Lesotho

Criminal Procedure and Evidence Act, 1981

Act 7 of 1981

Legislation as at 31 December 1981

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Criminal Procedure and Evidence Act, 1981
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To consolidate and amend the law relating to procedure and evidence in criminal cases.

ENACTED BY THE ASSEMBLY

1. Short title

This Act may be cited as the Criminal Procedure and Evidence Act 1981.

2. Application

This Act applies to all criminal proceedings instituted in respect of any offence at whatever time the offence may have been committed.

3. Interpretation

In this Act —

"**charge**" includes an indictment and a summons;

"**coin**" includes currency;

"**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, and includes a partnership, a firm, an association of persons, local government body, or any other association of persons.

[Act 25 of 1967]

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

"**court**" in relation to any matter dealt with under this Act, means the judicial authority which under this Act or any other law has jurisdiction in respect of that matter including a magistrate holding a preparatory examination, other than a court constituted under the Central and Local Court Proclamation 1938 or any law amending or replacing that Proclamation except for the purpose of Part II and III;

[Proclamation 62 of 1938]

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

"**district**" means the area within which a court has jurisdiction in accordance with any law establishing the area of that jurisdiction;

"**judicial officer**" includes a Judge of The High Court, magistrate, justice or any officer appointed to act in any of the above capacities;

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

"**magistrate**" means a person appointed or who is deemed to have been appointed, to be a magistrate in pursuance of the law relating to subordinate courts;

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

"**night**" when used in contradistinction today, means the space of time between sunset and sunrise;

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

"**peace officer**" includes a sheriff or a deputy sheriff, any officer, non-commissioned officer or trooper of a police force established under any law or of any body of persons carrying out under any law the powers, duties and functions of a police force in Lesotho, a gaoler or a warder of any prison or gaol, and any chief recognised as such under any law;

"**person**" "owner" and other like terms—

(a) when used in reference to property or acts, include a body corporate and any other association of persons capable of holding property or doing acts;

(b) when relating to property, include His Majesty and any department of Government;

"**policeman**" includes any commissioned officer, noncommissioned officer, trooper of a police force established under any law or of any body of persons carrying out under any law the powers, duties and functions of a police force in Lesotho;

"**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 owned;

"**public prosecutor**" includes any person delegated generally or specially by the Director of Public Prosecutions under this Act;

"**rules of court**" means rules in force under the High Court Act 1978 or the Subordinate Courts Proclamation 1938 as the case may be;

[Act 5 of 1978; Proclamation 58 of 1938]

"**subordinate court**" means a court constituted in pursuance of section 3 of the Subordinate Courts Proclamation 1938;

[Proclamation 58 of 1938];

"**telegraph**" includes transmission by radio telegraphy or radio telephone;

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

Part I – Criminal jurisdiction

4. Jurisdiction of subordinate courts

The jurisdiction of a subordinate court in respect of the trial of a person charged with an offence (whether as to the nature of the offence, the area within which it is alleged to have been committed, and the maximum punishment that may be imposed therefor, the review of and appeals against convictions and sentences of that court and the manner of enforcing the process, orders and sentences of that court) is as prescribed in the law relating to the powers and jurisdiction of that court and in this Act and in any other law or rule of law relating to the powers and jurisdiction of that court.

Part II – Prosecution at the public instance

A – Director of Public Prosecutions

5. Powers of Director of Public Prosecutions

The Director of Public Prosecutions may in any case in which he considers desirable so to do —

(a) institute and undertake criminal proceedings against any person before any court (other than a court-martial) in respect of any offence alleged to have been committed by that person;

(b) take over and continue any criminal proceedings which have been instituted or undertaken by any other person or authority including any proceedings instituted before the commencement of this Act; or

(c) discontinue in writing at any stage before judgment is delivered any criminal proceedings instituted or undertaken by himself or other person or authority.

6. Delegation to prosecute

(1) The powers of the Director of Public Prosecutions under section 5 may be exercised by him in person or by officers subordinate to him acting in accordance with his general or special instructions.

(2) The Director of Public Prosecutions may retain counsel for the purposes of conducting any criminal proceedings instituted or continued by him.

(3) The powers vested in the Director of Public Prosecutions by section 5 (b) and (c) shall be exercised by him to the exclusion of any other person or authority except that where any other person or authority has instituted criminal proceedings, nothing in this sub-section shall prevent the withdrawal of those proceedings by or at the instance of that person or authority and with the leave of the court.

(4) For the purposes of this section, any appeal from a judgment in criminal proceedings before any court, or any case stated or question of law reserved for the purpose of any such proceedings to any other court shall be deemed to be part of such proceedings except that the powers vested in the Director of Public Prosecutions by section 5 (c) shall not be exercised in relation to an appeal by a person convicted in criminal proceedings or to a case stated or a question of law reserved at the instance of such a person.

(5) In the exercise of the functions vested in him by subsection (3) the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority but nothing in this sub-section precludes a court from exercising jurisdiction in relation to any question whether the Director of Public Prosecutions has exercised those functions in accordance with law.

7. Presiding officer to appoint prosecutor in certain cases

(1) If through any cause the person 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 the court or examination shall, by writing under his hand, designate some fit and proper person for that occasion to prosecute or to appear, as the case may be.

(2) Where no fit and proper person is found under subsection (1), 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.

8. Exercise of power to discontinue prosecution

If a criminal proceeding is discontinued in pursuance of section 5 (c) before judgment is delivered and the accused has already pleaded to any charge he shall in such a case be entitled to a verdict of acquittal in respect of that charge.

9. Liberation of persons committed

The Director of Public Prosecutions may order the liberation of any person committed to prison for further examination, sentence or trial and a writing setting forth that the Director of Public Prosecutions sees no ground for prosecuting that person and subscribed by him shall be a sufficient warrant for that liberation.

10. Acquittal or conviction not bar to civil proceedings

Neither a conviction nor an acquittal following on any prosecution is 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 – Public prosecutor

11. Functions of public prosecutors

(1) Every public prosecutor in any court is a representative of the Director of Public Prosecutions, is subject to his instructions and is charged with the duty of prosecuting in that court every offence which that court has jurisdiction to try.

(2) Nothing in any law contained precludes the Director of Public Prosecutions from exercising his powers in respect of a court established under the Central and Local Courts Proclamation 1938.

[Proclamation 62 of 1938]

(3) Criminal Proceedings instituted in any subordinate court by any public prosecutor may be continued by any other public prosecutor.

(4) Whenever there is lodged with or made before a public prosecutor a sworn declaration in writing by any person disclosing that any other person has committed an offence chargeable in a subordinate court to which the public prosecutor is attached, he shall determine whether there are good grounds for prosecution or not except that —

(a) he may refer to the Director of Public Prosecutions the question whether to prosecute or not; and

(b) any other person may be specially authorised by the Director of Public Prosecutions to prosecute in the matter.

Part III – Private prosecutions

12. Private prosecution on refusal to prosecute

In every case where the Director of Public Prosecutions declines to prosecute for an alleged offence and issues a certificate *nolle prosequi* to that effect, 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 the offence, may prosecute in any court competent to try the offence, the person alleged to have committed it.

13. Certain persons entitled to prosecute

The following persons may prosecute under section 12 as private parties—

(a) a husband in respect of offences committed against his wife;

(b) the legal guardians or curators of minors or lunatics in respect of offences committed against their wards;

(c) the wife or children or, where there is no wife or child, any of the 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.

14. Private party to apply for warrant

Where, by virtue of the right of prosecution given to private parties, any private party desires to prosecute for any offence any person for whose liberation from prison any warrant has been issued by the Director of Public Prosecutions, such private party may apply to the magistrate within whose jurisdiction the 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 the magistrate shall make such order as to him seems right under the circumstances.

15. Certificate of refusal to prosecute

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

(2) In every case in which the Director of Public Prosecutions declines to prosecute he shall, at the request of the private party intending to prosecute, grant the certificate referred to in sub-section (1).

16. Recognisance by private prosecutor

No private party shall take any criminal proceedings under this Part until he—

(a) has, if the prosecution is in the High Court, deposited the sum of 100 maloti or entered into a recognisance in the sum of 100 maloti with sufficient sureties in the sum of 50 maloti each (to be approved by the High Court) as security that he will prosecute the charge against the accused to a conclusion without delay and

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

17. Failure of private prosecutor to appear

(1) If the prosecutor being a 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 the private party was prevented from appearing by circumstances beyond his control, in which case the court may adjourn the hearing of the case.

(2) In the event of the dismissal of a charge under subsection (1), the accused shall not be again liable for prosecution on the same charge by any private party but no such dismissal shall prevent the Director of Public Prosecutions, or a public prosecutor on the instructions of the Director of Public Prosecutions, from afterwards instituting a prosecution.

18. Mode of conducting private prosecutions

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 that the court may make when the prosecution is finally concluded.

19. Discontinuation of private prosecution

In the case of prosecution at the instance of a private party, the Director of Public Prosecutions or the public prosecutor may apply by motion to any court before which the prosecution is pending to stop further proceedings in the case in order that the prosecution for the offence may be instituted or continued at the public instance, and the court shall in every such case make an order in terms of the motion.

20. Payment of court process by private prosecutors

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

21. Costs of private prosecutions

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

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

(3) If the accused on a private prosecution is convicted the court convicting such accused may order that the costs of the private prosecutor be paid by the Crown.

(4) All costs which may be accorded in terms of this section shall, if the opposite party demands it, be taxed by the taxing master of the court awarding such costs.

Part IV – Prescription of offences

22. Prosecution barred by lapse of time

The right of prosecution for—

(a) murder shall not be barred by any lapse of time;

(b) any other offence, whether at the public instance or at the instance of a private party, shall, unless some other period is expressely provided by law, be barred by the lapse of 20 years from the time when the offence was committed.

(c) If after the lapse of 20 years there is a prosecution on a charge of murder, and after hearing the evidence the court finds that the accused would be guilty of a lesser crime such as culpable homicide on which a verdict is competent, the accused shall be entitled to be acquitted on such lesser crime by reason of lapse of time.

Part V – Arrests

A – Without warrant

23. Arrest by judicial officers

A judicial officer, who has knowledge of any offence by seeing it committed, may arrest the offender or by verbal order authorise other persons to do so and persons so authorised are empowered and required to follow the offender if he flees, and to execute the order on him out of the presence of the judicial officer.

24. Arrest by peace officer without warrant

Every peace officer and every other officer empowered by law to execute criminal warrants may arrest without warrant—

(a) every person who commits any offence in his presence;

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

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

25. When peace officer to arrest without warrant

(1) A peace officer may, without any order or warrant, arrest—

(a) any person having in his possession any implement of house-breaking, and not being able to account satisfactorily for such possession;

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

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

(d) any person reasonably suspected of being a deserter from His Majesty's Naval, Military or Air Forces or from Lesotho Mounted Police or Police Mobile Unit;

(e) any person who has been concerned in or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been concerned in any act committed any place outside Lesotho which if committed in Lesotho would have been punishable as an offence, and for which he is, under any law relating to extradition or fugutive offenders or otherwise, liable to be apprehended or detained in custody in Lesotho;

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

(g) any person reasonably suspected of committing or having committed an offence under any law governing the making, supplying, possession or conveyance of intoxicating liquor or any substance included in the Schedule of the Dangerous Medicines Act 1973 or the possession or disposal of arms and ammunition;

(h) any person reasonably suspected of being a prohibited immigrant in Lesotho for the purpose of any law regulating entry into or residence in Lesotho;

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

(j) any person reasonably suspected of being or having been in unlawful possession of stock or produce as defined in any law for the prevention of the theft of stock or produce.

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

26. Failure to give particulars on offence

(1) A peace officer may call upon —

(a) any person whom he has power to arrest;

(b) any person reasonably suspected of having committed an offence; or

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

to furnish the peace officer with his full name and address.

(2) If any person —

(a) fails on the demand to furnish his full name and address pursuant to sub-section (1), the peace officer making the demand may arrest him forthwith;

(b) furnishes the peace officer on demand under subsection (1) a name or address which the peace officer upon reasonable grounds suspects to be false, the peace officer may arrest and detain such person for a period not exceeding 24 hours until the name or address so furnished has been verified.

(3) Any person, who when called upon under sub-section (1) or (2) to furnish his name and address, fails to do so or furnishes a false or incorrect name or address is guilty of an offence and liable to 200 Maloti and to 3 months imprisonment.

27. Arrest by a private person for certain offences

(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 arrest without warrant or pursue the offender forthwith and every other private person to whom the purpose of the pursuit is made known may join and assist therein.

(2) Every person may arrest without warrant 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 the private person believes on reasonable grounds to have authority to arrest the escaping person for that offence.

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

28. Arrest by private person in case of affray

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

29. Owner of property to arrest

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

30. Arrest by private person on reasonable suspicion

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

31. Arrest of persons offering stolen property

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

32. Procedure after arrest

(1) No person arrested without warrant shall be detained in custody for a longer period than in all circumstances of the case is reasonable and such period shall, subject to subsection (2), unless a warrant has been obtained for further detention upon a charge of an offence, not exceed 48 hours, exclusive of the time necessary for the journey from the place of the arrest to the subordinate court having jurisdiction in the matter.

(2) Unless a person arrested without warrant is released by reason that no charge is to be brought against him, he shall as soon as possible, be brought before a subordinate court having jurisdiction upon a charge of an offence but if the magistrate of the court is temporarily absent, and there is no other magistrate available who has jurisdiction in the matter, that person may be detained in custody until the return of the first-mentioned magistrate or such other magistrate becoming available, whichever is earlier.

(3) Nothing in this section shall be construed as modifying Part VIII or any other law, whereby a person under detention may be released on bail.

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

B – With warrant

33. Warrant of apprehension

(1) Any judicial officer 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 Director of Public Prosecutions or by the public prosecutor or any commissioned officer of the police setting forth the offence alleged to have been committed and that, from information taken upon oath, there are reasonable grounds of suspicion against the person, or upon the information to the like effect of any person made on oath before the judicial officer issuing the warrant.

(2) A judicial officer shall not issue a warrant under subsection (1) except where —

(a) the offence charged has been committed within his area of jurisdiction; or

(b) the person against whom the warrant is issued was, at the time when it was issued, known, or suspected on reasonable grounds, to be within the area of jurisdiction of the judicial officer.

(3) Every warrant issued under this section 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.

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

34. Execution of warrants

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

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

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

35. Telegram stating issue of warrant

(1) A telegram from any officer of any court of 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 a sufficient authority to any peace officer for the arrest and detention of such person until a sufficient time, not exceeding 14 days, has elapsed to allow the transmission of the warrant or writ to the place where such person has been arrested or detained unless a judicial officer orders that he be discharged.

(2) A judicial officer may, upon cause show, order the further detention of any person arrested and detained under subsection (1) for a period, to be stated in the order, not exceeding 28 days from the date of the arrest of such person.

(3) Nothing in this section shall be construed as derogating from this Act or any other law whereby a person may be admitted to bail.

