fact the signatures or marks of the accused and the magistrate respectively:

Provided that if the accused made such admission under section 72 but refused to subscribe it by signature or mark, a solemn declaration signed by the magistrate and attached to the document signed by him under section 72, stating that such accused did so make the admission but refused to subscribe it shall, upon its mere production, be sufficient evidence that such accused admitted the previous conviction.

Notice that proof of former conviction will be offered.

285. (1) If any person indicted in the High Court for any offence has been previously convicted of any offence, whether within Swaziland or elsewhere, the Attorney-General in cases in which the procedure prescribed by section 72 has not been followed may give notice to him, that, in the event of his pleading guilty, or being found guilty of the offence for which he is indicted, proof will be given of such previous conviction.

(2) The period of notice required under this section shall not be less than seventy-two hours.

Mode of proof of previous conviction.

286. (1) If notice has been duly served on any person that evidence of a previous conviction will be given against him as provided in section 285, and such person pleads guilty, or has been found guilty, the prosecutor may before sentence is pronounced offer to prove such previous conviction, and thereupon the court shall ask such person whether he confesses that he is the person so appearing to have been previously convicted and whether he was so convicted as alleged.

(2) If such person neither confesses that he has been so convicted nor has admitted it at the preparatory examination in manner prescribed in section 72, the court shall itself proceed to determine the truth as to the alleged previous convictions which the accused has not so confessed or admitted.

(3) If the trial is before a magistrate's court the prosecutor may, after the accused has pleaded guilty, or has been found guilty, tender evidence of any previous convictions which he may allege in respect of such accused.

(4) Thereupon the court shall ask the accused whether he is the person so alleged to have been previously convicted and shall proceed to determine the truth as to any alleged previous convictions which the accused has not confessed or admitted.

(5) If on any trial any previous conviction is lawfully proved against the accused, or if he confesses or has admitted such previous conviction, the court shall take it into consideration in awarding sentence for the offence to which he has pleaded, or of which he has been found guilty.

Finger-print records to be prima facie evidence of previous conviction.

287. Notwithstanding anything in this Act, any finger-print or foot-print records, photographs or documents purporting to be certified under the hand of any officer having charge of the criminal records of Swaziland or of any other country, colony or territory (whether or not such records, photographs or documents were obtained under any law or regulation made under a law, and the person concerned was unable to prevent them being obtained) shall, if under this Act a previous conviction may be proved, be admissible in evidence before any court in proof of such previous conviction and shall be *prima facie* evidence of the facts in such records, photographs or documents set forth:

Provided that such records, photographs and documents shall be produced to the court by a policeman or prisons officer having the custody of them.

PART XVI

JUDGMENT ON CRIMINAL TRIAL

Withdrawing charges.

288. (1) If an indictment or summons containing more counts than one is framed against the same person, and a conviction has been obtained on one or more of them, the prosecutor may withdraw the remaining charge or charges.

(2) Such withdrawal shall have the effect of an acquittal on such charge or charges unless the conviction is set aside.

(3) In such event the court, subject to the order of the court setting aside such conviction, may, upon the application of the Attorney-General, proceed with the trial of the charge or charges so withdrawn.

Arrest of judgment.

289. (1) Any person convicted of an offence before the High Court, whether on his plea of guilty or otherwise, may, at any time before sentence, move such court to arrest judgment on the ground that the indictment does not disclose any offence.

(2) Upon hearing the motion the court may allow any amendment of the indictment which it might have allowed before verdict.

(3) The court may hear and determine such motion either forthwith or after any adjournment it considers necessary.

Decision may be reserved.

290. The court at which any person is tried for any offence may reserve the giving of its final decision on questions raised at the trial; and its decision whenever given shall be considered as given at the time of such trial.

Sentence in the High Court.

291. (1) If a motion in arrest of judgment is not made or is dismissed, the High Court may either pass sentence upon the offender forthwith or may discharge him on his recognisance, as hereinafter provided, conditioned that he shall appear and receive judgment at some future session of the court or when called upon.

(2) If sentence is not passed forthwith the presiding officer of the court may, at any subsequent sitting thereof at which such offender is present, pass sentence upon him.

Continuance of proceedings

291*bis*. Notwithstanding any law or provision to the contrary-

(a) where a presiding officer dies, resigns, the presiding officer's services are terminated or is for a just reason unable to continue with the trial, a re-trial, review, appeal, compliance with an order of a superior court, another judicial officer of that court may, at any stage of the proceedings, assume and continue the proceedings;

(b) the judicial officer, shall before continuing with the proceedings acquaint himself or herself with the recorded evidence and where the judicial officer deems it necessary, call or recall any witness; and

(c) the judicial officer may do any other thing that he or she may lawfully do to ensure that justice or the administration of justice is achieved.

Committal to High Court for sentence after conviction in a magistrate's court.

292. (1) If on the trial by a magistrate's court any person is convicted of an offence, the court, on obtaining information about his character and antecedents, is of opinion that they are such that a greater punishment should be inflicted for the offence than it has the power to inflict, such court may, for reasons to be recorded in writing on the record of the case, instead of dealing with him in any other manner, commit him in custody to the High Court for sentence.

(2) For the purpose of this section, the aggregate of consecutive sentences imposed upon any person, in case of conviction for several offences at one trial, shall be deemed to be a single sentence.

(Amended P.49/1964.)

Procedure on committal for sentence under section 292.

293. (1) If a magistrate's court commits a person for sentence under section 292, it shall forthwith send a copy of the record of the case to the High Court.

(2) Any person committed to the High Court for sentence shall be brought before the High Court at the next convenient session thereof or earlier if so directed by such court.

(3) If any person is brought before the High Court in accordance with subsection (2), such court shall enquire into the circumstances of the case and, if, after consideration of the record, it is satisfied of the accused's guilt, it shall thereafter proceed as if such person had pleaded guilty before it in respect of the offence for which he has been so committed.

(4) If the High Court, under this section, passes any sentence upon any person he shall be deemed to have been tried and convicted for the offence concerned before the High Court. (Amended P.49/1964.)

Provisions applicable to sentences in all courts.

294. (1) The judgment in every trial in any court shall be pronounced or the substance of such judgment shall be explained in open court either immediately after the termination of the hearing or without undue delay at some subsequent time, of which notice shall be given to the parties and their legal representatives, if any:

Provided that the whole judgment shall be read out if required either by the prosecution or defence: and,

Provided further, that in a case in the High Court any judgment written by a judge may be read by any magistrate or officer of such court if directed so to do.

(Amended P.49/1964.)

(2) A court may, before passing sentence, receive such evidence as it thinks fit in order to inform itself as to the sentence proper to be passed.

(3) Every warrant for the execution of any sentence passed in a criminal case by any court may be issued either by the officer who passed the sentence or by any judicial officer of such court, or in the case of the High Court by the registrar thereof.

(4) If, in a magistrate's court, sentence is not passed upon an offender forthwith upon his conviction, or if, by reason of any decision or order of the High Court on appeal, review or otherwise, it is necessary to add to or vary any sentence passed in a magistrate's court, or to pass sentence anew in such court, any judicial officer of such court may, if the judicial officer who convicted such offender or passed such sentence is not available within Swaziland, as the case may be, pass sentence on such offender after consideration of the evidence recorded and in the presence of such offender.

(Amended P.49/1964.)

Extenuating circumstances.

295. (1) If a court convicts a person of murder it shall state whether in its opinion there are any extenuating circumstances and if it is of the opinion that there are such circumstances, it may specify them:

Provided that any failure to comply with the requirements of this section shall not affect the validity of the verdict or any sentence imposed as a result thereof.

(2) In deciding whether or not there are any extenuating circumstances the court shall take into consideration the standards of behaviour of an ordinary person of the class of the community to which the convicted person belongs. (Amended P.47/1959.)

PART XVI

PUNISHMENTS

Nature of punishments.

296. (1) Sentence of death by hanging shall be passed by the High Court upon an offender convicted before or by it of murder, and sentence of death by hanging may be passed by such court upon an offender convicted before or by it of treason:

Provided that where a woman by any wilful act or omission causes the death of her child under the age of twelve months, but at the time of such act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to such child or by reason of the effect of lactation consequent upon the birth of such child, then, notwithstanding that the circumstances were such that but for this proviso the offence would have amounted to murder, she shall be guilty of culpable homicide and may be dealt with and punished accordingly:

Provided further that it shall not be lawful for sentence of death to be pronounced on or recorded against any person convicted of an offence punishable by death if in the opinion of the court such person was at the time of the commission of such offence under the age of eighteen years, but in lieu thereof the court shall sentence such person to be detained during His Majesty's pleasure, and if so sentenced he shall be detained in such place and under such conditions as His Majesty may direct, and whilst so detained shall be deemed to be in lawful custody; and, *

Provided also that where a court in convicting any person of murder is of the opinion that there are extenuating circumstances it may impose any sentence other than the death sentence. (Amended P.6/1956; P.47/1959; P.31/1962; L.N.38/1 967.)

(2) Subject to this Act or any other law or the common law the court may pass the following sentences on a convicted offender —

(*a*) imprisonment;

* See P.47/1959 providing sentence other than death sentence when extenuating circumstances have been found.

(*b*) declaration as an habitual criminal;

(*c*) fine;

(*d*) detention at a juvenile or juvenile adult reformatory or an industrial school subject to the Reformatories Act No. 82 of 1921;

(*e*) whipping;

(*f*) putting the accused under recognisance with conditions:

Provided that no child under the age of fourteen years shall be sentenced to imprisonment.

(3) This Act shall not be construed as —

(*a*) authorising any court to impose for any offence any sentence other than, or in excess of, the sentence which by law it is competent for such court to impose for that offence; or

(*b*) derogating from the authority specially conferred on any court by any law to impose any other punishment.

(4) The execution of any sentence of fine or of imprisonment with or without hard labour shall not be suspended by the obligation imposed by any law to transmit the record of the case for review, unless the person sentenced gives sufficient bail at a time or place on conditions specified by such law to pay the fine imposed upon him or to surrender himself in order to undergo imprisonment, as the case may be, if the proceedings in such case are approved.

(5) If under the sub-section (1) a person has been sentenced to be detained during His Majesty's pleasure, His Majesty may direct such person to be detained in a juvenile reformatory.

(6) If His Majesty has directed that any person to whom sub-section (5) applies be detained in a juvenile reformatory, the Reformatories Act No. 82 of 1921 shall in all respects apply to such person as if he had been sentenced by a court under section 3 of that Act to be detained in a juvenile reformatory.

(Amended P.47/1959; P.31/1962; P.49/1964.)

Sentence of death.

297. The form of the sentence to be pronounced upon a person who is convicted of an offence punishable with death and sentenced to death shall be that he be returned to custody and that he be hanged by the neck until he is dead.

Sentence of death upon a woman who is pregnant.

298. (1) If a woman convicted of an offence punishable with death is found under this section to be pregnant, the sentence to be passed on her shall be a sentence of imprisonment with hard labour instead of a sentence of death.

(2) If a woman convicted of an offence punishable with death alleges that she is pregnant, or if the court before which a woman who is so convicted thinks fit to order, the question whether or not she is pregnant shall, before sentence is passed on her, be determined by such court.

(3) The question whether such woman is pregnant or not shall be determined on such evidence as may be led before the court either on the part of such woman or on the part of the Crown, and the court shall find that the woman is not pregnant unless it is proved affirmatively to its satisfaction that she is pregnant.

(4) The rights conferred by this section on a woman convicted of an offence punishable with death shall be in substitution for the right of such woman to allege in stay of execution that she is quick with child.

Manner of carrying out death sentences.

299. (1) No sentence of death shall be carried into effect except upon the special warrant of His Majesty, who, after having taken the advice of the Committee on the Prerogative of Mercy under section 92 of the Constitution has decided not to exercise the prerogative of mercy vested in Him.

(2) Such special warrant shall be issued to the sheriff or his deputy who shall, as soon after the receipt of such special warrant as fitting arrangements for the carrying out of the sentence can be made, execute such special warrant in the place appointed therein:

Provided that the sheriff or his deputy shall not execute such warrant if at any time the Chairman of the Committee on the Prerogative of Mercy by written notice under his hand to the sheriff or deputy-sheriff intimates that His Majesty has decided to grant a pardon or reprieve to the person so sentenced or otherwise to exercise the Royal prerogative of mercy with regard to him.

(3) Any notice by the Chairman of the Committee on the Prerogative of Mercy under the proviso to subsection (2) shall be construed for all purposes as a cancellation of the warrant referred to in that subsection.*

(4) The power vested in the King by section 92 of the Constitution to pardon a convicted offender or to commute, remit or grant a respite of the execution of any sentence of any court of criminal jurisdiction may be exercised by written or telegraphic order addressed to the proper officer of such court or to any officer charged with the duty of executing or enforcing such sentence. (Section 299(4) taken from General Law and Administration Proclamation (*Cap*. 3) (section 13) as amended by L.N.38/1967 and L.N.8/1969.)

Cumulative or concurrent sentences.

300. (1) If a person is convicted at one trial of two or more different offences, or if a person under sentence or undergoing punishment for one offence is convicted of another offence, the court may sentence him to such several punishments for such offences or for such last offence, as the case may be, as it is competent to impose.

(2) If such punishment consists of imprisonment the Court shall direct whether each sentence shall be served consecutively with the remaining sentence.

(Amended P.49/1964.)

* See also sections 12 to 14 of Sheriff's Act 17 of 1902.

Discretion of the court as to the amount and nature of punishment.

301. (1) If any person is liable by law to a sentence of imprisonment for life or for any period he may be imprisoned for any shorter period. (Amended P.49/1964.)

(2) Any person liable by law to be sentenced to pay a fine of any amount may be sentenced to pay a fine of any lesser amount. (Amended P.56/1962.)

Habitual criminals.

302. (1) If any person has been convicted on more than one occasion of any offence mentioned in the Second Schedule, whether of the same or of a different kind, and whether in Swaziland or elsewhere, and is thereafter convicted within Swaziland by the High Court of any offence mentioned in the Second Schedule, he may be declared by the court to be an habitual criminal.

(2) The judge making any such declaration shall report thereon to the Chairman of the Committee on the Prerogative of Mercy for the information of His Majesty in such terms as he may deem fit.

(3) Subject to section 333, any person declared to be an habitual criminal shall be detained in a prison during His Majesty's pleasure.

(Amended P.47/1959.)

Imprisonment in default of payment of fines.

303. (1) If a court has convicted an offender of any offence punishable by a fine (whether with or without any other direct or alternative punishment) it may, in imposing a sentence of a fine upon such offender, impose, as a punishment alternative to such fine, a sentence of imprisonment, of any duration within the limits of its punitive jurisdiction:

Provided that, subject to sub-section (3), the period of such alternative sentence of imprisonment shall not, either alone or together with any period of imprisonment imposed as a direct punishment, exceed the longest period of imprisonment prescribed by any law as a punishment (whether direct or alternative) for such offence.

(2) If a court has imposed upon any offender a sentence of a fine without an alternative sentence of imprisonment, and such fine has not been paid in full or has not been recovered in full by a levy, the court which passed sentence on such offender may issue a warrant directing that he be arrested and brought before it, and may thereupon sentence him to such term of imprisonment as could have been imposed upon him as an alternative punishment, under subsection (1).