36. Arresting wrong person

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

(2) any person called on to assist the person making the arrest under sub-section (1) 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 any 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 the warrant.

37. Irregular warrant

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

(2) It shall be a question of law whether the facts of which there is evidence constitute ignorance or negligence under subsection (1) in his so believing the warrant or process to be good in law.

38. Tenor of warrant

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

C – General

39. Assistance by private persons to police

(1) Every male person between the ages of 16 and 60 is, when called upon by any policeman, authorised and required to assist the policeman in making any arrest which by law the policeman is authorised to make, of any person charged with or suspected of the commission of any offence, or to assist the policeman in retaining the custody of any person so arrested.

(2) A male person who, without reasonable excuse, refuses or fails to comply with sub-section (1) is guilty of an offence and liable to 100 maloti and to one month's imprisonment.

40. Entry by breaking to effect arrest

(1) Subject to sub-section (2) any peace officer or private person who is by law authorised or required to arrest any person known or suspected to have committed any offence, may break open for that purpose the doors and windows of, and may enter and search, any premises in which the person whose arrest is required is known or suspected to be.

(2) Any peace officer or private person shall not act under sub-section (1) unless he has previously failed to obtain admission after having audibly demanded entry and notified the purpose for which he seeks to enter the premises.

41. Method of arrest

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

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

(3) Whenever a woman is searched on her arrest, the search shall only be made by a woman and shall be made with strict regard to decency, and if there is no woman available for the search who is a member of the police force or is a prison officer, the search may be made by any woman specially named for the purpose by a peace officer.

42. Resisting arrest

(1) When 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 to having committed any of the offences mentioned in Part II of the First Schedule, attempts to make the 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 the peace officer or private person killing the person so fleeing or resisting such killing shall be deemed justifiable homicide.

(2) Nothing in this section shall give a right to cause the death of a person who is not accused or suspected on reasonable grounds of having committed any of the offences mentioned in Part II of the First Schedule, the offence of theft being limited for the purposes of this section, to theft in a dwelling house at night, and theft of stock or produce.

43. Retaking on escape

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 Lesotho.

44. Escaping from custody

(1) Any person who, having been arrested and being in lawful custody but not having yet been lodged in any prison, gaol, police cell or lock-up, escapes or attempts to escape from such custody is guilty of an offence and liable to 2 years' imprisonment.

(2) Any person rescuing or attempting to rescue from lawful custody and other person who has been arrested but is 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 escaped, is guilty of an offence and liable to 2 years' imprisonment.

45. Saving

Nothing in this part contained —

(a) shall be construed as taking away or diminishing any authority specially conferred by any other law to arrest, detain or put any restraints on any person;

(b) shall, save as is otherwise expressly provided, be construed as taking away of diminishing 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

46. Search warrants

(1) If it appears to a judicial officer 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 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; or

(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 are reasonable grounds for believing that it is intended to be used for the purpose of any offence,

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

(2) Any warrant issued under this section shall be executed by day unless a judicial officer by a warrant specially authorises it to be executed by night, in which case it may be so executed, and in searching of any woman section 41 (3) *mutatis mutandis* applies;

(3) A warrant may be issued and executed on Sunday as on any other day under this section.

47. Search by police without warrant

(1) If a policeman of or above the rank of warrant officer believes on reasonable grounds that the delay in obtaining a search warrant would defeat the object of the search, he may search any person, premises, other place, vehicle or receptacle, and any person found in or upon the premises, other place, vehicle or receptacle for any such thing as is mentioned in section 46 and may seize such if found and take it before a magistrate, except that in searching of any woman section 41 (3) applies *mutatis mutandis*;

(2) The search referred to in sub-section (1) shall as far as possible be made by day and in the presence of two more respectable persons of the locality in which the search is made;

(3) any policeman having a special written authority from a judicial officer, or a policeman of or above the rank of warrant officer may enter and inspect without warrant any drinking place, gaming house or other place of resort of loose and disorderly persons.

48. Search for stock, produce, etc.

(1) If any policeman of or above the rank of sergeant has reason to suspect —

(a) 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

(b) 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 dealing with intoxicating liquor or habit-forming drugs.

he may at any time enter upon and search the premises or place and search any person thereupon or thereat, or grant written authority to any person applying therefor to make entry and search.

(2) Any person in lawful occupation of any land may, in respect of any premises or place upon that land exercise the powers conferred by sub-section (1).

(3) Any person who, under colour of this section, wrongfully and maliciously or without probable cause applies for, obtains or acts upon a written authority referred to in sub-section (1), or wrongfully and maliciously or without probable cause exercises the power of search conferred by this section, is guilty of an offence and liable to 200 Maloti and to 3 months' imprisonment, and in addition shall 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 600 Maloti as any competent court may award.

(4) Nothing in sub-section (2) shall 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 under that sub-section.

49. Seizure of books and documents

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

(2) Any person who resists, hinders, aids, incites or encourages any other person to resist or hinder an officer executing an order under this section is guilty of an offence and liable to 600 maloti and to 6 months' imprisonment.

50. Seizure of counterfeit currency

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

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

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

he may seize and take the article found before a magistrate to be dealt with according to law.

51. Seizure of vehicle or receptacle

On the arrest of any person on a charge of an offence specified in Part I of the First Schedule, the person making the arrest may seize any vehicle or receptacle in possession or custody of the arrested person at

the time of the arrest and used in conveyance of or containing any article or substance in connection with which the offence is alleged to be or to have been committed.

52. Disposal by police official of article after seizure

A policeman who seizes any article which is concerned in or on reasonable grounds believed to be concerned in the commission or suspected commission of an offence, whether within Lesotho or elsewhere, or which may afford evidence of the commission or suspected commission of an offence whether within Lesotho or elsewhere or which is intended to be used or is on reasonable grounds believed to be intended to be used in the commission of an offence:—

(a) may, if the article is perishable with due regard to the interests of the persons concerned, dispose of the article in such manner as the circumstances may require or

(b) may, if the article is stolen property or property suspected to be stolen, with the consent of the person from whom it was seized, deliver the article to the person from whom, in the opinion of such policeman, such article was stolen, and shall warn such person to hold such article available for production at any resultant criminal proceedings, if required to do so; or

(c) shall, if the article is not disposed of or delivered under paragraph (a) or (b), give it a distinctive identification mark and retain it in police custody or make such other arrangements with regard to the custody thereof as the circumstances may require.

53. Disposal of article where no criminal proceedings are instituted or where it is not required for criminal proceedings

(1) If no criminal proceedings are instituted in connection with any article referred to in section 52 (c) or if it appears that such article is not required at the trial for purposes of evidence or for purposes of an order of court, the article shall be returned to the person from whom it was seized, if such person may lawfully possess such article, or, if such person may not lawfully possess such article, to the person who may lawfully possess it.

(2) If no person may lawfully possess such article or if the policeman concerned does not know of any person who may lawfully possess such article, the article shall be forfeited to the crown.

(3) The person who may lawfully possess the article in question shall be notified by registered post at his last known address that he may take possession of the article and if such person fails to take delivery of the article within thirty days from the date of such notification, the article shall be forfeited to the Crown.

54. Disposal of article where criminal proceedings are instituted and admission of guilt fine is paid

(1) If criminal proceedings are instituted in connection with any articles referred to in section 52 (c) and the accused admits his guilt in terms of this Act, the article shall be returned to the person from whom it was seized, if such person may lawfully possess such articles, or, if such person may not lawfully possess such articles, to the person who may lawfully possess it, whereupon the provisions of section 53 (2) shall apply with reference to any such person.

(2) If no person may lawfully possess such article or if the police official concerned does not know of any person who may lawfully possess such article, the article shall be forfeited to the Crown.

55. Article to be transferred to court for purposes of trial

(1) If Criminal proceedings are instituted in connection with any article referred to in section 52 (c) and such article is required at the trial for the purposes of evidence or for the purposes of an order of Court, the police official concerned shall, subject to the provisions of sub-section (2), deliver such article to the Clerk of the Court where such Criminal proceedings are instituted or to the Registrar of the High Court, as the case may be.

(2) If it is by reason of the nature, bulk or value of the article in question impracticable or undesirable that the article should be delivered to the Clerk of the Court in terms of Subsection (1), the Clerk of the court may require the police official concerned to retain the article in police custody or in such other custody as may be determined in terms of section 52 (c).

(3) The Clerk of the Court shall place any article received in terms of sub-section (1) in safe custody, which may include the deposit of money in an official banking account if such money is not required at the trial for the purposes of evidence.

(4) Where the trial in question is to be conducted in a court other than a court which such clerk is the clerk of the court, such clerk of the court shall:—

(a) transfer any article received under sub-section (1), other than money deposited in a banking account pursuant to sub-section (3), to the clerk of the court or, as the case may be, the Registrar, and such clerk of the court or Registrar shall place such article in safe custody;

(b) in the case of any article retained in police custody or in some other custody in accordance with sub-section (2) or in the case of any money deposited in a banking account, advise the clerk of court of such court or the Registrar, as the case may be, of the fact of such custody or such deposit as the case may be.

56. Disposal of article after commencement of criminal proceedings

(1) The judge or judicial officer presiding at criminal proceedings shall at the conclusion of such proceedings, but subject to this Act or any other law under which any matter shall or may be forfeited, make an order that any article referred to in section 55:—

(a) be returned to the person from whom it was seized, if such person may lawfully possess such article; or

(b) if such person is not entitled to the article or cannot lawfully possess the article, be returned to any other person entitled thereto, if such person may lawfully possess the article; or

(c) if no person is entitled to the article or if no person may lawfully possess the article or if the person who is entitled thereto cannot be traced or is unknown, be forfeited to the Crown.

(2) The court may, for the purpose of any order under sub-section (1), hear such additional evidence, whether by affidavit or orally, as it may deem fit.

(3) If the judge or judicial officer concerned does not, at the conclusion of the relevant proceedings, make an order under sub-section (1), such judge or judicial officer or, if he is not available, any other judge or judicial officer of the court in question, may at any time after the conclusion of the proceedings make any such order, and for that purpose hear such additional evidence, whether by affidavit or orally, as he may deem fit.

(4) Any order made under sub-sections (1) or (3) may be suspended pending any appeal or review.

(5) Where the court makes an order under sub-section (1) (a) or (b), section 53 (2) shall *mutatis mutandis* apply with reference to the person in favour of whom such order is made.

(6) If the circumstances so require or if the criminal proceedings in question cannot for any reason be disposed of, the judge or judicial officer concerned may make any order referred to in sub-section (1) (a) (b) or (c) at any stage of the proceedings.

57. Forfeiture of article to the Crown

(1) Any court which convicts an accused of any offence may, without notice to any person, declare:—

(a) any weapon, instrument or other article by means whereof the offence in question or which was used in the commission of such offence; or

(b) if the conviction is in respect of an offence referred to in Part I of Schedule I, any vehicle, container or other article which was used for the purpose of or in connection with the commission of the offence in question or for the conveyance or removal of the stolen property, and which was seized under this Act, forfeited to the Crown:

Provided that such forfeiture shall not affect any right referred to in subsection (4) (a) (i) or (ii) if it is proved that the person who claims such right did not know that such weapon, instrument, vehicle, container or other article was being used or would be used for the purpose of or in connection with the commission of the offence in question or, as the case may be, for the conveyance or removal of the stolen property in question, or that he could not prevent such use and he may lawfully possess such weapon, instrument, vehicle, container or other article as the case may be.

(2) A court which convicts an accused or which finds an accused not guilty of any offence, shall declare forfeited to the Crown any article seized under this Act which is forged or counterfeit or which cannot lawfully be possessed by any person.

(3) Any weapon, instrument, vehicle, container or other article declared forfeited under sub-section (1), shall be kept for a period of thirty days with effect from the date of declaration of forfeiture or, if an application is received from any person within that period for the determination of any right referred to in sub-section 4(a) or (b), until a final decision in respect of any such application has been given.

(4) The court in question or, if the judge or judicial officer of the court in question, may any time within a period of three years with effect from the date of declaration of forfeiture, upon application of any person, other than the accused, who claims that any right referred to in paragraph (a) or (b) of this subsection is vested in him, inquire into and determine any such right, and if the court finds that the weapon, instrument, vehicle, container or other article in question:—

(a) is the property of any such person, the court shall set aside the declaration of forfeiture and direct that the weapon, instrument, vehicle, container or other article, as the case may be, be returned to such person, or if the Crown has disposed of the weapon, instrument, vehicle, container or other article in question, direct that such person be compensated by the Crown to the extent to which the Crown has been enriched (exclusive of any interest or other advantage) by such disposal;

(b) was sold to the accused in pursuance of a contract under which he becomes the owner of such weapon, instrument, vehicle, container or other article, as the case may be, upon the payment of a stipulated price, whether by instalments or otherwise, and under which the seller becomes entitled to the return of such weapon, instrument, vehicle, container or other article upon default of payment of the stipulated price or any part thereof:—

(i) the court shall direct that the weapon, instrument, vehicle, container or other article in question be sold by public auction and that the said seller be paid out of the proceeds of the sale an amount equal to the value of his rights under the contract to the weapon, instrument, vehicle, container or other article, but not exceeding the proceeds of the sale; or

(ii) if the Crown has disposed of the weapon, instrument, vehicle, container or other article in question, the court shall direct that the said seller be likewise compensated.

(5) If a determination by the court under sub-section (4) is adverse to the applicant, he may appeal therefrom as if it were conviction by the court making the determination, and such appeal may be heard either separately or jointly with an appeal against conviction as a result whereof the declaration of forfeiture was made, or against a sentence imposed as a result of such conviction.

(6) When determining any rights under this section, the record of the criminal proceedings in which the declaration of forfeiture was made, shall form part of the relevant proceedings, and the court making the determination may hear such additional evidence whether by affidavit or orally as it may deem fit.

58. Disposal of article concerned in an offence committed outside Lesotho

(1) Where an article is seized in connection with which

(a) an offence was committed or is on reasonable grounds suspected to have been committed in a country outside Lesotho;

(b) there are reasonable grounds for believing that it will afford evidence as to the commission of an offence in a country outside Lesotho or that it was used for the purpose of or in connection with such commission of any offence;

the magistrate within whose area of jurisdiction the article was seized may, on application and if satisfied that such offence is punishable in such country by death or by imprisonment for a period of twelve months or more by a fine of five hundred maloti, order such article to be delivered to a member of a police force established in such country who may thereupon remove it from Lesotho.

(2) Whenever the article so removed from Lesotho is returned to the magistrate, or whenever the magistrate refuses to order that the article be delivered as aforesaid, the article shall be returned to the person from whose possession it was taken, unless the magistrate is authorised or required by law to dispose of it otherwise.

59. Women detained for immoral purposes

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 the magistrate is acting in good faith in the interests of a woman or girl, that there is reasonable ground for suspecting immoral purposes by any person in any place within the magistrate's jurisdiction, he may issue a warrant to a peace officer authorising him to search for the woman or girl and when found to take the woman or girl and detain the woman or girl in a place of safety until the woman or girl can be brought before a magistrate.