(3) If by any law passed before the commencement of this Act, a court is empowered to impose, upon a person convicted by such court of an offence, a sentence of imprisonment (whether direct or as an alternative to a fine) of a duration proportionate to the sum of a fine, such court may, notwithstanding such law, impose upon any person convicted of such offence, in lieu of a sentence of imprisonment which is so proportionate, any sentence of imprisonment within the limits of the court's punitive jurisdiction.

(Amended P.49/1964.)

Recovery of fine.

304. (1) If an offender is sentenced to pay a fine, the court passing the sentence may, in its discretion, issue a warrant addressed to the sheriff or messenger of the court authorising him to levy the amount by attachment and sale of any movable property belonging to such offender although such sentence directs that, in default of payment of a fine, the offender shall be imprisoned.

(2) The amount which may be levied under subsection (1) shall be sufficient to cover, in addition to such fine, the costs and expenses of such warrant and of the attachment and sale thereunder.

(3) Such warrant when issued by the High Court may be executed anywhere within Swaziland.

(4) Such warrant, if issued by a magistrate's court, shall authorise the attachment and sale of the movable property within the local limits of the jurisdiction of such magistrate's court, and also outside such limits if endorsed by a magistrate having jurisdiction in the place where the property is found.

(5) If the proceeds of sale of the movable property are insufficient to satisfy the amount of such fine, costs and expenses, the High Court may issue a warrant, or in the case of a sentence by any magistrate's court may authorise such magistrate's court to issue a warrant, for the levy of the amount unpaid against the immovable property of the offender.

(6) If an offender has been sentenced to pay a fine only or, in default of payment of such fine, imprisonment, and the court issues a warrant under this section, it may suspend the execution of the sentence of imprisonment and may release the offender upon his executing a bond with or without sureties as such court thinks fit, conditioned for his appearance before such court or some other court on the day appointed for the return to such warrant, being not more than fifteen days from the time of executing such bond; and if the amount of the fine is not recovered, the sentence of imprisonment shall be carried into execution at once.

(7) If an order for the payment of money has been made on non-recovery whereof imprisonment may be awarded and such money is not paid forthwith, the court may require the person ordered to make such payment to enter into a bond as prescribed in sub-section (6), and in default of his doing so may at once pass sentence of imprisonment as if such money had not been recovered.

(8) If an offender has been sentenced to pay a fine only or, in default of payment of such fine, imprisonment, and before the expiry of the period of such imprisonment any part of the fine is paid or levied, such period shall be reduced by a number of days bearing as nearly as possible the same proportion to the number of days to which such person is sentenced as the sum so paid and levied bears to the amount of such fine.

(9) Any amount which would reduce the imprisonment by a fractional part of a day shall not be received.

(10) No payment of any sum under this section need be accepted otherwise than during ordinary office hours.

Manner of dealing with convicted juveniles.

305. (1) Any court in which a person under the age of eighteen years has been convicted of any offence may, instead of imposing any punishment upon him for such offence [but subject to the second proviso to section 296(1)] order that he be placed in the custody of any suitable person designated in such order for a specific period:

Provided that such order may be made in addition to the imposition of a whipping: and,

Provided further that no order made in terms of this sub-section shall direct that the convicted person shall remain in the custody in which he has been placed after he attains the age of eighteen years.

(2) Any person who has been dealt with under sub-section (1) and who absconds from the custody in which he was placed may be apprehended without warrant by any policeman and shall be brought as soon as may be before a magistrate of the district in which he was apprehended.

(3) If any person is brought before a magistrate under sub-section (2) such magistrate shall, after questioning the absconding person as to the reason why he absconded, order either that he be —

(*a*) returned to the custody from which be absconded;

(*b*) placed in the custody of another person for the remaining period of the original order; or

(*c*) committed to prison for the remaining period of the order made under sub-section (1). (Amended P.6/1956.)

Sentence of whipping.

306. (1) When any male person over the age of 18 years is liable to be sentenced to be whipped, such punishment may be inflicted in addition to, or in substitution for, any punishment to which he is otherwise liable, and the number of strokes to be inflicted, not exceeding fifteen, shall, subject to any statute, be in the discretion of the court.

(2) The court shall specify in the sentence the number of strokes which are to be given.

(3) If a sentence of whipping is wholly or partially prevented on grounds of health from being executed, the offender shall be kept in custody until such sentence is revised by the court which passed it, and such court may in its discretion either remit the sentence of whipping or sentence the offender, in lieu of whipping, or in lieu of so much of the sentence of whipping as was not executed, to imprisonment not exceeding twelve months.

(4) Such imprisonment may be in addition to any other punishment to which such offender may have been sentenced for the same offence. (Amended P.49/1964.)

Sentence of whipping on male person under the age of eighteen.

307. (1) If any male person under the age of eighteen years is convicted of any offence, the court before which he is convicted may, in lieu of any other punishment or in addition to any other punishment except a discharge under section 311 or a fine and whether in the case of a first conviction or any subsequent conviction, sentence such person to receive in private a moderate correction of whipping not exceeding fifteen cuts with a light cane.

(2) Such correction shall be administered by such person and in such place as the court may appoint.

(3) The parent or guardian of such person shall have the right to be present. (Amended P.49/1964.)

Females not to be sentenced to whipping.

308. No female and no male person over the age of 40 years shall be sentenced by any court whatever to the punishment of whipping. (Amended K.O-I-C. 38/1975.)

Conditions to be fulfilled before whipping.

309. No punishment of whipping imposed by a court shall be carried out unless the sentence under which it was imposed has been reviewed under section 79 of the Magistrate's Courts Act, 1938 and such punishment shall be carried out privately in a convict prison or jail and in accordance with the regulations made under the law relating to prisons or jails.

(Amended A.1/1988.)

Recognisances to keep the peace and be of good behaviour.

310. (1) Any person convicted of an offence not punishable with death may, instead of or in addition to any punishment to which he is liable, be ordered to enter into his own recognisance, with or without sureties, in such amount as the court thinks fit to keep the peace and be of good behaviour for a time to be fixed by such court, and may be ordered to be imprisoned until such recognisance, with sureties, if so directed, is entered into:

Provided that the imprisonment for not entering into such recognisance shall, in no case, exceed one year.

(2) If any person is convicted of an offence involving assault or injury to the person, a magistrate's court may in lieu of or in addition to any other punishment, order him to give security to keep the peace and to refrain from committing any injury against the complainant for a period not exceeding three months.

(3) If any person after having been ordered to give such security under sub-section (2) refuses or fails to do so, the court may order him to be committed to gaol for a period not exceeding one month unless such security is sooner found.

(4) If the conditions upon which any recognisance or security under this section was given are not observed by the person who gave it, the court may declare such recognisance or security to be forfeited, and any such declaration or forfeiture shall have the effect of a judgment in a civil action in such court.

Recognisances to come up for judgment.

311. If a person is convicted of an offence not punishable with death, the court may instead of passing sentence, discharge him upon his entering into his own recognisances with or without sureties, in such sum as such court may think fit, to appear and receive judgment at some future sitting of the court or when called upon.

Payment of fine without appearance in court.

312. (1) If any person has been summoned or warned to appear in a magistrate's court or has been arrested or has been informed by a peace officer that it is intended to institute criminal proceedings against him for any offence, and an officer holding a rank or post to be designated by the **Prime Minister** from time to time for the purposes of this section by notice in the Gazette, has reasonable grounds for believing that the court which will try such person for such offence will, on convicting him of such offence, not impose a sentence of imprisonment or whipping or a fine exceeding **two thousand Emalangeni**, such person may sign and deliver to such officer a document admitting that he is guilty of such offence; and (Amended K.O-I-C. 23/1976.) (Amended, A.4/2004)

(*a*) deposit with such officer such sum of money as the latter may fix; or

(*b*) furnish to such officer such security as the latter deems sufficient;

for the payment of any fine which the court trying the case in question may lawfully impose therefor, not exceeding **two thousand Emalangeni** or the maximum of the fine with which such offence is punishable, whichever amount is the lesser; and such person shall, subject to subsection (8), thereupon not be required to appear in court to answer a charge of having committed such offence. (Amended K.O-I-C. 23/1976.); (Amended, A.4/2004)

(2) Such person may at any time before sentence is passed upon him under subsection (5) submit to any person in charge of the aforesaid document an affidavit setting forth any facts which he desires to bring to the notice of the court in mitigation of the punishment to be imposed for such offence, and such affidavit shall be submitted together with such document to the court which is to pass the sentence.

(3) An officer so designated, if he is not the public prosecutor attached to the court in which the offence in question is triable, shall, as soon as practicable after receiving a document referred to in sub-section (1), transmit it to such public prosecutor.

(4) If such public prosecutor has received any such document he shall transmit it to the clerk of such court:

Provided that before doing so he may report the matter to the Attorney-General and ask him for his directions thereon.

(5) After receiving such document the clerk of such court shall enter it in the criminal record book of such court and the person in question shall, subject to sub-section (8), there-upon be deemed to have been convicted by such court of such offence, and such court shall pass sentence upon such person in accordance with law:

Provided that such court may decline to pass sentence upon him and may direct that he be prosecuted in the ordinary course, and in that case, if such person has been summoned or warned in terms of sub-section (1), he shall be summoned afresh to answer any charge which the public prosecutor may prefer against him.

(6) If the court imposes a fine on such person such fine shall be paid out of any sum deposited under sub-section (1)(*a*), or if security has been given under sub-section (1)(*b*) and the fine has not been paid in accordance with the terms of such security, the latter, if corporal property, may be sold by public auction and the fine paid out of the proceeds of the sale:

Provided that if the whereabouts of such person are known, written notice of the intended sale and of the time and place thereof shall be given to him not less than three days before such sale takes place.

(7) If any balance remains of any such deposit or of the proceeds of any such sale, after payment of such fine, such balance shall be paid over to the person who made such deposit or gave such security, and if such deposit or such security is insufficient to pay the fine imposed, the balance remaining due shall be recovered from the person upon whom such fine was imposed in manner provided in this Act.

(8) At any time before sentence has been passed upon the person in question under sub-section (5), the Attorney-General may direct that no action be taken in the matter under sub-sections (5), (6) and (7), but that such person be brought to trial in the ordinary manner:

Provided that in such case, if such person has been summoned or warned in terms of sub-section (1), he shall be summoned afresh to answer any charge which the Attorney-General may direct.

(9) If at the conclusion of the trial referred to in sub-section (8) the person tried is sentenced to pay a fine, sub-sections (6) and (7) shall apply.

(10) If at the conclusion of any proceedings against any person under this section, no fine is imposed upon him, the money or security deposited by or on behalf of such person shall be returned to the person who made the deposit.

Powers as to postponement and suspension of sentences.

313. (1) If a person is convicted before the High Court or any magistrate's court of any offence other than one specified in the Third Schedule, the court may in its discretion postpone for a period not exceeding three years the passing of sentence and release the offender on one or more conditions (whether as to compensation to be made by the offender for damage or pecuniary loss, good conduct or otherwise) as it may order to be inserted in recognisances to appear at the expiry of such period, and if at the end of such period the offender has observed all the conditions of such recognisances, it may discharge him without passing any sentence.

(2) If a person is convicted before the High Court or any magistrate's court of any offence other than one specified in the Third Schedule, it may pass sentence, but order that the operation of the whole or any part of such sentence be suspended for a period not exceeding three years, which period of suspension, in the absence of any order to the contrary, shall be computed in accordance with sub-sections (4) and (5) respectively.

(3) Such order shall be subject to such conditions (whether as to compensation to be made by the offender for damage or pecuniary loss, good conduct or otherwise) as the court may specify therein.

(4) The period during which any order for the suspension of a part of a sentence, made under sub-section (2) and affecting a sentence of imprisonment, shall run, shall commence on the date upon which the person convicted was lawfully discharged from prison in respect of the unsuspended portion of such sentence, or if not then discharged because such person has to undergo any other sentence of imprisonment, such period shall commence upon the date upon which such person was lawfully discharged from prison in respect of such other sentence and if any portion of such other sentence is itself suspended, the periods of suspension of all such sentences shall, in the absence of any order to the contrary, run consecutively in the same order as the sentences.

(5) The period during which any order for the suspension of the whole of a sentence of imprisonment shall run, shall if the convicted person is —

(*a*) not serving another sentence, commence from the date from which the sentence wholly suspended was expressed as taking effect, or took effect; and

(*b*) serving another sentence commence from the date of expiry of such sentence including any period thereof which may be subject to an order of suspension.

(6) If during the period of suspension of the whole of a sentence the convicted person is sentenced to imprisonment, the portion then remaining of the sentence wholly suspended shall be deemed to be consecutive to the sentence of imprisonment subsequently awarded.

(7) If the offender has, during the period of suspension of any sentence under this section, observed all the conditions specified in the order, the suspended sentence shall not be enforced. (Amended P.37/1957.)

Payment of fines by instalments.

314. (1) If a person is convicted before the High Court or any magistrate's court of any offence other than one specified in the Third Schedule, such court may in its discretion order that any fine imposed on such person be paid in instalments or otherwise on such date or dates, and during such period, not exceeding twelve months from the date of such order, as it may fix therein.

(2) If on such date or dates the offender has made all payments in accordance with the order of court, no warrant shall be issued committing the offender to prison to undergo any alternative imprisonment prescribed in the sentence in default of payment of such fine.

(Amended P.37/1957.)

Consequences of failure to comply with conditions of postponement or suspension of sentence.

315. (1) If the conditions of any order made, or recognisance entered into, under section 313 or 314 are alleged not to have been fulfilled, the local public prosecutor may, without notice to the offender, apply to any magistrate's court within the local limits of whose jurisdiction the offender is known or suspected to be, for a warrant for the arrest of such offender for the purpose of bringing him before the court to show cause why he shall not undergo the sentence which has been, or may be, lawfully imposed.

(2) Any application made under sub-section (1) shall be supported by evidence in the form of an affidavit or on oath, that the order or recognisance is still binding upon the offender and that such offender has failed, in a manner to be specified, to observe the conditions thereof.

(3) The court to which application is made under sub-section (1) may, if it is satisfied that the offender ought to be called upon to show cause why he shall not undergo the sentence which has been, or may be, imposed, grant a warrant for the arrest of such offender for the purpose of bringing him to court so to show cause.

(4) The court before which any offender appears in consequence of an application under sub-section (1), shall read, or cause to be read, to the offender, such application and the evidence given in support thereof, and shall thereupon call upon him to say whether he opposes such application.

(5) If such offender does not oppose the application and admits that he has not fulfilled the conditions of the order made, or recognisance entered into, the Court may order him to undergo the sentence which was, or is then, imposed upon him or may make an order under section 316 if the original order was made under section 313(2) or 314.

(5) If the offender denies the allegations and opposes the application, the court shall proceed to hear the matter in accordance with the principles generally applicable to criminal trials under this Act, and if it finds that such offender has not fulfilled the conditions of any order made, or recognisance entered into, it may thereupon order him to undergo the sentence which was, or is then, imposed upon him, or may make an order under section 316 if the original order was made under section 313(2) or 314. (Amended P.37/1957.)