(2) The magistrate before whom the woman or girl is brought under this section may cause the woman or girl to be delivered up to her parent, husband, relative or guardian, or otherwise deal with her as the circumstances of the case require.

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

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

(a) being under the age of 16 years, is detained for those purposes whether against her will or not;

(b) being over the age of 16 years and under the age of 21 years, is for those purposes detained against her will or against her parent or of any other person who has the lawful care or charge of her;

(c) being of or above the age of 21 years is for those purposes detained against her will: or

(d) is detained by any person in order that she be unlawfully carnally known by any man.

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

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

Part VII – Preparatory examination

60. Appearance at preparatory examination

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 the public prosecutor is attached shall make out a summons, requiring the said person to appear before the magistrate of the court for the purpose of undergoing a preparatory examination and shall deliver the summons to the person who is to serve it in terms of section 61 (2).

61. Contents of summons

(1) A summons referred to in section 60 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 is to appear.

(2) Every summons shall be served by a person authorised to serve criminal process in the district of the magistrate before whom the accused is required to appear, or by any other duly authorised person, upon the accused person to whom it is directed either—

(a) by delivering it to him personally: or

(b) if the accused 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 under his hand.

(4) Nothing in this section or section 60 shall be deemed to abrogate the custom whereby an accused person may be warned through his chief or headman to appear before a subordinate court.

(5) If—

(a) any person fails to appear at the hour and on the day appointed for his appearance to answer the charge, and the court is satisfied upon the return of the person required to serve summons that he was duly summoned; or

(b) it appears from evidence given under oath that he was duly warned to appear or that he is evading service of summons or that he attended but failed to remain in attendance,

the court in which the criminal proceedings are conducted, may issue a warrant directing that he be arrested and brought, at a time and place stated in the warrant, or as soon thereafter as possible, before the court or any magistrate.

(6) When any person has been arrested under a warrant referred to in sub-section (5), he may be detained thereunder in any gaol, lock-up or other place of detention or in the custody of the person who is in charge of him, with a view to securing his presence at his trial but the court may release him on recognizance with or without sureties, for his appearance at his trial and for his appearance at the enquiry referred to in sub-section (7).

(7) The court may in a summary manner enquire into a person's failure to obey the summons or warning or into his evasion of the service of the summons or his failure to remain in attendance, and unless it is proved that he has reasonable excuse for the failure or evasion, the court may sentence him to pay 30 maloti and to one month's imprisonment.

(8) Any sentence imposed by the court under sub-section (7) shall be enforced and shall be subject to an appeal as if it were a sentence in a criminal case imposed by the court.

62. Jurisdiction of certain persons to hold preparatory examination

(1) The Minister may, with the concurrence of the Chief Justice, by notice in the *Gazette* —

(a) appoint an officer in the public service to hold any preparatory examination specified therein or to hold preparatory examinations in a specified area of jurisdiction for a specified period; and

(b) specify in the notice what jurisdiction shall be exerciseable by an officer appointed under this section in the event of remittal under paragraphs (d), (e) and (f) of section 90.

(2) If the Director of Public Prosecutions, in pursuance of paragraphs (d), (e) and (f) of section 90 (1) remits, to be dealt with in a subordinate court, any case in which the preparatory examination has been held by an officer appointed under subsection (1), the case may be dealt with by that officer in accordance with the jurisdiction specified in the notice appointing him.

(3) An officer appointed under this section shall have jurisdiction to deal with any case remitted notwithstanding that his appointment has expired by effluxion of time.

(4) An officer appointed under this section shall, for the purposes of any matter dealt with under his appointment, have the powers conferred upon a magistrate in this Part, save those conferred by section 81.

63. Commencement of preparatory examination

(1) When the accused is before a magistrate having jurisdiction—

(a) whether voluntarily or upon summons or after warning; or

(b) after being apprehended with or without warrant; or

(c) while in custody for the offence of which he is accused or any other offence,

the 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 the accused.

(2) 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 is instituted may, subject to sub-section (3), be joined with the accused, and thereupon the preparatory examination of the accused and that person shall proceed jointly.

(3) The evidence given by every witness before the joinder under sub-section (2) shall be read over to the person so joined, and if he or his legal adviser requests the magistrate holding the preparatory examination to recall any such witness for the purpose of being cross-examined, the magistrate shall recall him and if necessary shall direct that he be subpoenaed to reappear before him, for the purpose of being cross-examined by the said person or his legal adviser, and re-examined by the public prosecutor.

64. Irregularities not to affect proceedings

No—

(a) irregularity or defect in the substance or form of the summons or warrant, or in the manner of arrest; and

(b) 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.

65. Clerk of court to subpoena witness

(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 his legal adviser, may compel the attendance of any person at the preparatory examination to give evidence, or to produce any book or document, by means of a subpoena, issued in the manner prescribed by rules of court, 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 the preparatory examination is being or is to be held.

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

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

(4) A magistrate holding a preparatory examination may call as a witness or recall 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 the examination unless excused by the magistrate holding the examination.

(6) Nothing in this section shall be deemed to abrogate the custom whereby a witness may be warned through his chief or headman to attend before a subordinate court.

66. Arrest for failure to obey subpoena

(1) If any person subpoenaed, to attend at any criminal proceedings or who during his attendance at any criminal proceedings was warned by the court to attend those criminal proceedings again, fails to attend the criminal proceedings, concerned at the hour and on the day specified in the subpoena or warning, or if he attended but failed to remain in attendance, and the court in which the proceedings are conducted, is satisfied from a statement under oath or from the return of the person who was required to serve the subpoena or from the record of the proceedings—

(a) that a subpoena to attend the proceedings was directed to and duly served on such person;

(b) that he is evading service of the subpoena; or

(c) that he was warned in terms of this section to attend the proceedings; or

(d) that he attended but failed to remain in attendance;

the court may issue a warrant directing that he be arrested and brought, at a time and place stated in the warrant, or as soon thereafter as possible, before the court or any magistrate.

(2) When any person is arrested under a warrant referred to under sub-section (1), he may be detained in any gaol, lockup or other place of detention or in the custody of the person who is in charge of him, with a view to securing his presence as a witness at the criminal proceedings but the court may release him on a recognizance with or without sureties, for his appearance to give evidence as required, and for his appearance at the enquiry referred to in sub-section (3).

(3) The court may in a summary manner enquire into any person's failure to obey the subpoena or to comply with the warning referred to in sub-section (1) or to remain in attendance, and unless it is proved that the said person has a reasonable excuse for the failure, the court may sentence him to 30 maloti and to one month's imprisonment.

(4) Any sentence imposed by any court under sub-section (3) shall be enforced and shall be subject to an appeal as if it were a sentence in a criminal case imposed by that court.

(5) If a person who has entered into any recognizance for his appearance to give evidence at any criminal proceedings or for his appearance at an enquiry referred to in sub-section (3) fails to appear, he may, apart from the forfeiture of his recognizance, be dealt with as if he had failed to obey a subpoena to attend and criminal proceedings.

67. Tender of witness's expenses

No prepayment or tender of expenses shall be necessary in the case of a person who is required to give evidence at a preparatory examination, and who is ordinarily resident in Lesotho.

68. Witness refusing to give evidence

(1) Whenever any person appearing, either in obedience to a subpoena or warning or by virtue of a warrant, or being present and being verbally required by a magistrate to give evidence at a preparatory examination—

(a) refuses to be sworn;

(b) having been sworn, refuses to answer such questions as are put to him; or

(c) 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 the refusal or failure, the magistrate may adjourn the proceedings for any period not exceeding 8 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 any person committed to a gaol under sub-section (1) upon being brought up at the adjourned hearing refuses again to do what is required of him, the magistrate may, if he sees it fit, adjourn the proceeding again and by order commit him for 8 more days, and so again from time to time until the person consents to do what is required of him.

(3) An appeal shall lie from any order of committal referred to under this section to the High Court which may make such order on appeal as to it seems just.

(4) Nothing in this section shall 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 and 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.

69. Procedure when turned into a preparatory examination

(1) Whenever any subordinate court has stopped the summary trial of an accused person under the powers conferred by the law governing the 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 the trial, but the magistrate's record of evidence so given certified by him to be correct shall for all purposes have the same force and effect and 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 70.

(2) Where a summary trial is stopped pursuant to subsection (1) and it appears to the magistrate or it is made to appear to him by the prosecutor or the accused that the ends of justice might be served by having a witness already examined recalled for further examination, the witness shall be summoned and examined accordingly, and the examination so taken shall be recorded in the manner hereinafter directed as to other examination.

70. Evidence at preparatory examination

(1) Every preparatory examination shall, except when an oath is by law dispensed with, be taken upon oath or by affirmation where such is allowed by law, and every witness before giving evidence shall make oath or affirmation, as the case may be, 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 sections 63 (3), 95 and 96, the evidence given by a witness at a preparatory examination shall—

(a) be given in the presence of the accused,

(b) be taken down in writing, and

(c) be read over to the witness who gave it, and if such evidence is taken down in shorthand writing, 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.

(3) The accused or his legal adviser may cross-examine any witness giving evidence at a preparatory examination and thereupon the public prosecutor may re-examine.

(4) Any evidence given under section 96 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 the examination, and thereupon section 63 (3) shall apply.

(5) If a preparatory examination is held on a charge that the accused committed or attempted to commit—

(a) any indecent act towards another person;

(b) any act for the purpose of procuring or furthering the commission of an indecent act towards or in connection with any other person; or

(c) extortion or a statutory offence of demanding from any person some advantage which was not due and, by inspiring fear in such person's mind, compelling him to render the advantage,

no person shall at any time publish by radio or in any document produced by printing or any other method of multipublication any information relating to the preparatory examination or any information disclosed thereat, unless the magistrate holding the 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 the publication.

(6) Any person who contravenes sub-section (5) is guilty of an offence and liable to 300 maloti and to 6 month's imprisonment.

71. Recognizance of witness

(1) Every magistrate before whom any preparatory examination is taken may require any witness, either alone or together with one or more sufficient sureties to the satisfaction of the magistrate to enter into a recognizance under condition that the witness shall at any time within 12 months from the date thereof, upon being served with a subpoena or upon being warned at some certain place within Lesotho to be selected by the witness, appear and give evidence at the trial of the person in respect of whom the preparatory examination was taken.

(2) Every recognizance entered into under this section shall—

(a) specify the full name of the person entering into it, his occupation or profession (if any), the place of residence and the name and number (if any) of the street in which it is, and whether he is the owner of the place of residence or tenant thereof or a lodger therein; and

(b) 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 is bound to appear.

72. Absconding witness to be arrested

(1) Whenever any person is bound by recognizance to give evidence or is likely to give material evidence in respect of any offence, any judicial officer before whom the 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 a warrant for his arrest.

(2) If any person is arrested pursuant to sub-section (1) any 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 he shall be entitled on demand to receive a copy of the information upon which the warrant for his arrest is issued.

73. Witness refusing to enter into recognizance

Any witness who refuses to enter into any recognisance when so required by the magistrate under section 71 may, by warrant, be committed by the magistrate to a gaol and kept there until after the trial or until the witness enters into the recognizance before a magistrate having jurisdiction in the place where the gaol is situated but if the accused is afterwards discharged, any magistrate having jurisdiction shall order such witness to be discharged.

74. Cautioning of accused

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

(2) The accused may, then or at any later stage of the proceedings, make a statement or give evidence on oath and the statement or evidence shall be taken down in writing in so far as it is 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.

(3) Any statement or evidence made or given by an accused under sub-section (2) shall be received in evidence before any court upon its production without further proof unless it is shown that the statement or evidence was not in fact duly made or given or that the signature or marks thereto are not in fact the signature or marks of the persons whose signature or marks they purport to be.

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

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

75. Admission admissible

Nothing in this Part shall prevent any prosecutor from giving, in evidence, any admission, confession or other statement made or any evidence given by the accused which, under Part XII, would be admissible at his trial.

76. Admission of previous convictions

(1) As soon as a preparatory examination is concluded the prosecutors shall, if he has information or reasonable grounds for believing that the accused has previously been convicted of any offence, transmit direct to the Director of Public Prosecutions particulars of the alleged previous conviction.

(2) If the Director of Public Prosecutions determines under section 90 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 the magistrate of the district in which the accused is in custody, or if the accused is on bail, the magistrate of the district in which the accused was committed for trial or sentence, or with the consent of the accused, any other magistrate, to re-open the preparatory examination for the purpose of ascertaining whether the accused admits that he was previously convicted.

(3) The magistrate shall—

(a) in accordance with the directions of the Director of Public Prosecutions, re-open the preparatory examination,

(b) inform the accused of the particulars of the alleged previous convictions, and

(c) call upon him to admit or deny that he was previously convicted,

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

(4) No person other than the magistrate, public prosecutor, accused, his legal adviser, the court interpreter and the necessary escort of the accused shall be present at any proceedings taken by the magistrate under sub-section (3).

(5) A copy of any admission or denial by the accused made under this section shall be transmitted as soon as possible to the Director of Public Prosecutions.

(6) 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 the previous conviction is tendered as is provided in Part XIV.

77. Discharge of accused when no sufficient case

(1) When 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 the opinion that no sufficient case is made out to put the accused upon his trial, discharge him, and in that case any recognizance taken in respect of the charge shall become void unless, within 28 days, the Director of Public Prosecutions orders that the accused be committed for trial or that a further examination be taken.

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

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

78. Committal for trial

(1) Whenever there appears to a magistrate sufficient reason for putting on trial for any offence any accused person brought before him, the magistrate shall grant a warrant to commit the accused to a gaol, to be detained there until he is brought to trial for the offence or until he is admitted to bail

or liberated in due course of law, and the warrant shall express clearly the offence with which the accused is charged.

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

79. Proceedings on admission of guilt

(1) Except when the charge is sedition, treason, or murder, if the accused when questioned under section 74, states that he is guilty of the charge, then the magistrate shall say to him the following words or words to the like effect—

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

(2) If the accused in answer to a question asked under sub-section (1) states that he does not wish the witnesses again to appear to give evidence against him, his statement shall be taken down in writing and read to him, and shall be signed by the magistrate and the accused, and shall be kept with the depositions of the witnesses and sent to the Director of Public Prosecutions.

(3) In any case referred to 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 safely kept there until the sitting of the court or until he is admitted to bail or liberated in due course of law.

80. Committal by other magistrate

In every case in which any person charged with any offence has been summoned, warned or arrested and brought before any magistrate of any district other than that in which the offence is alleged to have been committed, and where the magistrate sees cause to commit such person for examination, the 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 the magistrate has jurisdiction to act or to any other gaol.

81. Removal of accused to another gaol

The magistrate of any area of jurisdiction shall, on application to that effect signed by the Director of Public Prosecutions, issue a warrant for the removal of any accused person detained on a criminal charge under any legal warrant within the gaol of that area of jurisdiction to the gaol of any other district specified in the application for detention therein for further examination, trial or sentence, or until liberated or removed therefrom in due course of law.