Further postponement or deferment of sentence.

316. The court before which an offender appears may, if the original order related to the suspension of a sentence under section 313(2) or the payment of a fine by instalments or otherwise under section 314, and if the offender proves to the court's satisfaction that he has been unable through circumstances beyond his control to fulfil the conditions of such order, grant an order further suspending the operation of such sentence or further deferring payment of such fine, subject to such conditions as might have been imposed at the time the original order was made. (Amended P.37/1957.)

Magistrate's courts not to impose sentences of less than four days.

317. No person shall be sentenced by a magistrate's court to imprisonment for a period of less than four days, unless the sentence is that the offender be detained until the rising of the court.

Commencement of sentences.

318. Subject to sections 300(2) and 313, a sentence of imprisonment shall take effect from and include the whole of the day on which it is pronounced unless the court, on the same day on which sentence is passed, expressly orders that it shall take effect from some day prior to that on which it is pronounced. (Amended P.49/1964.)

Discharge with caution or reprimand.

319. If a person is convicted before the High Court or any magistrate's court of any offence other than one specified in the Third Schedule, such court may in its discretion discharge the offender with a caution or reprimand, and such discharge shall have the effect of an acquittal, except for the purpose of proving and recording previous convictions.

(Amended P.37/1957.)

Regulations as to probation, etc.

320. The Deputy Prime Minister may make regulations, not inconsistent with this Act relating to the powers and duties of persons (to be known as probation officers) to whom may be entrusted the care or supervision of offenders whose sentences of imprisonment have been suspended under this Act, the circumstances under which courts may entrust such care or supervision to probation officers, the conditions which shall be observed by such offenders while on probation and the varying of such conditions, and generally for the better carrying out of the objects and purposes of this Part.

PART XVIII

COSTS, COMPENSATION AND RESTITUTION

Court may order accused to pay compensation.

321. (1) If any person has been convicted of an offence which has caused personal injury to some other person, or damage to or loss of property belonging to some other person, the court trying the case may, after recording the conviction and upon an application made by or on behalf of the injured party, forthwith award him compensation for such injury, damage or loss:

Provided that the amount so awarded shall not exceed the civil jurisdiction of such court. (Amended K.O-I-C. 19/1975.)

(2) For the purposes of determining the amount of compensation or the liability of the accused therefor, the court may refer to the proceedings and evidence at the trial or hear further evidence either upon affidavit or verbal, or the amount of compensation may be awarded by the court in accordance with an agreement reached between the person convicted and the person to be compensated. (Amended P.49/1964.)

(3) The court may order a person convicted upon a private prosecution to pay the costs and expenses of such prosecution in addition to any sum awarded under subsection (1):

Provided that if such private prosecution was instituted after a certificate by the Attorney-General that he declined to prosecute, the court may order the costs thereof to be paid by the Government.

(4) If a court has made any award of compensation, costs or expenses under this section and such award has been accepted by the person in whose favour it has been made, such award shall have the effect of a civil judgment of such court.

(Amended P.49/1964; K.O-I-C. 19/1975.)

(5) Any costs so awarded shall be taxed according to the scale, in civil cases, of the court which made the award.

(6) If any moneys of the accused have been taken from him upon his apprehension, the court may order payment in satisfaction or on account of the award, as the case may be, to be made forthwith from such moneys.

(7) Any person against whom an award has been made under this section shall not be liable at the suit of the person in whose favour an award has been so made, and who has accepted such award, to any other civil proceedings in respect of the injury for which compensation has been awarded. (Amended P.37/1957.)

Compensation to innocent purchaser of stolen property.

322. If any person has been convicted of theft or of any offence whereby he has unlawfully obtained any property, and it appears to the court by the evidence that he sold such property or part of it to any person who had no knowledge that it was stolen or unlawfully obtained, and that money has been taken from the convicted person on his apprehension, the court may, on the application of such purchaser and on restitution of such property to its owner, order that, out of the money so taken from the prisoner and belonging to him, a sum, not exceeding the amount of the proceeds of the sale, be delivered to such purchaser.

Restitution of stolen property.

323. (1) If any person is convicted of theft or receiving stolen property knowing it to have been stolen, or otherwise unlawfully obtaining any property, such property may be restored to the owner or his representative on application by him to the court.

(2) In every such case the court before which such person is tried for any such offence may from time to time award writs of restitution in respect of such property or order the restitution thereof in a summary manner.

(3) If it appears, before any award is made, that any valuable security has been *bona fide* paid or discharged by any person liable to the payment thereof or, being a negotiable instrument, has been *bona fide* taken or received by transfer or delivery by any person for a just and valuable consideration without notice or without any reasonable cause to suspect that it had by any offence been stolen or otherwise unlawfully obtained, or if it appears that the property so stolen or received or otherwise unlawfully obtained has been transferred to an innocent purchaser for value who has acquired a lawful title thereto, the court shall not award or order the restitution of such security or property.

Return of exhibits, etc.

324. (1) After the conclusion of any trial and subject to any special provision contained in any law, the court may make a special order as to the return to the person entitled thereto of the property in respect of which the offence was committed or of any property seized or taken under this Act or produced at such trial.

(2) If no such order is made the property shall, on application, be returned to the person from whose possession it was obtained (unless it was proved during the trial that he was not entitled to such property) after deduction of the expenses incurred since the conclusion of such trial in connection with the custody of such property:

Provided that if within a period of three months after the conclusion of the trial no application is made under this section for the return of the property, or if the person applying is not entitled thereto or does not pay such expenses, such property shall vest in the Government.

(3) The court convicting any person of any offence which was committed by means of any weapon, instrument or other article produced to it may, if it thinks fit, declare such weapon, instrument or other article to be forfeited to the Government.

(4) The court convicting any person of any offence specified in Part I of the First Schedule who was arrested while in possession or custody of any vehicle or receptacle used in the conveyance of or containing any article or substance in connection wherewith such offence was committed may, if it thinks fit, declare such vehicle or receptacle, or the convicted person's right thereto, to be forfeited to the Government:

Provided that such declaration shall not affect any rights which any person other than the convicted person may have to the vehicle or receptacle in question if it is proved that he did not know that it was being used or would be used for the conveyance of, or as a receptacle for, the said article or substance, or that he could not prevent such use.

(5) During the trial resulting in any such declaration of forfeiture and at any time after the making of such declaration, the court which is holding or which held the trial may enquire into and determine any person's rights to the vehicle or receptacle in question; and if such determination is adverse to any person, he may appeal therefrom as if it were a conviction by the court making the determination, and such appeal may be heard either separately or jointly with an appeal against the conviction as a result whereof such forfeiture was declared, or against a sentence imposed as a result of such conviction.

(6) If any such declaration is set aside or varied after the sale, on behalf of the Government, of the vehicle or receptacle or rights declared to be forfeited, the person whose rights were upheld by the setting aside or variation of such declaration may, at his option, enforce such rights against any person in possession or custody of the vehicle or receptacle in question, or claim from the Government an amount equal to the value of such rights not exceeding the proceeds of the sale of such rights.

Miscellaneous provisions as to awards or orders under this Part.

325. (1) Any award or order of restitution made under this Part may be made subject to the applicant giving security *de restituendo* in case the award or order be reversed on appeal or review.

(2) The court may in any case refer a party applying for compensation under this Part to his remedy under the ordinary law.

(3) If any such award or order is made against two or more persons it shall be joint and several.

PART XIX

APPEALS

When execution of sentence may be suspended.