82. Committal for further examination

(1) Where sufficient grounds do not appear at once for committing the accused for trial or for discharging him, and it appears to the magistrate probable that further evidence may be produced, the magistrate may issue a warrant committing the accused, for a further period not exceeding 14 days, for further examination.

(2) A committal for further examination under sub-section (1) may, if necessary, take place more than once upon sufficient cause appearing to the magistrate, and such cause shall be expressed in the warrant of re-commitment.

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

83. Offence committed on boundary

(1) When an offence is committed on the boundary of two or more areas of jurisdiction or within the distance of 2 miles beyond any such boundary, the preparatory examination may be held in any of the areas of jurisdiction.

(2) When an offence is committed in or upon any vehicle employed on any journey in Lesotho, the preparatory examination may be held in any area of jurisdiction through any part whereof or on or within the distance of 2 miles beyond the boundary whereof the vehicle has passed in the course of the journey during which the offence was committed.

(3) Where an offence is committed upon any railway train, the preparatory examination may be held in any area of jurisdiction in or through any part whereof the railway train passes.

84. Preparatory examination to be held anywhere

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

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

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

(4) Where 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 area of jurisdiction within which the preparatory examination in the case of the principal offender is held.

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

(6) In special cases not falling within this section, the Director of Public Prosecutions may authorise the preparatory examination to be held in any other area of jurisdiction.

(7) Where—

(a) there is a doubt or dispute as to the area of jurisdiction in which the preparatory examination is to be held;

(b) there is an objection on the part of the accused to the holding of the examination in any particular area of jurisdiction; or

(c) more than one offence is alleged to have been committed by the accused in different areas of jurisdiction,

the matter shall be referred to the Director of Public Prosecutions, who may direct in which area or jurisdiction a preparatory examination shall be held, and his direction shall be conclusive and not subject to appeal to any court.

85. Discretionary powers of magistrates

A magistrate holding a preparatory examination may—

(a) change the place of hearing of the 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 the magistrate sits or if, from any other reasonable cause, adjourn the examination for that purpose;

(b) if it appears to him to be in the interest of good order, public morals or administration of justice, direct that—

(i) the preparatory examinaton be held with closed doors;

(ii) (with such exceptions as he may direct) females, minors, the public generally or any class thereof be not permitted to be present thereat; and

(iii) if a preparatory examination is to be held or is being held on a charge referred to in section 70 (5), at the request of the person against or in connection with whom the offence is alleged to have been committed (or if he is a minor, at the request of that person or of his guardian) whether made in writing before the commencement of the preparatory examination or orally at any time during the preparatory examination, every person whose presence is not necessary in connection with the preparatory examination on any person mentioned in the request be not allowed to be present thereat;

(c) regulate the course of the preparatory examination in any way which appears to him desirable and which is not inconsistent with this Act or any law;

(d) if—

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

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

It appears desirable to him that the accused he tried summarily, stop the examination and with the consent of the prosecutor and the accused, place the accused on trial for the offence before the subordinate court presided over by him, and

(aa) the evidence already taken at the examination shall thereupon be deemed to have been recorded as evidence at the trial;

(bb) either the prosecutor or the accused may require any person who has given evidence at the examination be recalled for further examination; and

(cc) if the accused so requests, any evidence already taken at the examination shall be read to him.

86. Granting of bail discretionary

(1) Until the warrant for commitment for trial or sentence is made out no prisoner may insist on being admitted to bail, but the magistrate may, except where the trial is treason or murder, admit an accused person to bail before the preparatory examination is concluded.

(2) If the accused person, when admitted to bail before the preparatory examination is concluded, does not appear at the time and place mentioned in the recognizance forfeited the court shall adjourn the examination and issue a warrant for his apprehension.

87. Local inspection and post mortem examination

(1) The person charged with the prosecution or the magistrate who conducts the preparatory examination shall—

(a) make or cause to be made any local inspections which the particular circumstances of the case render necessary; and

(b) in cases of homicide or of serious injury to the person of any person, 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, by the best qualified person obtainable.

(2) The practitioner or person who makes the examination under sub-section (1) (b) shall draw up and subscribe a written statement of the appearance and facts observed on the examination.

88. Labelling of exhibits

The magistrate conducting the preparatory examination shall—

(a) cause all documents and any other articles exhibited by the witnesses in the course of the preparatory examination and likely to be used in evidence on 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 the accused's trial, and

(b) cause all the documents and articles to be kept in safe custody until the trial so that they may be produced.

89. Record of preparatory examination to be sent to the Director of Public Prosecutions

(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 Director of Public Prosecution for his consideration.

(2) Where the prosecution is by a private person the Director of Public Prosecutions shall, if he declines to prosecute public instance, transmit a copy of the preparatory examination record to that private party together with the certificate referred to in section 15.

90. Powers of Director of Public Prosecutions after preparatory examinations

(1) After considering the preparatory examination transmitted to the magistrate, who, if the accused is in custody, shall cause him to be liberated forthwith, or if not in custody, shall inform him of the decision of the Director of Public Prosecutions;

(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 the preparatory examination and shall inform the magistrate accordingly;

[Please note: numbering as in original.]

(c) even if the magistrate has discharged the accused—

(i) indict the accused for trial before the High Court on a charge of any offence disclosed by the evidence taken at the preparatory examination and direct the magistrate to commit the accused for trial if, in the Director of Public Prosecution's opinion, the accused ought to have been so committed; or

(ii) remit the case under paragraph (d); and

in either case the Director of Public Prosecutions may order the magistrate to issue a warrant for re-arrest of the accused if he has been discharged from custody or direct that

the recognisance be in operation if the accused has been admitted to bail or give such other directions in respect of further proceedings against the accused as he may think right;

(d) unless the offence to be charged is sedition, murder or treason, remit the case to be dealt with under its ordinary jurisdiction by the subordinate court of the area of jurisdiction in which the preparatory examination was held;

(e) unless the offence to be charged is sedition, murder or treason, remit the case to be dealt with by the subordinate court of the area of jurisdiction in which the preparatory examination was held under any increased jurisdiction conferred upon the court by any law governing subordinate courts or by any other law;

(f) in any case in which a person has been committed for sentence under section 79, unless the offence to be charged is sedition, murder or treason, remit the case to be dealt with by the subordinate court of the area of jurisdiction conferred upon the court by any law govern- held, either under its ordinary jurisdiction or under any increased jurisdiction conferred upon the court by any law governing subordinate courts or by any other law;

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

(h) take such measures and give such directions for the trial of the prisoner before a competent court as he may consider most expedient.

(2) The Director of Public Prosecutions in remitting any case to a subordinate court shall specifically state whether—

(a) he remits the case under paragraph (d), (e) or (f) of sub-section (1); and

(b) he remits the case to be dealt with under ordinary jurisdiction of the subordinate court or under any increased jurisdiction.

91. How remitted cases to be dealt with

Any case remitted to a subordinate court under section 90 shall be tried by that court in accordance with the relevant provisions of Part IX, X, XI, XII, XIII, XIV and XV and with any subject to the law governing that court, and any conviction and sentence imposed in respect thereof shall be subject to review or appeal as prescribed by such law.

92. Accused to be committed for trial

(1) Except as provided for by section 144 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 the committal was on the direction of the Director of Public Prosecutions under the powers conferred by section 90 (1) (c), for or in respect of the offence charged in the indictment, but in any case in which the Director of Public Prosecutions has declined to prosecute, the High Court may, upon the application of any private prosecutor referred to in sections 12 and 13, direct any magistrate to take a preparatory examination against the person accused.

(2) 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 upon which the accused might have been committed upon the charge mentioned in the indictment although the committing magistrate when committing the accused upon such depositions has committed him for some offence other than that charged in the indictment or for some other offence not known to the law.

(3) An accused person who—

(a) is in actual custody when brought to trial; or

(b) 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 the indictment unless he proves to the contrary.

93. Access to copy of depositions

(1) 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 lawful custody thereof, a copy of the depositions of witnesses upon which he has been committed and of his statement and evidence, if any.

(2) The person who has lawful custody of depositions of witnesses upon which the accused person has been committed or of the accused person's statement and evidence shall—

(a) deliver a copy thereof to the accused person, his attorney or agent on payment of a reasonable sum not exceeding 10 lisente for each folio of 100 words; or

(b) in a case where counsel is assigned by court to defend the accused *pro deo*, deliver a copy thereof to the accused or counsel free of charge.

(3) If the demand under sub-section (1) be not made before the day appointed for the commencement of the trial of the person on whose behalf the demand is made, such person shall not be entitled to have any such copy of depositions unless the judge presiding at the trial is of the opinion that such copy be made and delivered without delay or inconvenience to the trial.

(4) The judge presiding at the trial may, if he thinks fit, postpone the trial by reason of the copy of depositions mentioned in this section not having been previously had by the accused person.

94. Inspection of depositions by accused person

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 him.

95. Evidence in the absence of accused

If—

(a) it is proved after a preparatory examination has commenced that the accused has absconded and that there is no immediate prospect for his arrest; or

(b) the accused conducts himself in such a manner that the preparatory examination cannot in the opinion of the magistrate, property proceed in the presence of the accused, the magistrate may, on the instruction of the Director of Public Prosecutions, examine in the absence of the accused the witness (if any) produced on behalf of the prosecution and record their depositions.

96. Evidence where offender unknown

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

(2) Sections 65 to 70 inclusive shall apply in respect of persons required to attend and give evidence under this section.

97. Access to accused by friends

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

(2) An accused person may be assisted by his legal adviser at a preparatory examination.

98. Accused entitled to copy of warrant of commitment

(1) In every case where an accused person is committed for trial or sentence, he may 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 300 maloti if he refuses to give the copy within 6 hours after it is demanded by the accused or his legal adviser.

(2) The penalty under this section may be recovered by civil proceedings at the suit of the accused person.

Part VIII – Bail

A – After preparatory examination is concluded

99. Bailable offences

(1) Every person committed for trial or sentence in respect of any offence except sedition, murder or treason may be admitted to bail in the discretion of the magistrate.

(2) The refusal by the magistrate who has committed any person for trial, to grant such person bail shall be without prejudice to such person's rights under section 108.

(3) Notwithstanding sub-section (1), the magistrate, who has committed a woman for trial upon a charge of having murdered her newly born child, or has committed a person under 16 years for trial on a charge of murder, may admit such woman or person to bail.

100. Verbal application for bail

The accused may, at the same time of the commitment, apply verbally to the judicial officer granting the warrant of commitment, to be liberated on bail.

101. Written for bail

(1) The accused may, after the time of commitment, apply in writing to the magistrate who granted the warrant of commitment, or the magistrate of the area of jurisdiction in which he was committed for trial, or the magistrate within whose area of jurisdiction he is in custody, unless bail has already been refused by a magistrate, or to the High Court, to be admitted to bail.

(2) When the commitment is on a warrant issued by the High Court application for bail shall be made to the High Court.

(3) Every written application for bail shall be in the form of a petition and accompanied by a copy of the warrant to commitment or an affidavit that a copy is denied.

102. Decision on bail to be exercised within 5 days

Where an application for bail is made under section 101, the judicial officer shall take *inter alia* the charge against the accused as he finds it on the face of the warrant of commitment.

103. Refusal of bail in certain cases

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

104. Conditions of recognizance

(1) The recognizance which is taken on the admission of an accused person to bail under this Part shall be taken by the court or judicial officer, as the case may be, either from the accused or from the 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 the recognizance shall be that—

(a) the accused shall appear and undergo any further examination which the magistrate or the Director of Public Prosecutions considers desirable, and answer to any indictment that may be presented, or charge that may be made, against him in any competent court for the offence with which he is charged at any time within 12 months from the date of recognizance;

(b) the accused shall attend during the hearing of the case and receive sentence; and

(c) the accused shall accept service of any summons or warning to undergo further examination and any such indictment, charge, notice of trial or other notice undergo this Act at any place in Lesotho chosen and therein expressed by him.

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

105. Failure of accused to appear at trial

(1) If upon the day appointed for the hearing of a case it appears by the return of the proper officer or other sufficient proof that a copy of the indictment and notice of trial or, in the case of a remittal to a subordinate 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—

(a) apply to the court for a warrant for the apprehension of the accused; and

(b) move the court that the accused and his sureties (if any) be called upon their recognisance, and in default of appearance, that the recognisance be then and there declared forfeited.

(2) The declaration of forfeiture under this section shall have the effect of a judgment on the recognizance for the amounts named therein against the accused and sureties respectively.

B – In case tried by subordinate courts

106. Power to admit to bail

(1) When a criminal case before a subordinate court is adjourned or postponed and the accused remanded, the magistrate may admit the accused to bail in the manner provided herein.

(2) The accused shall not be remanded for a period exceeding 30 days if he is not in custody, or for a period exceeding 15 days if in custody.

(3) If for any reason the magistrate is absent from his station the clerk of the subordinate court may remand the accused for a period not exceeding 7 days if he is not in custody, or for a period not exceeding 3 days if in custody and shall, upon the return of the magistrate inform him accordingly and obtain his endorsement to the remand.

(4) When the magistrate decides to admit an accused person to bail under this section, a recognisance shall be taken from the accused or from the accused and one or more sureties as the magistrate may determine, regard being had to the nature and circumstances of the case.

(5) The conditions of the recognisance shall be that the accused shall appear at the time and place to be specified in writing as often as and at such intervals not exceeding one month as may be necessary

thereafter within a period of 6 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 appears to the Director of Public Prosecutions to have been committed by the accused.

(6) The magistrate may add to the recognisance any condition which he considers necessary or advisable in the interests of justice, as to —

(a) times and places at which and persons to whom the accused shall personally present himself;

(b) places to which the accused is confined or where he is forbidden to go;

(c) the surrender of passports or allied documents to the police or other designated authority;

(d) prohibition against communication by the accused with witnesses for the prosecution; or

(e) any other matter relating to the accused's conduct.

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

C – General for all criminal cases

107. Bail not to be excessive

(1) Subject to sub-section (2) the amount of bail to be taken in any case shall be in the discretion of the judicial officer to whom application to be admitted to bail is made.

(2) No person shall be required to give excessive bail.

108. Appeal to the High Court against refusal

Where accused person considers himself aggrieved

(a) by the refusal of any magistrate to admit him to bail; or

(b) by the magistrate having required excessive bail or having imposed unreasonable conditions,

he may appeal against the decision of the magistrate to the High Court which shall make such order thereon as to it in the circumstances seems just.

109. Power of High Court to admit to bail

The High Court may, at any stage of any proceedings taken in any court in respect of an offence admit the accused to bail.

110. Insufficiency of sureties

If—

(a) through mistake, fraud or otherwise insufficient sureties have been accepted; or

(b) sureties afterwards become insufficient, the judicial officer granting the bail may issue a warrant of arrest directing that the accused be brought before him and may order him to find sufficient sureties and on his failing to do so, may commit him to prison.

111. Release of sureties

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

(2) On application being made under this section, the judicial officer shall issue a warrant of arrest directing that the accused be brought before him.

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

112. Render in court

The sureties for the attendance and appearance of an accused released on bail may bring the accused into court at which he is bound to appear during any sitting thereof and, by leave of the court, render him in discharge of the recognizance at any time before sentence, and the accused shall be committed to a gaol to remain there until discharged by due course of law, but the court may admit the accused to bail for his appearance at any time it thinks fit.

113. Sureties not discharged until sentence

The pleading or conviction of an accused released on bail shall not discharge the recognizance which remains in force for his appearance during the trial and until sentence is passed or he is discharged, but the court may commit the accused to a gaol upon his trial or sentence, as the case may be, notwithstanding the recognizance, and the committal shall discharge the sureties.

114. Death of surety

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

115. Person released on bail to be arrested when absconding

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

116. Deposit instead of recognisance

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

(2) The court or judicial officer shall make written conditions, in respect of the deposit money under sub-section (1) of the same nature as the conditions prescribed in respect of recognisances under this Part, and the provisions of this Part prescribing the circumstances in which recognisances taken from the accused alone may be forfeited, his arrest if about to abscond and remission of forfeited bail shall *mutatis mutandis* apply in respect of any such deposit of money.

(3) Except where the charge against the accused person is one of the offences mentioned in Part II of the First Schedule, any policeman holding a rank or post designated by the Minister by notice in the *Gazette* for the purposes of this section may, at any police station and at such times as no judicial

officer is available, admit to bail an accused person who makes or on whose behalf is made a deposit of such a sum of money is the policeman may fix and sub-section (2) as to conditions, forfeiture and remission of forfeited bail shall *mutatis mutandis* apply in respect of any such deposit.

117. Remission of bail

The Chief Justice may remit any portion of any amount forfeited under this Part and enforce payment in part only.

Part IX – Indictments and summonses

A – Indictments in the High Court

118. Charges in the High Court

(1) When 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) When the prosecution is —

(a) at the public instance the indictment shall be in the name of, and signed by, the Director of Public Prosecutions;

(b) a private one, the indictment shall be in the name of the party at whose instance it is preferred (to be described therein with certainty and precision) and signed by him or his counsel.

(3) Two or more persons may not prosecute in the same indictment, except where two or more persons have been injured by the same offence.

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

119. When case is pending

As soon as the indictment in any criminal case has been lodged with the Registrar of the High Court, such case shall be deemed to be pending in that court.

B – Summonses and charge in subordinate courts

120. Charges in subordinate courts

Where a public prosecutor has determined to prosecute any person in a subordinate court for any offence within the jurisdiction of that court, he shall lodge forthwith with the clerk of the court a statement in writing of the charge against that person—

(a) describing him by his name, place of abode and occupation;

(b) setting forth shortly and distinctly the nature of the offence, the time and place at which it is alledged it was committed.

121. Summons in subordinate court

(1) The clerk of the subordinate 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 the charge with as many copies as there are persons to be summoned.

(2) Except where specially provided otherwise by any law, the service upon accused persons of any summons or other process in a criminal case in a subordinate court shall be made by the prescribed officer by delivering it to the accused personally.

(3) If—

(a) any person fails to appear at the hour and on the day appointed for his appearance, and the court is satisfied upon the return of the person required to serve summons that he was duly summoned;

(b) it appears from evidence given under oath that he was duly warned to appear or that he is evading service of the summons; or

(c) it appears from evidence given under oath that he attended but failed to remain in attendance,

the court in which the criminal proceedings are conducted may issue a warrant directing that he be arrested and brought, at a time and place, stated in the warrant, or as soon thereafter as possible, before the court or any magistrate.

(4) In any case in which the accused is ordinarily resident in Lesotho it shall be regarded as a sufficient summons to attend the court if the accused is duly warned through his chief or headman to appear, and proof of the warning shall render the accused liable to the penalties prescribed in sub-section (3) in the event of his failure to appear at the appointed time.

(5) When the person in question has been arrested under a warrant referred to in sub-section (3), he may be detained thereunder in any gaol, lock-up or other place of detention or in the custody of the person who is in charge of him, with a view to securing his presence at his trial, but the court may release him on a recognizance, with or without sureties, for his appearance at his trial and for his appearance at the enquiry referred to in sub-section (6).

(6) The court may in a summary manner enquire into the person's failure to obey the summons or his failure to remain in attendance, and unless it is proved that the said person has a reasonable excuse for the failure or evasion, may sentence him to pay a fine not exceeding 30 maloti or to imprisonment for a period not exceeding one month.

(7) Any sentence imposed by the court under sub-section (6) shall be enforced and shall be subject to an appeal as if it were a sentence in a criminal case.

122. Notice to appear in subordinate court

(1) If a police officer has reasonable grounds for believing that a subordinate court will on convicting any person of any offence, impose a sentence of a fine not exceeding 50 maloti, and hands to that person a written notice in the prescribed form calling upon him to appear to answer a charge of having committed the offence, that person shall, except for the purposes of section 123, be deemed to have been duly summoned under section 121 to appear to answer the charge at the time and place stated in the notice.

(2) If the amount of the fine which a court would probably impose in respect of the offence concerned is set forth in the notice referred to in sub-section (1), the person to whom the notice is handed may sign a document admitting that he is guilty of the offence and hand or transmit the document with the amount to the officer referred to in section 313 (1) before the date on which he is required to appear, whereupon such person shall not be obliged to appear as required by the notice and section 313 other than sub-section (1) thereof applies *mutatis mutandis*.

(3) The amount referred to in sub-section (2) shall be determined from time to time for any particular area by the senior magistrate of the district in which the area is situated.

(4) The Minister shall by notice in the *Gazette* prescribe the forms expedient for carrying this section into effect.

123. Charge in subordinate court

(1) Except where the accused is warned under section 121 (4), in all summary trials in any subordinate court, the charge shall be entered upon the summons, containing the name of every accused person, the offence with which he is charged and the necessary particulars thereof concisely stated.

(2) At the trial the 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 may at all reasonable times inspect the charge as stated in the summons.

124. Charges in remitted cases

(1) Whenever any case has been remitted by the Director of Public Prosecutions to be dealt with by a subordinate court, the court shall—

(a) with convenient dispatch, cause the accused to be brought before it, or

(b) if the accused has been released on bail, cause a notice to be served on him stating that the case has been so remitted and requiring him to appear on the day appointed for the trial.

(2) The notice referred to in sub-section (1) shall be served in the same manner as a criminal summons, and if the accused does not appear—

(a) his bail shall be estreated; and

(b) he may be apprehended and brought before the court,

as in the case of a person who has not appeared upon a criminal summons.

C – General for all courts

125. Joinder of counts

(1) Any number of counts for any offence may be joined in the same charge.

(2) Where there are more than one counts in a charge, the counts shall be numbered consecutively and each may be treated as a separate charge.

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

(a) the direction may be made either before or in the course of the trial; and

(b) the counts in the charge which are not tried shall be proceeded with as if they had been found in a separate charge.

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

126. Where it is doubtful that offence has been committed

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

127. Essentials of charge

(1) Subject to this Act or any other law, each count of the charge shall set forth the offence with which the accused is charged in such manner and with such particulars as to the alleged time and place of committing the offence and the person (if any) against whom and the property (if any) in respect of which the offence is alleged to have been committed, as may be reasonably sufficient to inform the accused of the nature of the charge.

(2) The following provisions shall apply to criminal proceedings in the High Court or any subordinate court—

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

(b) any exception, exemption, provision, excuse or qualification, whether it does or it does not accompany in the same section the description of the offence in the law creating the offence —

(i) may be proved by the accused but need not be specified or negatived in the charge; and

(ii) if specified or negatived in the charge need not be proved by the prosecution.

(3) Where any of the particulars referred to in this Act are unknown to the prosecutor it shall be sufficient to state that fact in the charge.

128. Sufficiency of allegation of dates between which theft took place

It may in any charge in respect of theft be alleged that the property stated to have been stolen was taken at divers times between any two days named therein, and upon such charge, proof may be given of the theft of the property upon any day or days between the two days specified.

129. General deficiency

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

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

In every charge in which it is necessary to make averment as to any money or banknote it shall be sufficient to describe the money or banknote simply as money, without specifying any particular coin or bank note, and the averment, so far as regards the description of the property, shall be sustained —

(a) by proof of any amount of coin or bank note, although the particular species of coin of which the amount was composed or the particular nature of the bank note is not proved; and

(b) in cases of money or banknotes obtained by false pretences or by any other unlawful act, by proof that the offender obtained any coin or bank note or any portion of thereof, although the coin or bank note was delivered to him in order that some part of the value should be returned to the party delivering it to any other person, and such part has been returned accordingly.

131. Charges for giving false evidence

(1) It shall not be necessary—

(a) in respect of an offence which relates—

(i) to the taking or administering of an oath;

(ii) to the giving of false testimony on solemn declaration or otherwise;

(iii) to the making of a false statement or solemn declaration or otherwise;

(iv) to the procuring of the giving of false testimony: or

(v) to the making of false statement,

to set forth the words of the oath, testimony or statement except that the purport thereof or so much of the purport thereof as is material shall be sufficient if set forth;

(b) to allege in the charge, or to establish at the trial, that the 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;

(c) in a charge relating to the giving of false testimony, procuring or attempting to procure the giving of false testimony, to allege the jurisdiction or to state the nature of the authority of the court or tribunal before whom the false testimony was given or intended or proposed to be given.

If a person has made any statement on oath whether orally or in writing, and he thereafter on another oath makes another statement, which is in conflict with the first mentioned statement, he is guilty of an offence and may, on a charge alleging that he made the two conflicting statements, and upon proof of those two statements and without proof as to which of the statements was false, be convicted of the 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.

132. Presumption of qualifications

(1) If an act constitutes an offence only if committed by a person possessing a particular qualification or quality, or vested with a particular authority, or acting in a particular capacity, a person charged with such offence upon a charge alleging that he possessed the 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 denied at the trial or the allegation is disproved.

(2) If after the prosecutor has closed his case the allegation referred to in sub-section (1) is denied or evidence is led to disprove it, the Prosecutor may adduce any evidence and submit any argument in support of the allegation as if he had not closed his case.

133. Rules particular to certain charges

(1) It shall not be necessary in a charge—

(a) for an offence relating to a testamentary instrument, to allege that the instrument is the property of any person;

(b) for an offence relating to anything fixed in a square, street or open place or in a place dedicated to public use or ornament or to anything in or taken from a public place or office, to allege that the thing in respect of which the offence was committed is the property of any person;

(c) for an offence of theft from any grave, whether in a cemetery or burial place or not, to allege that any dead body or portion thereof or anything in the grave is the property of any person.

(2) In a charge—

(a) for an offence relating to a document which is the evidence of title to land or an interest in land, the document may be described as being the evidence of the title of the person or one

of the persons having an interest in the land to which the document relates, and the land or any part thereof shall be described in a manner, sufficient to identify it;

(b) for the theft of anything leased to the accused, the thing may be described as the property of the person who actually leased it;

(c) against a person employed in the public service for an offence committed in connection with anything which came into his possession by virtue of his employment, the thing in question may be described as the property of the Government;

(d) for an offence committed in connection with anything in the occupation or under the management of any public officer, the thing may be described as belonging to the officer without naming him; or

(e) for an offence committed as regards any property, movable or immovable, whereof any body corporate has by law the management, control or custody, the property may be described as belonging to the body corporate.

(f) for an offence as regards any property, if it is uncertain to which of two or more persons the property belongs as at the time of the commission of the offence, the property may be described as being the property of one or other of those persons, naming each of them, but without specifying which of them and it shall be sufficient at the trial to prove that at the time of the commission of the offence the property belonged to one or other of those persons without proving which of them.

(3) It shall be sufficient—

(a) in a charge for the theft of any property, if the property was not in the physical possession of the owner thereof at the time of the commission of the theft, but was in the physical possession of another person who had the custody thereof on behalf of the owner, to allege that the property was in lawful custody or under the lawful control of that other person;

(b) in a charge in which any trade mark or forged trade mark is proposed to be mentioned, without further description and without any copy or facsimile, to state that the trade mark or forged trade mark is a trade mark or forged trade mark.

(4) In a charge 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 any law, the charge may either state the offence which it is alleged the accused intended to commit or may aver an intent to commit an offence to the prosecutor unknown.

134. Companies and partnerships to be named by their names, style or title

It shall be sufficient —

(a) in every case in which it is necessary in any charge to name any company, firm or partnership, to state the name of the company of the style or title of the firm or partnership without naming any of the officers or shareholders of the company, or any of the partners in the firm or partnership, and one individual trading under the style or title of a firm may be described by the style or title;

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

135. Means or instrument by which act done not to be stated

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

136. A charge for murder or culpable homicide charge as to fact sufficient

It shall be sufficient —

(a) in a charge for murder to allege that the accused did wrongfully, unlawfully and intentionally kill the deceased; and

(b) in a charge for, culpable homicide to allege that the accused did wrongfully and unlawfully kill the deceased.

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

(1) In a charge for forging, uttering, stealing, destroying, concealing or otherwise unlawfully dealing with, any instrument, it shall be sufficient to describe the instrument by name or designation by which it is usually known or by the purport thereof, without setting out any copy or facsmile thereof, or otherwise describing it or stating its value.

(2) Whenever it is necessary in any case to make an allegation in a charge in respect of any instrument, whether the same consists wholly or in part of writing, print or figures, it shall be sufficient to describe the instrument by name or designation by which it is usually known or by the purport thereof, without setting out any copy or facsmile thereof or the whole or any part thereof, unless the wording of the instrument is an element of the offence.

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

In a charge for an offence relating to insolvency, 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.

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

(1) It shall be sufficient in a charge for—

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

(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 fraudulent 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 offence mentioned in this sub-section;

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

(2) In the case of any offence mentioned in this section 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.

140. Persons implicated in the same offence may be charged together

(1) Any number of persons charged with—

(a) committing or with procuring the commission of the same offence, although at different times, or with having after the commission of the offence, harboured or assisted the offence; or

(b) receiving, although at different times, any property which has been obtained by means of an offence or any part of any property so obtained,

may be charged with substantive offences in the same charge and may be tried together, notwithstanding that the principal offender or the person who obtained the property is not included in the same charge or is not amenable to justice.

(2) A person who—

(a) counsels or procures another to commit an offence; or

(b) aids another person in committing an offence; or

(c) after the commission of an offence harbours or assists the offender,

may be charged in the same charge with the principal offender and may be tried with him or separately or may be charged and tried separately whether the principal offender has or has not been convicted, or is not amenable to justice.

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

Part X – Procedure before commencement of trial

A – In the High Court

141. Persons committed to be brought to trial without delay

(1) Subject to this Act, every person committed for trial or sentence whom the Director of Public Prosecutions has decided to prosecute before the High Court shall—

(a) be brought to trial at the first session of that court for the trial of criminal cases held after the date of commitment; or

(b) be admitted to bail, if 31 days have elapsed between the date of commitment and the time of holding such sessions;

unless—

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

(bb) before the close of such first session an order has been obtained from the court under section 142 for his removal for trial elsewhere.