326. The execution of the sentence of a magistrate's court shall not be suspended by reason of any appeal against a conviction, unless the —

(*a*) sentence is that the accused be whipped, in which case the sentence shall not be executed until such appeal has been heard and decided; or

(*b*) court from which the appeal is made thinks fit to order that the accused be admitted to bail, or, if he is sentenced to any punishment other than simple imprisonment, that he be treated as an unconvicted prisoner until such appeal has been heard and decided:

Provided that, if the accused is ultimately sentenced to imprisonment, the time during which he is so released on bail shall be excluded in computing the term for which he is so sentenced: and

Provided further that any time during which the accused has been detained as an unconvicted prisoner under this Act shall be included or excluded in computing the term for which he is ultimately sentenced, as the Appeal Court may determine.

Powers of Appeal Court.

327. In any appeal against a conviction the Court of Appeal may without prejudice to the exercise by such court of its powers under section 82 of the Subordinate Courts Proclamation (*Cap*. 20) and under section 5 of the High Court Act No. 20 of 1954 —

(*a*) confirm the judgment of the court below, in which case if the accused, having been convicted and admitted to bail, is in court, the Appeal Court may forthwith commit him to custody for the purpose of undergoing any punishment to which he may have been sentenced;

(*b*) order the judgment to be set aside notwithstanding the verdict, which order shall have for all purposes the same effect as if the accused had been acquitted;

(*c*) give such judgment as ought to have been given at the trial; or impose such punishment (whether more or less severe than or of a different nature from the punishment imposed by the court below) as ought to have been imposed at the trial; or,

(*d*) make such other order as justice may require:

Provided that notwithstanding that the appeal court is of the opinion that any point raised might be decided in favour of the accused, no conviction or sentence shall be set aside or altered by reason of any irregularity or defect in the record or proceedings, unless it appears to such appeal court that a failure of justice has in fact resulted therefrom.

(Amended P.49/1964.)

Order of court to be certified.

328. The order or direction of the appeal court shall be certified under the hand of the presiding judge to the registrar of the court before which the case was tried, and such order or direction shall be carried into effect and shall authorise every person affected by it to do whatever is necessary to carry it into effect.

PART XX

PARDON AND COMMUTATION

Saving of Royal prerogative of mercy.

329. The power at any time to commute or remit any sentence of any court of criminal jurisdiction now or hereafter established in Swaziland, or to grant a pardon either free or subject to lawful conditions of any offender convicted by any such court, is vested in His Majesty under section 91 of the Constitution.

His Majesty may commute sentence.

330. (1) If His Majesty extends mercy conditionally to any offender under sentence of death, He may, without the consent of such offender, commute the punishment to any other punishment provided by law.

(2) Any such commutation shall be signified in the form of an order that the offender be punished in the manner directed by His Majesty, and such offender shall thereupon be allowed the benefit of such conditional pardon.

(3) Such allowance and order shall have the effect of a valid sentence passed by the court before which such offender was convicted.

Effect of free pardon.

331. A free or unconditional pardon by His Majesty shall have the effect of discharging the convicted person from the consequences of the conviction.

Conditional remission of sentence by His Majesty.

332. (1) If His Majesty extends mercy to an offender under sentence of imprisonment with or without hard labour, he may extend mercy upon condition that the offender enters into a recognisance conditioned as in the case of offenders discharged by the court upon suspension of the execution of a sentence.

(2) The offender shall thereupon be liable to the same obligations and to be dealt with in all respects in the same manner as a person discharged by the court on recognisance upon such suspension.

Release on probation and breach of fulfilment of conditions of release.

333. (1) Subject to section 302 His Majesty may order the release of an habitual criminal for any period and on any conditions which His Majesty may see fit to determine.

(2) If any such offender so released fails to observe any condition of such release he may be arrested and recommitted to prison by warrant under the hand of any magistrate and shall be detained in prison as if he had not been released by His Majesty; and such magistrate shall inform the Chairman of the Committee on the Prerogative of Mercy for the information of His Majesty, of the fact of such recommittal.

(3) If any offender so released complies with all the conditions of his release during the whole of any period of time which may be required of him as a condition of release, he shall, save for the purpose of proof and recording of previous convictions, be no longer deemed an habitual criminal or liable to suffer any other punishment in respect of the conviction upon which he was declared to be an habitual criminal. (Amended P.37/1957.)

PART XXI

GENERAL AND SUPPLEMENTARY

How documents are to be served.

334. (1) Unless some period is expressly provided, any notice or document, except a summons to an accused person, required to be served upon an accused person shall be served by delivering it to the accused at least ten days before the day specified therein for his trial if his trial is before the High Court, or at least two days (Sundays and Public Holidays excluded) before such day if his trial is before a magistrate's court, or, if the accused cannot be found, by leaving a copy of such notice or document with an adult member of his household at his dwelling, or, if no adult person belonging to his household can be found, then by affixing such copy to the principal outer door of such dwelling or of any place where he actually resides or was last known to reside.

(2) If the accused has been admitted to bail any such notice or document may either be served upon him personally or left at the place specified in the recognisance as that at which any notice of trial and service of the indictment or summons may be made.

(3) The officer serving any such notice shall forthwith deliver or transmit to the official from whom he has received the notice or document for service a return of the mode in which service was made, and such return shall be *prima facie* evidence that the service of the notice or document was made in manner and form stated in the return.

(4) Police officers may, subject to the rules of court, serve any notice or document under this Act as if they had been appointed deputy-sheriffs or deputy-messengers or other like officers of the court.

(Amended P.49/1964.)

Person making a statement in a criminal case entitled to copy.

335. If a person has made to a peace officer a statement in writing, or a statement which was reduced to writing, relating to any transaction, and criminal proceedings are thereafter instituted in connection with such transaction, any person in possession of such statement shall furnish the person who made the statement, at his request, with a copy thereof.

Mode of proving service of process.

336. If it is necessary to prove the service of any summons, subpoena, notice, or other process, or the execution of any judgment or warrant under this Act, the service or execution may be proved by affidavit made before a justice or commissioner for oaths having jurisdiction to take affidavits in the district wherein the affidavit is made or in any other manner in which such service or execution might have been proved if it had been effected in the district or other area wherein such summons, subpoena, notice or other process or judgment or warrant emanated.

Transmission of summonses, writs, etc., by telegraph.

337. Any summons, writ, warrant, rule, order, notice or other process, document, or communication, which by any law, rule of court, or agreement of parties is required or directed to be served or executed upon any person, or left at the house or place of abode or business of any person, in order that such person may be affected thereby, may be transmitted by telegraph, and a telegraphic copy served or executed upon such person, or left at his house or place of abode or business, shall be of the same force and effect as if the original had been shown to, or a copy thereof served or executed upon, such person, or so left, as the case may be.

Liability to punishment in case of offences by corporate bodies, partnerships, etc.

338. (1) In any criminal proceedings under any statute or statutory regulation or at common law against a company, the secretary and every director or manager or chairman thereof in Swaziland may, unless it is otherwise directed or provided, be charged with the offence and shall be liable to be punished therefor, unless it is proved that he did not take part in the commission of such offence, and that he could not have prevented it.

(Amended P.6/1956.)

(2) In any such proceedings against a local authority, the mayor, chairman, town clerk, secretary or other similar officer shall, unless it is otherwise directed or provided, be liable to be so charged, and in like circumstances punished for the offence.

(3) In any such proceedings against a partnership, every member of such partnership who is in Swaziland shall, unless it is otherwise directed or provided, be liable to be so charged, and in like circumstances punished for the offence.

(4) In any such proceedings against any association of persons not specifically mentioned in this section, the president, chairman, secretary, and every other officer thereof in Swaziland shall, unless it is otherwise directed or provided, be liable to be so charged, and in like circumstances punished for the offence.

(5) This section shall not be deemed to exempt from liability any other person guilty of the offence.

(6) In any criminal proceedings against a corporate body, any record which was made or kept by a director, servant or agent of such corporate body within the scope of his activities as such, or any document which was at any time in the custody or under the control of any such director, servant or agent within the scope of his activities as such, shall be admissible in evidence against the accused.

(7) For the purposes of sub-section (6) any record made or kept by a director, servant or agent of a corporate body or any document which was at any time in his custody or control shall be presumed to have been made or kept by him or to have been in his custody or control within the scope of his activities as such, unless the contrary is proved.

(8) In any proceedings against a director or servant of a corporate body in respect of any offence, any evidence which would be or was admissible against such corporate body in a prosecution for such offence, shall be admissible against him.

(9) In this section —

"director" in relation to a corporate body means any person who controls or governs that corporate body or who is a member of a body or group of persons which controls or governs that corporate body or where there is no such body or group, who is a member of that corporate body. (Amended P.6/1956.)

Provisions as to offences under two or more laws.

339. (1) If an act or omission constitutes an offence under two or more statutes or is an offence against a statute and the common law, the offender shall, unless the contrary intention appears, be liable to be punished under either statute, or (as the case may be) under the statute or the common law, but shall not be liable to more than one punishment for the act or omission constituting such offence.

(2) In this section —

"statute" includes a statutory regulation.

(Amended P.49/1964.)

Estimating age of person.

340. If in any criminal proceedings the age of any person is a relevant fact of which no or insufficient evidence is available in such proceedings, the court may estimate the age of such person by his appearance or from any information which may be available, and the age so estimated shall be deemed to be such person's correct age, unless —

(*a*) it is subsequently proved that the said estimate was incorrect; and,

(*b*) the person accused in such proceedings could not have been lawfully convicted of the offence with which he was charged if such person's correct age had been proved.

Binding over of persons to keep the peace.

341. (1) If a complaint on oath is made to a magistrate that any person is conducting himself violently towards or is threatening injury to the person or property of another or that he has used language or behaved in a manner towards another likely to provoke a breach of the peace or assault, then, whether such conduct occurred or such language was used or such threat was made in a public or private place, such magistrate may order such person to appear before him, and if necessary may cause him to be arrested and brought before him.

(2) The magistrate shall thereupon enquire into and determine upon such complaint and may place the parties or any witnesses thereat on oath, and may order the person against whom the complaint is made to give recognisances with or without sureties in an amount not exceeding fifty rand for a period not exceeding six months to keep the peace towards the complainant and refrain from doing or threatening injury to his person or property.

(3) The magistrate may, upon the enquiry, order the person against whom the complaint is made or the complainant to pay the costs of and incidental to such enquiry.

(4) If any person after having been ordered to give recognisances under this section refuses or fails to do so, the magistrate may order him to be committed to gaol for a period not exceeding one month unless such security is sooner found.

(5) If the conditions upon which the recognisances were given are not observed by, the person who gave them, the magistrate may declare such recognisances to be forfeited and any such declaration of forfeiture shall have the effect of a judgment in a civil action in the magistrate's court of the district.

The taking of fingerprints, palm prints, specimen for analysis of blood, etc.

342. (1) Any police officer may take or cause to be taken the handwriting specimens or the fingerprints, palm prints or footprints of any person arrested upon any charge punishable with imprisonment and may make or cause to be made available for such person for identification in such condition, position or apparel as such police officer may determine, and the medical officer of any prison or any district surgeon, or registered medical practitioner or duly qualified nurse acting on the instructions of a police officer, or (except in the case of a woman) any police officer may take or cause to be taken such steps, including (except in the case of a police officer) any specimen for analysis of blood as he may deem necessary in order to ascertain whether the body of such person bears any mark, characteristic or distinguishing feature or shows any condition or appearance. (Amended A.14/1991.)

(2) A magistrate holding a preparatory examination or a court trying any charge may order that the handwriting specimens or the fingerprints, palm prints and footprints of the accused be taken, and may order that all such steps be taken (including the arrangements for the taking of a specimen of blood for analysis) as may by such magistrate or court be deemed necessary to ascertain whether the body of the accused bears any mark, characteristic or distinguishing feature or shows any condition or appearance, or to ascertain the state of health of the accused. (Amended A.14/1991.)

(3) The court which has convicted a person on any charge or any magistrate may order that the fingerprints, palm prints or footprints of such person be taken.

(4) A magistrate who has committed any person for trial or sentence after the conclusion of a preparatory examination may, at the request of the public prosecutor, order that the fingerprints, palm prints or footprints of such person be taken.

(5) Any handwriting specimens, fingerprints, palmprints or footprints and the records of any steps taken under this section shall be destroyed if the person concerned is found not guilty at his trial or his conviction is set aside or the Director of Public Prosecutions declines to prosecute him under section 86(1(*a*):

Provided that any handwriting specimen or print made or taken under this section previous to the occurrence which is the subject of criminal proceedings may, if no order exists for the destruction of such handwriting specimen, print or record, be used as evidence in a criminal trial. (Amended A.14/1991.)

(6) Any person who, without reasonable excuse, fails to permit a specimen of blood to be taken from his body for analysis in terms of this section shall be guilty of an offence, and, on conviction, liable to a fine not exceeding four hundred rand or, in default of payment thereof, imprisonment not exceeding twelve months or both, and, in addition, if he was within a reasonable period preceding the commission of this offence driving or attempting to drive a motor vehicle on a public road or other public place or occupying a driver's seat of a motor vehicle, the engine whereof was running at the time, while it was on a public road or other public place, the court shall have the powers conferred on it by the Road Traffic Act No. 6 of 1965.

Evidence of handwriting, fingerprints, etc., of an accused.

343 (1) If it is relevant or if it may, in the opinion of the Court, become relevant to ascertain whether a handwriting, fingerprint, palmprint or footprint of an accused person corresponds to any other handwriting, fingerprint, palmprint or footprint, or whether the body of the accused bears or bore any mark, characteristic or distinguishing feature; or shows or showed any condition or appearance, evidence of such accused's handwriting, fingerprints, palmprints or footprints or of the fact that his body bears or bore any mark, characteristic or distinguishing feature, or shows or showed any condition or appearance (including the result of any blood test) that may be so relevant, shall be admissible in evidence.

(2) Such evidence shall not be rendered inadmissible by the fact that the handwriting specimen, fingerprint, palmprint or footprint was taken, or the marks, characteristic feature or condition or appearance was ascertained, otherwise than in terms of section 342 or against the wish of the accused.

(3) Any record from a handwriting or fingerprint bureau, whether within or outside Swaziland, produced by the person appointed to the charge of such bureau which purports to be the record of a handwriting, fingerprint, palmprint or footprint of the accused shall be admissible and accepted as *prima facie* evidence of the facts stated in such record.

(Amended A.14/1991.)

Breath tests.

344. (1) For the purpose of this section —

"breath test" means a test for the purpose of obtaining an indication of the proportion of alcohol in a person's blood carried out by means of a device approved for the purpose by the Minister of Health, on a specimen of breath provided by such person;

"motor vehicle" shall have the same meaning as in the Road Traffic Act No. 6 of 1965.

(2) A description of the device so approved shall be published in the Gazette.

(3) Any police officer may require any person reasonably suspected by him of having alcohol in his body, and —

(*a*) suspected by him of having committed any offence punishable by imprisonment;

(*b*) driving or attempting to drive a vehicle on a public road or other public place; or

(*c*) occupying the driver's seat of a motor vehicle, the engine whereof is running, whilst it is on a public road or other public place;

to provide a specimen of breath for a breath test there or at such place near to it as may be practicable, including a hospital or police station:

Provided that no requirement shall be made under paragraph (*a*) unless it is made as soon as reasonably practicable after the commission of the offence: and

Provided further that a person shall not be required to provide a specimen while at a hospital as a patient without the consent of the medical practitioner in immediate charge of him, or if his condition as a result of injuries sustained or ill-health is such that such test may prove dangerous or prejudicial to his health.