(2) If the person committed for trial or sentence before the High Court is not brought to trial at the first session of that court held after the expiry of 6 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) The accused, with his own consent in writing and with the consent of the Director of Public Prosecutions, may be brought to trial at any time after his commitment notwithstanding that the period of 31 days has not expired.

(4) For the purposes of this section a person shall not be deemed to have been committed for trial in case in which the Director of Public Prosecutions has under section 90 ordered a further examination to be taken, until such further examination has been completed.

142. Change of place of trial

(1) Whenever an accused person is charged before the High Court, the judge may, upon application by or on behalf of the Director of Public Prosecutions or by or on behalf of the accused, order that the trial be held at some place other than that specified in the indictment and at a time to be named in the order.

(2) When an order is made under sub-section (1), the consequences shall be the same in all respects as if the Director of Prosecutions 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 recognizances of the bail are to be deemed to be extended to that time and place accordingly, and the recognizances of any persons who are bound to attend as witnesses are in like manner to be deemed to be extended to the same time and place.

(3) Notice of time and place specified in the order under this section shall be given to the persons bound by recognizances, otherwise their recognizances shall not be forfeited.

143. Effect of change of place of trial

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

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

144. Summary

(1) Whenever—

(a) in the opinion of the Director of Public Prosecutions any danger of interference with or intimidation of witnesses exists; or

(b) the Director of Public Prosecutions considers it to be in the interest of the safety of the State or in the public interest,

he may direct that any person accused of having committed any offence be tried summarily in the High Court without a preparatory examination having been instituted against him.

B – In subordinate court

145. Commencement of proceedings if accused in custody

When a person who has been arrested upon a charge is brought before a judicial officer in terms of section 32 or 34 (3), such officer shall forthwith commence his trial or a preparatory examination upon the charge or if the matter is cognisable by another court to judicial officer, remand him to such court or officer.

C – General for all courts

146. Persons brought before wrong court

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

(2) If the accused does not make the request referred to under sub-section (1) the trial shall proceed and the verdict and judgment shall have the same effect in all respects as if the court had originally had jurisdiction to try the accused.

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

147. Trial of pending case may be postponed

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

148. Adjournment of trial

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

149. Powers of court on postponement

(1) When a trial is postponed or adjourned, the court may direct that the accused 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 or extend his bail, if he has already been admitted to bail, and may extend the recognizances of the witnesses.

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

150. Accused to plead to the charge

Subject to section 313 the accused, upon the day appointed for his trial or sentence upon any charge—

(a) shall appear in court, or

(b) if he is in custody, shall be brought into court; and

(c) shall be informed in open court of the offence with which he is charged as set forth in the charge,

and shall be required to plead instantly thereto, except where, in the case of a charge the accused objects to plea and the court finds that he has not been duly served with a copy of the charge.

151. Effect of plea

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

152. Objections to charge how and when to be made

(1) Every objection to charge 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 an objection is taken for a formal defect of a charge may, if the court thinks necessary and the accused is not prejudiced as to his defence, cause the charge to be amended forthwith in such particular by some officer of the court or other person, and thereupon the trial shall proceed as if no defect had appeared.

153. Exceptions

(1) When the accused excepts only and does not plead any plea, the court shall hear and determine the exception forthwith, and if the exception is overruled he shall be called upon to plead to the charge.

(2) When the accused pleads and excepts together, it shall be in the discretion of the court whether the plea or exception shall be first disposed of.

154. Certain omissions or imperfections not to invalidate charge

(1) No charge in respect of any offence shall be held insufficient—

(a) for want of the averment of any matter unnecessary to be proved;

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

(c) because of an omission to state the time at which the offence was committed in any case where time is not of the essence of the offence;

(d) because the offence is stated to have been committed on a day subsequent to the lodging;

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

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

(2) If any particular day or period is alleged in any charge as the day or period during which any act or offence was committed—

(a) proof that the act or offence was committed on any other day or time not more than 3 months before or after the day or period laid down therein shall be taken to support such allegation if time be not of the essence of the offence; and

(b) proof may be given that the act or offence was committed on a day or time more than 3 months before or after the day or period stated in the charge, unless it is made to appear to the court before which the trial is being held that the accused is likely to be prejudiced thereby in his defence upon the merits.

(3) If the court considers that the accused is likely to be prejudiced thereby in his defence upon the merits it shall reject proof referred to in this section, and the accused shall be in the same plight and conditions as if he had not pleaded.

155. Proceedings if defence be alibi

(1) Notwithstanding section 154 if in any case the defence of the accused is that commonly called an alibi, and the court before which the trial is held considers that the accused might be prejudiced in making such defence if proof were admitted that the act or offence in question was committed on some day or time other than the day or time stated in the charge then, although the day or time proposed to be proved is within a period of 3 months before or after the day stated in the charge, the court shall reject such proof and thereupon the same consequences shall follow as are in section 154 (3) mentioned.

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

156. Charge for libel

No charge of publishing a blasphemous, seditious, obscene or defamatory libel, or of selling, 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, but the court may order that particulars be furnished by the prosecutor stating what passages in the book; pamphlet, newspaper, printing or writing are relied on in support of the charge.

157. Court to order delivery of particulars

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

(2) The 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 trial shall proceed in all respects as if the charge had been amended in conformity with the 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 subordinate court is material to the substantial justice of the case or not, the court may have regard to the preparatory examination.

158. Defect in a charge cured by evidence

Whenever a charge in respect of any offence is defective for want of the averment of any matter which is an essential ingredient of the offence, the defect shall be cured by evidence at the trial in respect of the offence proving the presence of such matter which should have been averred, unless the want of averment was brought to court before judgment.

159. Motion to quash charge

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

(2) Upon the motion under sub-section (1) the court may quash the charge or may order it to be amended in such manner as the court thinks just, or may refuse to make any order on the motion.

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

160. Notice of motion to quash charge and of certain pleas be given

(1) When the accused intends to apply to have a charge quashed under section 159, or to except, or to plead any of the pleas mentioned in section 162, except the plea of guilty or not guilty, he shall give reasonable notice (regard being had to the circumstances of each particular case)—

(a) to the Director of Public Prosecutions or his representative if the trial is before the High Court; or

(b) to the public prosecutor if the trial is before a subordinate court; or

(c) when the prosecution is private, to the private prosecutor,

stating the grounds upon which he seeks to have the charge quashed or upon which he bases his exception or plea.

(2) The notice referred to in sub-section (1) may be waived by the Director of Public Prosecutions or the prosecutor, as the case may be, and the court may on good cause shown, dispense with the notice or adjourn the trial to enable the notice to be given.

161. Correction of errors in the charge

(1) Whenever, on trial of any charge—

(a) there appears to be any variation between the statement therein and the evidence offered in proof of such statement; or

(b) if it appears that—

(i) any words or particulars that ought to have been inserted in the charge have been omitted; or

(ii) that any words or particulars that ought to have been omitted have been inserted; or

(iii) that there is any other error in the charge,

the court may, at any time before judgment, if it considers that the making of the necessary amendment in the charge does not prejudice the accused in his defence, order that the charge be amended, so far as it is necessary, both in that part thereof where the variance, omission, insertion or error occurs and in every other part thereof which it may become necessary to amend.

(2) The amendment may be made on such terms (if any) as to postponing the trial as the court thinks reasonable.

(3) Upon the amendment of the charge in accordance with the order of the court, the trial shall proceed at the appointed time upon the amended charge in the same manner and with the same consequences in all respects as if it had been originally in its amended form.

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

162. Pleas

(1) If the accused does not object that he has not been duly served with a copy of the charge, or apply to have it quashed under section 159 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 to the charge he may plead—

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

(b) that he is not guilty; or

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

(d) that he has received the Royal pardon for the offence charged; or

(e) that the court has no jurisdiction to try him for the offence; or

(f) that the prosecutor has no title to prosecute.

(3) Two or more pleas may be pleaded together except that the plea of guilty shall not 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 charge, save as is specially provided in this Act or in any other law, shall be entitled to demand that he be either acquitted or found guilty.

163. Specially pleaded

(1) A person charged with the unlawful publication of a 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 the plea referred in subsection (1) shall, unless waived, be given as provided in section 160.

164. Person committed or remitted for sentence

(1) When a person has been committed to the High Court by a subordinate court for sentence, or his case has been remitted by the Director of Public Prosecutions to a subordinate court for sentence, he shall be called upon to plead to the charge in the same manner as if he had, in the case of the committal, been committed for trial and, in the case of the 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 the charge.

(2) If he pleads that he is guilty, the court shall, upon being satisfied that he duly admitted before a subordinate 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 entered pursuant to subsection (2) has the same effect as if it had been actually pleaded.

(4) If—

(a) the court is not satisfied with the guilt of the accused under sub-section (2); or

(b) notwithstanding that the accused pleads guilty it appears upon an examination of the deposition of the witness that he has not in fact committed the offence charged or any other offence of which he might be convicted on the charge,

the plea of not guilty shall be entered and the trial shall proceed as in other cases when that plea is entered.

165. Accused refusing to plead

If the accused, when called upon to plead to a charge, does not plead or answer directly thereto, the court may, if it thinks fit, order a plea of not guilty to be entered on behalf of the accused and a plea so entered shall have the same effect as if it had been actually pleaded.

166. Doubt as to capacity of accused to appreciate the proceedings

(1) If, when the accused is called upon to plead to a charge, it appears to be uncertain for any reason whether he is capable of understanding the proceedings at the trial, so as to be able to make a proper defence, the procedure prescribed by section 172 shall be observed.

(2) If a medical officer finds that the accused is capable of understanding the proceeding at the trial so as to be able to make a proper defence, the trial shall proceed as in other cases.

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

167. Statement of accused sufficient plea of former conviction or acquittal

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.

168. Trial on plea to jurisdiction

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.

169. Issues raised by plea to be tried

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

Part XI – Procedure after commencement of trial

A – In the High Court and subordinate courts

170. Separate trials

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

171. Defence by counsel

(1) Subject to sub-section (2) 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.

(2) Upon his trial before a subordinate court, an accused person under the age of 16 years may be assisted 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 the court, be so assisted.

172. Trial of insane person

(1) If on the arraignment or during the trial or at the preparatory examination of any person charged with any offence, it appears to the judicial officer presiding at such trial or preparatory examination that such person is insane or mentally incapacitated the court before which the trial or preparatory examination is being held shall enquire into the question of such person's sanity.

(2) If the court finds the person charged with an offence insane or mentally incapacitated pursuant to sub-section (1), the judicial officer presiding at the trial or preparatory examination shall record such verdict or finding, and shall issue an order committing such person to some prison pending the satisfaction of the King's pleasure or the court may make any order which it deems fit.

(3) When in any criminal proceeding, any act or omission is charged against any person as an offence, and it is given in evidence on the trial of such person for that offence that he was insane so as not to be responsible, according to law, for his action at the time when the act was done or the omission made, then, if it appears to the court before which such person is tried that he did the act or made the omission charged, but was insane at the time when he did the act or made the omission —

(a) the court shall return a special verdict or finding to the effect that the accused is guilty of the act or omission charged against him, but was insane at the time when he did the act or made the omission, and

(b) the judicial officer presiding at the trial shall thereupon order the accused to be kept in custody in some prison pending the signification of the King's pleasure.

173. Presence of accused

(1) Every criminal trial shall take place, and the witnesses shall, save as is otherwise expressly provided by 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, in which event the court may order him to be removed and may direct the trial to proceed in his absence.

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

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

(4) The High Court may, whenever it thinks fit, and subordinate court may, if it appears to that court to be in the interest of good order of public morals or of the administration of justice, direct a trial to be held with closed doors or (with such exceptions as the court may direct) females or minors or the public generally or any class thereof not to be permitted to be present thereat.

(5) If an accused is to be tried or is on trial on a charge referred to in section 70 (5), the court may, at the request to 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 reguest of that person or of his guardian), whether made in writing before the trial or orally at any time during the trial, direct every person whose presence is not necessary in connection with the trial or any person or class of person mentioned in the reguest, not to be permitted to be present thereat.

174. Certain information of trial not to be published

(1) Subject to sub-section (3), if the accused is tried upon a charge referred in section 70 (5) no person shall at any time publish by radio any document produced by printing or any other method of multiplication any information relating to the trial or any information disclosed thereat, unless the judicial 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 guadian), 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) is guilty of an offence and liable to 300 maloti or 3 months' imprisonment, 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 trial referred to in this section which is necessary to report any question of law which was raised during such trial or any proceedings resulting therefrom, and any decision or ruling given by any court on such question if the 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.

175. Conduct of trial

(1) The prosecutor may, in any trial before any evidence is given, address the court for the purpose of explaining the charge and opening the evidence intended to be adduced for the prosecution without commenting thereon.

(2) The prosecutor—

(a) shall then examine the witnesses for the prosecution and put in and read any documentary evidence which is admissible; and

(b) may, in the case of a trial before the High Court and in a case remitted to a subordinate 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.

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

(4) At the close of the evidence for the prosecution the judicial officer shall ask the accused, or each of the accused if more than one, or his legal representative, if any, whether he intends to adduce evidence in his defence and if he answers in the affirmative he or his legal representative—

(a) may address the court for the purpose of opening the evidence intended to be adduced for his defence without commenting thereon;

(b) shall then examine his witnesses and put in and read any documentary evidence which is admissible.

176. Address by counsel etc.

(1) After all the evidence has been adduced, the prosecutor may address the court, and thereafter the accused or which have not been remitted each of the accused if more than one may himself or his legal

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

177. Judgment

After the evidence is concluded and the legal representative or the 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 postpone the case to a future time.

178. Validity of judgment

(1) The judgment of a court, or other proceeding of a court in a criminal case, is not invalid by reason of it happenning on a Sunday.

(2) When by mistake a wrong judgment or sentence is delivered, the court may before the judgment is issued to the clerk or Registrar (as the case may be) as soon as possible thereafter amend the judgment or sentence and it shall stand as ultimately amended.

179. Judgment valid as if charge not amended

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

B – In cases remitted to a subordinate court

180. Remittal on accused's confession

(1) In a case remitted to a subordinate court on the confession of the accused, the presiding officer shall, when the accused 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 Director of Public Prosecutions has been remitted by the Director of Public Prosecutions to the court and section 164 shall *mutatis mutandis* be observed by the court.

(2) If the accused is convicted the presiding officer shall ask the accused 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.

(3) If, in answer to a question referred to in sub-section (2), 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 ground why sentence should not be passed upon him, the court shall consider what is urged by the accused in support of his application for further evidence or his objection to be sentenced and shall pass or postpone sentence as it considers it to be most in accordance with real substantial justice.

(4) If the court in any case under this section considers it proper to pass sentence at once, a note of the application or objection made by the accused and of the reasons for disallowance thereof shall be made on the record.

181. Remittal otherwise than on confession

(1) In a case remitted by the Director of Public Prosecutions 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 representative address the court.

in the manner prescribed by law in respect of criminal cases

(2) When the presiding officer at the trial of a case under this section is the magistrate before whom the preparatory examination was taken, he may not 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.

(3) The magistrate may, with the consent of the accused or his legal representative, dispense with the reading of any evidence or deposition under this section.

(4) 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.

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

(6) In every case where the Director of Public Prosecutions has remitted a case for trial under the powers conferred by section 90, the accused may, at the time of trial, inspect without fee or reward, all evidence and depositions (or copies thereof) which have been taken and the statement he made at the preparatory examination.

Verdicts possible on particular charges

182. On charge of commiting any offence, may be convicted of attempt

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

(2) Any person charged with an offence may be found guilty as an accessory after the fact in respect of that offence if such be the facts proved, and shall, in the absence of any penalty expressly provided by law, be liable to punishment to which the principal offender would under any law be subject.

(3) No person who has been tried on a charge of having committed any offence shall thereafter be prosecuted for an attempt to commit the offence for which he has been tried.

183. Attempts, incitements etc, to commit offence

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

(2) 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,

an offence, whether at common law or against a statute or statutory regulation, is guilty of an offence and liable to the punishment to which a person convicted of actually committing that offence would be liable.

184. On charge of fraud court may convict of certain offences

If an accused is tried on a charge alleging the commission of an offence in which an element consists of false representations as to the nature or quality of a certain article or substance, and if the accused would by the transaction in which those representations were made, have committed some other offence if his representations had been true, he may, if he is acquitted of the first mentioned offence be convicted of that other offence or an attempt to commit that other offence as if he had been charged therewith.

185. Charge of robbery

(1) If upon the trial of any person on a charge for robbery it appears upon the evidence that the accused did not commit the offence of robbery but that he did commit—

(a) an assault with intent to rob; or

(b) an assault with intent to do grievous bodily harm, or public violence,

(c) a common assault; or

(d) theft forming part of the offence of robbery charge; or

(e) an offence under section 343,

the accused may be found guilty of an assault with intent to rob, or of an assault with intent to do grievous bodily harm, or of a common assault, or of theft or of an offence under section 343, as the case may be.

(2) If on the trial of any person upon any charge in respect of robbery the evidence, though not sufficient to substantiate the charge of robbery, is sufficient to show that—

(a) the accused is guilty of receiving stolen goods knowing them to have been stolen; or

(b) the accused acquired or received into his possession stolen goods in contravention of section 344 (1),

he may be found guilty of receiving stolen goods knowing them to have been stolen, or of contravening section 344 (1), as the case may be, and upon such finding the accused is liable to the same punishment as if convicted of the like offence on a charge specially framed for the offence of receiving stolen goods knowing them to have been stolen.

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

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

187. Charge of rape etc.

(1) Any person charged with rape may be found guilty of—

(a) assault with intent to commit rape; or

(b) indecent assault; or

(c) assault with intent to do grievious bodily harm; or

(d) assault; or

(e) the statutory offence of unlawful carnal knowledge of, or committing any immoral or indecent act with a girl of or under a specified age; or

(f) 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;

(g) incest,

if such be the facts proved.

(2) Any person charged with assault with intent to 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.

(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 knowledge with a female idiot or imbecile under circumstances which do not amount to an attempt to commit rape or indecent act with such female, if such be the facts proved.

(4) Any person charged with any statutory offence referred to in sub-section (1) may be found guilty of indecent assault or common 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.

188. Charge of murder or culpable homicide

(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 the deceased, be found guilty—

(a) if charged with murder, of assault with intent to murder or to do grievous bodily harm, or common assault; and

(b) if charged with culpable homicide, of assault with intent to do grievous bodily harm or of common assault.

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

189. Exposing an infant

If at the trial of any person upon a charge of murder or culpable homicide, it appears that the person alleged to have been killed is a recently born 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.

190. Charge of house breaking with intent to commit an offence

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

191. Charge of statutory offences of entering or being upon premises

Where by statute the breaking and entering or the entering of premises with intent to commit an offence or the being without lawful excuse between sunset and sunrise in or upon any dwelling premises or enclosed area declared to be an offence, a person charged with entering premises with intent to commit an offence specified in the charge may be found guilty—

(a) of entering premises with intent to commit another offence than that specified, or an unknown, if intent to commit the specified offence is not proved but an intent to commit some offence is sufficiently proved; or

(b) of being without lawful excuse between sunset and sunrise in or upon any dwelling, premises or enclosed area, if such be the facts proved.

192. Persons charged with theft may be convicted of other offences

Any person charged with theft may be found guilty of receiving stolen goods knowing them to have been stolen or of contravening section 343 or 344 (1), if such be the facts proved.

193. Persons charged with receiving stolen goods knowing them to have been stolen may be convicted of theft

Any person charged with receiving stolen goods knowing them to have been stolen, may be found guilty of theft or of contravening section 344, if such be the facts proved.

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

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

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

(3) If a charge alleges that the offence referred in subsection (2) was committed by two or more persons, all or any of those persons may, according to the evidence, be convicted of theft of the property or of receiving it or any part of it knowing it to have been stolen, or one or more of them may, according to the evidence, be convicted of theft of the property, and the others of receiving it or any part of it knowing it to have been stolen.

195. Property alleged to have been stolen at one time is proved to have been stolen at different times

If upon a charge for theft it appears that the property alleged therein to have been taken at one time was stolen at different times, the prosecutor shall not, by reason thereof, be required to elect upon which taking the proceeds, and the accused is liable to be convicted of every such taking in like manner as if every such taking had been separately charged.

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

On the trial of any offence in which any of the following acts have been charged against the accused that he—

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

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

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

(d) induce, by means of any fraudulent 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 on the part of the accused an intention to defraud any particular person, but it shall be sufficient to prove that the accused did the act charged with intent to defraud.

197. Conviction for part of the offence charged

If in any other case not mentioned in this Act the commission of the offence with which the accused is charged as defined in the law creating or as set forth in the charge, 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.

198. When evidence shows offence of a similar nature

If the evidence on a charge for any offence does not prove the commission of the offence so charged but proves the commission of an offence which by reason of the essential elements of that offence is included in the offence so charged, the accused may be found guilty of the offence so proved.

Part XII – Witnesses and evidence in criminal proceedings

Securing attendance of witnesses

199. Process for securing attendance of witnesses

(1) Either the prosecutor or the accused may compel the attendance of any person to give evidence or to produce any books, papers or documents in any criminal proceedings by taking out of the office prescribed by rules of court the process of the court for that purpose.

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

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

(b) that the witnesses are necessary and material for his defence,

the prescribed officer of the court shall subpoena the witnesses or cause them to be warned.

(3) In any case where the prescribed officer of the court is not satisfied under subsection (2), he shall, upon the request of the accused, refer the application to the officer presiding over the court, who may grant or refuse the application, or defer giving his decision until he has heard the other evidence in the case or any part thereof.

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

200. Service of subpoena

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

201. Duty of witness to remain in attendance

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

202. Subpoenaing of witness or examination of persons in attendance by the court

(1) The court may at any stage of the criminal trial subpoena or cause to be subpoenaed any person as a witness or examine any person in attendance though not subpoenaed as a witness, or recall and re-examine any person already examined.

(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.

203. Powers of courts in case of default of witness attending or giving evidence.

Whenever any person appearing either in obedience to a subpoena or warning or by virtue of a warrant, or being present and being verbally required by the court to give evidence:—

(a) refuses to be sworn,

(b) having been sworn, refuses to answer such questions as are put to him;

(c) 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 court may adjourn the proceedings for any period not exceeding 8 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 any person committed to a gaol under sub-section (1) upon being brought up at the adjourned hearing refuses or fails again to do what is required of him, the court may, if it sees fit adjourn the proceedings again and commit him for the like period, and so again from time to time until such person consents to what is required of him.

(3) Nothing in this section shall prevent the court from giving judgment in any case or otherwise disposing of the case 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.

204. Requiring witness to enter into recognizance

(1) Every court before which a trial is proceeding may require any witness, either alone or together with one or more sufficient sureties to the satisfaction of the court, to enter into a recognizance under condition that the witness shall at any time within 19 months from the date thereof appear and give evidence at the trial upon being served with a subpoena, or upon being warned at some certain place to be selected by the witness,

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

(3) Every recognizance shall be liable to be estreated in the same manner as any forfeited recognizance is liable to be estreated by the court before which the principal party thereto was bound to appear.

(4) Any witness who refuses or fails to enter into this recognizance when required to under this section, may be committed to and detained in a gaol until such recognizance has been entered into.

205. Absconding witnesses

(1) Whenever any person is bound by recognizance 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 of arrest.

(2) If any person is arrested pursuant to subsection (1) any magistrate may, upon being 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 he shall be entitled on demand to receive a copy of the information upon which the warrant for arrest was issued.

206. Committal of witness who refuses to enter into recognizance

(1) Any witness who refuses to enter into any recognizance may be committed by the court by warrant to the gaol for the place where the trial is to be held to be kept there until after the trial or until the witness enters into such recognizance before a magistrate having jurisdiction in the place where the gaol is situated.

(2) If the accused is afterwards discharged any magistrate having jurisdiction shall order a witness committed to gaol pursuant to subsection (1) to be discharged.

207. Compelling witness to attend and give evidence

Section 68 applies *mutatis mutandis* in connection with any person subpoenaed or warned to attend any trial as a witness.

208. Witness from prison

(1) When the attendance of any person in any prison is required in any court in any criminal case cognisable therein or at a preparatory examination, the court before which the prisoner is required to attend may, before or during the sittings or session of the court at which the attendance of such person is required or the court holding the preparatory examination, as the case may be, make an order upon the gaoler or other person having the custody of the prisoner* to deliver the prisoner to the person named in the order to receive him.

(2) The person named in the order referred to in subsection (1) shall at the time prescribed in the order, convey the prisoner to the place at which such person is required to attend, there to receive and obey such further order as the court thinks fit.

(3) A judge of the High Court may, at any time for the purpose of taking such evidence as the judge may consider necessary, order to be brought before the High Court any person confined in any gaol.

(4) Whenever the attendance of any person confined in a gaol is required as a witness on behalf of a private prosecutor or an accused person (other than an accused person to whose defence the evidence of such witness is deemed material and who has not sufficient means to make the deposit), there shall be deposited with the gaoler or other officer having the custody and control of the person so confined such sum as may be necessary to cover expenses to be occasioned —

(a) by the person so confined and his necessary escort to and from the court, and

(b) by 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 gaol.

(5) No person shall obey or be allowed and summons issued pursuant to sub-section (1) unless the sum referred to therein has been deposited.

(6) The expenses referred to in sub-section (4) shall be determined in accordance with a scale prescribed by the Chief Justice.

209. Service subpoena to secure the attendance of a witness residing in Lesotho outside court's jurisdiction

(1) whenever a subpoena to give evidence in a criminal case has been issued out of any court and it appears that the person whose attendance is required thereby resides or is for the time at a place in Lesotho outside the area of Jurisdiction of that court, the subpoena shall be delivered to the proper officer and shall be served by him as soon as possible on such person.

(2) If the subpoena under sub-section (1) is not sued out by the Crown—

(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 for the purpose of which his attendance is required, shall be tendered to him with the subpoena; and

(b) a sum sufficient to cover the expenses of serving the subpoena shall be lodged with the registrar or clerk of the court by the person suing out the subpoena.

(3) If any person who has been served with a subpoena and to whom, if the subpoena is not sued out by the Crown, has been tendered the expenses fails, without lawful excuse, to attend at the time and place mentioned in the subpoena, a magistrate of the district in which the court is situated may issue a warrant for the apprehension of that person, and that person 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.

(4) The return of the proper officer showing that services of the subpoena has been duly effected, together with a certificate under hand of the registrar or clerk of the court that the person whose attendance was required by the subpoena failed to attend when called upon, and has established no lawful excuse for the non-attendance, shall be deemed sufficient proof of the nonattendance for the purpose of dealing with the person referred to under sub-section (3).

(5) For the purpose of this section "proper officer" includes a sheriff, deputy-sheriff, messenger, deputy-messenger or other officer who is by law or rule of court charged with the duty of serving subpoena to witnesses in criminal cases.

210. Payment of expenses of witnesses

(1) Any person who has attended any criminal proceedings as a witness for the Crown shall be entitled to such allowance as may be prescribed by regulation under sub-section (3), but the officer

presiding at such proceedings may, if he thinks fit, direct that no such allowance or only part of such allowance shall be paid to any such witness.

(2) Subject to any regulations made under sub-section (3) the officer presiding at any criminal proceedings may, if he thinks fit, direct that any person who has attended such proceedings as a witness for the accused be paid such allowance as may be prescribed by such regulation, or such lesser allowance as such officer may determine.

(3) The Chief Justice may, by regulation—

(a) prescribe a tariff of allowances to be paid to witnesses out of the public moneys in criminal cases;

(b) prescribe different tariffs for witnesses according to their several callings, occupations or station in life and according to the distances to be travelled by them to reach the place of trial, preparatory examination or other criminal proceedings; and

(c) prescribe the circumstances in which any such allowance is to be paid to any witness for the accused.

211. Taking evidence on commission

(1) Whenever 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, the court may—

(a) dispense with such attendance, and

(b) issue a commission to any magistrate or, where the witness is resident outside Lesotho, to any person authorised by the court to take evidence on commission in civil cases outside Lesotho, within the local limits of whose jurisdiction the witness resides.

(2) The specific fact with regard to which the evidence of the witness is required under sub-section (1) shall be set out in the commission, and the court may confine the examination of the witness to those facts.

(3) Where the commission is issued under sub-section (1) at the instance of the Crown, the court may if it thinks fit, direct as a condition of the order that the expense necessary to the representation of accused by attorney or counsel at the examination be paid by the Crown.

(4) The magistrate or other person to whom the commission is issued shall proceed to the place where the witness is or summon the witness before him and take down his evidence in the same manner as in the case of an ordinary preparatory examination taken before him or, where the commission is executed outside Lesotho, in the same manner as a commission to take evidence in civil cases is executed.

212. Parties may examine witnesses

(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 thinks relevant to the issue, and the magistrate or other person to whom the commission is directed shall examine the witness upon such interrogatories.

(2) Any party to criminal proceedings referred to in subsection (1) may appear before the magistrate or other person by counsel, attorney or agent or, if not in custody, in person and examine, cross-examine and re-examine (as the case may be) the witness.

213. Return of commission

(1) After a commission under section 211 has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the court which issued it, and 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 just exceptions, be read in evidence in the case by either party and shall form part of the record.

(2) Any deposition so taken may be received in evidence at any subsequent stage of the case before another court.

214. Adjournment of enquiry or trial

In every case in which a commission is issued under section 211 the trial, preparatory examination or other criminal proceeding may be adjourned for a specific time, reasonably sufficient for the execution and return of the commission.

Competency of a witness

215. Every person competent and compellable

Every person not expressly excluded by this Act from giving evidence is competent and compellable to give evidence in a criminal case in any court in Lesotho or before a magistrate on a preparatory examination.