(4) Any person who, without reasonable excuse, fails to provide a specimen of breath for a breath test under this section shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred rand or, in default of payment thereof, imprisonment not exceeding six months, or both.

FIRST SCHEDULE

PART I

OFFENCES IN CONNECTION WHEREWITH VEHICLES AND RECEPTACLES MAY BE SEIZED AND CONFISCATED UNDER SECTIONS 51 AND 324

Any offence under any law relating to the illicit possession, conveyance or supply of habit-forming drugs or intoxicating liquor.

Any offence under any law relating to the illicit possession of or dealing in precious metals or precious stones.

Any offence under any law relating to the illicit acquisition, dealing in, importation or possession of arms and ammunition.

(Amended P.49/1964.)

PART II

OFFENCES REFERRED TO IN RESPECT OF WHICH ARRESTS MAY, UNDER PART V, BE MADE WITHOUT WARRANT

Treason.

Sedition.

Murder.

Culpable homicide.

Rape, or any statutory offence of a sexual nature against a girl of or under a prescribed age.

Sodomy and bestiality.

Indecent assault.

Robbery.

Assault in which a dangerous wound is inflicted.

Arson.

Breaking or entering any premises with intent to commit an offence either at common law or in contravention of any statute.

Theft, either at common law or as defined by any statute.

Receiving any stolen goods or property knowing the same to have been stolen.

Fraud.

Forgery or uttering a forged document knowing it to be forged.

Offences against the laws for the prevention of illicit dealing in or possession of precious metals, precious stones or relating to the illicit possession, conveyance or supply of habit-forming drugs.

Offences relating to the coinage.

Offences the punishment whereof may be a period of imprisonment, exceeding six months.

Any conspiracy, incitement, or attempt to commit any of the above-mentioned offences.

(Amended P.6/1956; P.49/1964.)

SECOND SCHEDULE

OFFENCES, A SECOND OR SUBSEQUENT CONVICTION WHEREOF RENDERS THE OFFENDER LIABLE TO BE DECLARED AN HABITUAL CRIMINAL UNDER PART XVII

Rape or any statutory offence of a sexual nature against a girl of or under a prescribed age.

Robbery.

Assault with intent to commit murder, rape or robbery, or to do grievous bodily harm, or indecent assault.

Arson.

Fraud.

Forgery or uttering a forged document knowing it to be forged.

Offences relating to the coinage.

Breaking or entering any premises (whether at common law or in contravention of any statute) with intent to commit an offence.

Theft, either at common law or as defined by statute.

Receiving stolen property knowing the same to have been stolen.

Extortion or threats by letter or otherwise with intent to extort.

Offences described in any law for the suppression of brothels and the punishment of immorality.

Offences against the laws for the prevention of illicit dealing in or possession of precious metals, precious stones, or against any law relating to intoxicating liquor, or any law regulating the possession or disposal of arms or ammunition, or under any law relating to the illicit possession, conveyance or supply of habit-forming drugs.

Any conspiracy, incitement, or attempt to commit any of the above-mentioned offences. (Amended P.6/1956.)

THIRD SCHEDULE

OFFENCES ON CONVICTION WHEREOF THE OFFENDER CANNOT BE DEALT WITH UNDER SECTION 313

Murder.

Rape.

Robbery.

Any conspiracy, incitement or attempt to commit any of the above-mentioned offences.

FOURTH SCHEDULE

Offences referred to in sections 95 and 96.

Treason.

Murder.

Attempted murder involving the infliction of grievous bodily harm.

Sedition.

Rape.

Any offence referred to in section 2 of the Opium and Habit Forming Drugs Act, 1922 (Act 37 of 1922) or Section 12 of the Pharmacy Act, 1929 (Act 38 of 1929), if it is alleged that-

(a) the value of the substance in question is more than E 50 000; or

(b) the value of the substance in question is more than E 10 000 and that the offence was committed by a person, group of persons, syndicate or any enterprise acting in the execution or furtherance of a common purpose or conspiracy; or

(c) the weight, if it is cannabis or dagga (insangu) or such similar substance, is 15kg or more; or

(d) the number of tablets or capsules is thirty (30) or more;

(e) the offence was committed by any law enforcement officer or a member of the Umbutfo Swaziland Defence Force.

Any offence relating to the dealing in or smuggling of or illegal manufacturing of ammunition, firearms, explosives, armament or arms of war.

Any offence relating to exchange control, money laundering, corruption, extortion, fraud, forgery, uttering or theft-

(a) involving amounts of more than E 500 000; or

(b) involving amounts of more than E 100 000, if it is alleged that the offence was committed by a person, group of persons, syndicate or any enterprise acting in the execution or furtherance of a common purpose or conspiracy; or

(c) if it is alleged that the offence was committed by any law enforcement officer-

(i) involving amounts of more than E 10 000; or

(ii) as a member of a group of persons, syndicate or any enterprise acting in the execution or furtherance of a common purpose or conspiracy.

Indecent assault on a child under the age of 16 years.

An offence referred to in Part II of the First Schedule-

(a) and the accused has previously been convicted of an offence referred to in Part II of the first schedule; or

(b) which was allegedly committed whilst he or she was released on bail in respect of an offence referred to in Part II of the First Schedule.

(Added, A.4/2004)

FIFTH SCHEDULE

Offences referred to in sections 95 and 96.

Murder, when-

(a) it was planned or premeditated;

(b) the victim was-

(i) a law enforcement officer or judicial officer performing his or her functions as such, whether on duty or not, or a law enforcement officer or judicial officer who was killed by virtue of his or her holding such an position; or

(ii) a person who has given or was likely to give material evidence with reference to any offence referred to in Part II of the First Schedule;

(c) the death of the victim was caused by the accused in committing or attempting to commit or after having committed or having attempted to commit one of the following offences:

(i) rape; or

(ii) incest committed by one person with or on a baby, child or an adult person who is not a consenting party; or

(iii) robbery with aggravating circumstances; or

(d) the offence was committed by a person, group of persons or syndicates acting in the execution or furtherance of a common purpose or conspiracy.

Rape-

(a) when committed-

(i) in circumstances where the victim was raped more than once, whether by the accused or by any co-perpetrator or accomplice;

(ii) by more than one person, where such persons acted in the execution of a common purpose or conspiracy;

(iii) by a person who is charged with having committed two or more offences of rape; or

(iv) by a person knowing or having a reasonable foresight of the possibility that he has the acquired immune deficiency syndrome or the human immunodeficiency virus (HIV or AIDS);

(b) where the victim-

(i) is a girl under the age of 16 years;

(ii) is a physically disabled woman who, due to her physical disability, is rendered particularly vulnerable; or

(iii) is a mentally ill woman as contemplated in section 2 of The Mental Health Order, 1978 (K.O.I.C 20 of 1978)

(c) involving the infliction of grievous bodily harm.

Incest committed by one person with or on a body, child or an adult person who is not a consenting party

Robbery, involving-

(a) the use by the accused or any co-perpetrators or participants of a firearm;

(b) the infliction of grievous bodily harm by the accused or any of the co-perpetrators or participants; or

(c) the taking of a motor vehicle.

Indecent assault on a child under the age of 16 years, involving the infliction of grievous bodily harm.

Incest between consenting adult persons.

An offence referred to in the Fourth Schedule-

(a) and where the accused has previously been convicted of an offence referred to in the Fourth Schedule or this Schedule; or

(b) which was allegedly committed whilst he or she was released on bail in respect of an offence referred to in the Fourth Schedule or this Schedule."

(Added, A.4/2004)