216. Evidence for prosecution by husband or wife

(1) The wife or husband of an accused shall not be competent to give evidence for the prosecution in criminal proceedings but shall be competent and compellable to give evidence for the prosecution at such proceedings where the accused is charged with:—

(a) any offence committed against the person of either of them.

(b) any offence under sections 2, 3, or 4 of Women and Girls Protection Proclamation 14 of 1949 committed in respect of either of them;

(c) any offence under the Deserted Wives and Children's Proclamation 60 of 1959.

(d) bigamy

(e) incest

(f) abduction

(g) any offence under section 2 of Concealment of Child birth Proclamation 3 of 1943.

(h) perjury committed in connection with or for the purpose of any judicial proceedings instituted or to be instituted or contemplated by the one of them against the other, or in connection with or for the purpose of criminal proceedings in respect of any offence included in this sub-section;

(i) the statutory offence of making a false statement in any affidavit or any affirmed, solemn or attested declaration if it is made in connection with or for the purpose of any such proceedings as are mentioned in paragraph (h)

and shall be competent but not compellable to give evidence for the prosecution in criminal proceedings where the accused is charged with any offence against the separate property of the wife or of the husband of the accused.

(2) A person married in accordance with Sesotho law and custom is a married person.

217. Evidence of accused and husband or wife on behalf of accused

(1) An accused and wife or husband of an accused shall be a competent witness for the defence at every stage of criminal proceedings, whether or not the accused is charged jointly with any other person.

Provided that—

(a) an accused shall not be called as a witness except upon his own application;

(b) the wife or husband of an accused shall not be called as a witness for the defence except upon the application of the accused.

(2) The evidence which an accused may, upon his own application, give in his own defence at joint criminal proceedings, shall not be inadmissible against a co-accused at such proceedings by reason only that such accused is for any reason not a competent witness for the prosecution against such co-accused.

(3) An accused may not make an unsworn statement at his trial in lieu of evidence but shall, if he wishes, do so on oath, or as the case may be, on affirmation.

218. Court to decide on competency

It shall be competent for the court in which any criminal case is pending or, in the case of a preparatory examination, the magistrate, to decide upon all questions concerning the competency or compellability of any witness to give evidence.

219. Incompetency from insanity or intoxication

No person appearing or proved to be afflicted with idiocy, lunacy or inability or labouring under any imbecility of mind arising from intoxication or otherwise whereby he is deprived of the proper use of reason, shall be competent to give evidence while so afflicted or disabled.

Oaths and affirmations

220. Oaths

(1) No person other than a person referred to in sections 221 and 222 shall be examined as witness otherwise than upon oath.

(2) The oath to be administered to any person as a witness shall be administered in the form which most clearly conveys to him the meaning of the oath, and which he considers to be binding on his conscience.

221. Affirmations in lieu of oaths

(1) In any case where any person who is 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 _____"

and such affirmation and declaration shall be of the same force and effect as if such person had taken the oath.

(2) Every person authorised, required or qualified by law to take or administer an oath shall accept, in lieu thereof, an affirmation or declaration referred to in sub-section (1).

(3) The same penalties 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 in accordance with section 220 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 as in this section mentioned.

222. When unsworn or unaffirmed testimony admissible

(1) Subject to sub-section (2), any person 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.

(2) Before any person referred to in sub-section (1) 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 irreligious nature, obviously unfit to be administered.

(3) Any person referred to in sub-section (1) who wilfully and falsely states anything which, if sworn would have amounted to the offence of perjury, or any offence declared by any law to be equivalent to perjury, or punishable as perjury, shall be deemed to have committed that offence, and shall, upon conviction, be liable to punishment as is by law provided as a punishment for that offence.

Admissibility of evidence

223. Evidence or affidavit

(1) Whenever in any criminal proceedings the question arises whether any particular act, transaction or occurence did or did not take place in any particular department or office of the Government of Lesotho or in a particular court of law or in a particular bank, or whether any particular officer of the Government of Lesotho did or did not perform any particular act or take part in any particular transaction, a document purporting to be an affidavit made by a person who in that statement alleges —

(a) that he is in the service of the Government of Lesotho or of the bank, as the case may be;

(b) that if the act, transaction or occurence had taken place in the department or office, court or bank, or if the official had performed the act or taken part in the transaction, it would in the ordinary course of events have come to his knowledge, and a record thereof, available to him, would have been kept;

(c) that the act, transaction or occurence came to his knowledge or that he satisfied himself that no such record was kept or that no such act, transaction or occurence took place,

shall on its mere production in those proceedings by any person, but subject to sub-section (6), be *prima facie* proof that no such act, transaction or occurrence took place.

(2) Whenever in any criminal proceedings the question arises whether any person bearing a particular name did or did not furnish any particular officer in the service of the Government of Lesotho with any particular information or document, a document purporting to be an affidavit made by a person who, in that affidavit, alleges that he is that officer and that no person bearing that name furnished him with any such information or document, shall on its mere production in those proceedings by any person, but subject to sub-section (6), be *prima facie* proof that that person did not furnish that 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 (6) be proved *prima facie* by the production of a document purporting to be an affidavit made by the person upon whom that law confers the power or imposes the duty to effect any such registration or to record any such fact or transaction.

(4) Whenever any fact ascertained by any examination or process requiring any skill in bacteriology, biology, chemistry, physics, astronomy, anatomy, any branch of pathology or in toxicology or in the identification of finger prints or palm prints is or may be relevant to the issue in any criminal proceedings, a document purporting to be an affidavit made by a person who in that affidavit alleges that he is in the service of any institution to be designated for the purposes of this section by the Minister by notice in the *Gazette*, and that he has ascertained any such fact by means of any such examination or process, shall on its mere production in those proceedings by any person, but subject to sub-section (6), be admissible to prove that fact except that such affidavit shall not be so admissible in a subordinate court —

(a) if objected to by an accused or his representative, where the affidavit is produced by the prosecutor; or

(b) if objected to by the prosecutor or by an accused or his representative where the affidavit is produced by another accused or his representative,

unless the objector or his representative has received not later than 3 days after the day upon which the accused was summoned or otherwise notified of his trial, a notice in writing that the affidavit will be tendered in evidence at the trial, and has not within 3 days of the day of the receipt of the notice given notice in writing to the person who gave the first notice, that he objects to the production of the affidavit.

(5) In any criminal proceedings in which the physical condition or identity or a deceased person or dead body was in or at a hospital, nursing home, ambulance or mortuary is relevant to the issue, a document purporting to be an affidavit made by a person who in that affidavit alleges that he is or was employed at or in connection with the hospital, nursing home, ambulance, or mortuary and—

(a) that in the performance of his official duties there or in connection therewith he observed the physical characteristics of the deceased or dead body described in the affidavit;

(b) that while the deceased person or dead body was under his care such person or dead body sustained the injuries or wounds described in the affidavit or sustained no injuries or wounds;

(c) that he pointed out or handed over the deceased person or dead body to another person or left the deceased person or dead body in the care of another person; or

(d) that the deceased person or dead body was pointed out or handed over to him or left in his care by another person,

shall on its mere production in these proceedings by any person, but subject to sub-section (6) be *prima facie* proof of the facts alleged.

(6) The court in which an affidavit made pursuant to this section is adduced in evidence may 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 the interrogatories and any reply thereto, purporting to be a reply from such person, shall likewise be admissible in evidence in the proceedings.

(7) In any criminal proceedings in which any facts ascertained by a duly qualified medical practitioner in regard to any injury or state of mind or condition of body of a person or his opinion as to the cause of death of a person, or any facts ascertained by a veterinary practitioner as to any injury or his opinion as to the cause of death to any animal may be proved by a written report signed and dated by such medical or veterinary practitioner and that report shall be *prima facie* evidence of the facts recorded in it.

(8) Whenever the weight, mass or value of a precious metal or any precious stone is or may become relevant to the issue in the criminal proceedings, a document purporting to be an affidavit made by a person, who in that affidavit alleges that he is an appraiser of precious metals or precious stones that he is in the service of the Government and that weight, mass or value of that precious metal or precious stone is as specified in that affidavit, shall upon its mere production at such proceedings,

be *prima facie* proof that the mass, weight or value of that precious metal or precious stone is as specified.

(9) Nothing in this section shall affect any law under which any certificate or other document is made admissible in evidence, and this section shall be deemed to be an additional to, and not in substitution for, any such law except that, where any law in operation upon commencement of this Act, which deals with any matter dealt with in this section, is at variance with this section, this section shall prevail.

224. Irrelevant evidence inadmissible

No evidence, as to any fact, matter or thing, 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, shall be admissible.

225. Hearsay evidence

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 prior to the fourth day of October, 1966

226. Admissibility of dying declarations

The declaration made by any deceased person upon the apprehension of death shall be admissible or inadmissible in evidence in every case, in which the declaration would be admissible or inadmissible in any similar case depending in the Supreme Court of Judicature in England prior to the fourth day of October 1966.

227. Inadmissibility in criminal cases of evidence at preparatory examination

(1) The deposition of any witness taken upon oath before any magistrate at a preparatory examination in the manner required by section 70 in the presence of any person who has been brought before the magistrate on a charge of having committed an offence, or the deposition of a witness taken in circumstances described in section 95, shall be admissible in evidence on the trial of the person for any offence charged by the Director of Public Prosecutions in pursuance of the preparatory examination at which the deposition was taken or on that person's trial before a subordinate court or on the remittal of that person's case by the Director of Public Prosecutions after considering the preparatory examination except that—

(a) it is proved on oath to the satisfaction of the court that

(i) the deponent is dead;

(ii) the deponent is incapable of giving evidence;

(iii) the deponent is too ill to attend; or

(iv) the deponent is kept away from trial by the means and contrivance of the accused, or is outside the jurisdiction and his attendance cannot be procured without considerable amount of delay or expense and the deposition offered in evidence is the same which was sworn before the magistrate without alteration; and

(b) it appears on record or is proved to the satisfaction of the court that the accused, by himself, his counsel, attorney or law agent, had a full opportunity of cross-examining the witness.

(2) The evidence of a witness given at a former criminal trial shall, under like circumstances, be admissible on any subsequent trial of the same person upon the same charge.

(3) Subject to the conditions mentioned in this section where the witness cannot be found after diligent search or cannot be compelled to attend, the court may allow his deposition to be read as evidence at the trial.

228. Admissibility of confessions

(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 the confession is proved to have been freely and voluntarily made by such person in hi.$ sound and sober senses and without having been unduly influenced thereto.

(2) If a confession is shown to have been made to a policeman, it shall not be admissible in evidence under this section unless it is confirmed and reduced to writing in the presence or a magistrate.

(3) If a confession has been made at a preparatory examination before any magistrate, it shall not be admissible unless the person making it has been previously, according to law, been cautioned by the magistrate that he is not obliged, in answer to the charge against him, to make any statement which incriminates him, and that what he says may be used in evidence against him

(4) In any proceedings any confession, which is by virtue of this section inadmissible in evidence against the person who made it, shall be admissible against him if he or his representative adduces in those proceedings any evidence, either directly or in cross-examining a witness, of any statement, verbal or in writing, made by the person who made the confession, either as part thereof or in connection therewith, if such evidence is, in the opinion of the officer presiding at such proceedings favourable to the person who made the confession.

229. Inadmissibility of facts discovered by inadmissible confession

(1) Evidence of any fact otherwise admissible in evidence may be admitted notwithstanding—

(a) that such fact has been discovered and come to the knowledge of the witness who gives evidence respecting it only in consequence of information given by the person under trial in any confession or evidence which by law is not admissible in evidence against him on such trial and

(b) that such fact has been discovered and came to knowledge of the witness against the wish or will of the accused.

(2) Evidence may be admitted that anything was pointed out by the person under trial or that any fact or thing was discovered in consequence of information given by such person notwithstanding that such pointing out or information forms part of a confession or statement which by law is not admissible in evidence against him on such trial.

230. Confession not admissible against other persons

No confession made by any person shall be admissible as evidence against any other person.

231. Evidence of character

Subject to section 249, no evidence as to the character of the accused or as to the character of any woman on whose person any rape or assault with intent to commit rape or indecent assault is alleged to have been committed shall, in any such case, be admissible or inadmissible if such evidence would be inadmissible or admissible in any similar case depending in the Supreme Court of Judicature in England prior to the fourth day of October, 1966.

232. Evidence of genuineness of disputed writings

Comparison of a disputed writing with any writing proved to the satisfaction of the court or a magistrate holding preparatory examination to be genuine may be made by witnesses, and such writing and the

evidence of witnesses with respect thereto 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.

233. Proof of trial conviction or acquittal

The trial and conviction or acquittal of any person may be proved by the production of a certificate signed or purporting to be signed by the registrar or clerk of the court or other officer having the custody of the records of the court where the conviction or acquittal took place, or by the deputy of the registrar, clerk or other officer, that the document produced is a copy of the charge and of the trial, conviction, and judgment or acquittal, as the case may be, omitting the formal parts thereof.

234. Proof of law or anything published in *Gazette*

(1) The court shall take judicial notice of any law or government notice or any other matter which has been published in the *Gazette*.

(2) A copy of the *Gazette* or a copy of the law, government notice of any other matter purporting to be printed under the superintendence or authority of the Government Printer, shall, on its mere production, be evidence of the contents of such law, notice or other matter, as the case may be.

235. Proof of appointment to a public office

Any evidence which would be admissible in any criminal case depending in the Supreme Court of Judicature in England prior to the fourth day of October, 1966 as evidence of the appointment of any person to any public office, or of the authority of any person to act as a public officer, shall be admissible in evidence in criminal cases in Lesotho and before a magistrate holding a preparatory examination.

Evidence of accomplices

236. Accomplices and certain persons giving evidence freed from prosecution

(1) Wherever the prosecutor at any trial or preparatory examination informs the court that any person he produces as a witness on behalf of the prosecution has, in his opinion, been an accomplice, cither as principal or accessory, in the commission of the offence alleged in the charge, or the subject of the preparatory examination, or that such person will, in his opinion, be required to answer questions the reply to which would tend to incriminate him in respect of an offence mentioned by the prosecutor, such person shall, notwithstanding anything to the contrary, be compelled to be sworn or to make affirmation as a witness and answer any question the reply to which would tend to incriminate him in respect of any such offence.

(2) If a person referred to in sub-section (1) fully answers to the satisfaction of the court all such lawful questions as may be put to him, he shall, subject to sub-section (3), be discharged from all liability to prosecution for the offence concerned and the court shall cause the discharge to be entered on the record of the proceedings.

(3) The discharge referred to in sub-section (2) shall be of no force and effect and the entry thereof on the record of the proceedings shall be deleted if, when called as a witness at the trial of any person upon a charge of having committed the offence concerned or an offence disclosed by the preparatory examination, or at a reopening of the preparatory examination the person concerned refuses to be sworn or to make affirmation as a witness or refuses or fails to answer fully to the satisfaction of the court all such lawful questions as may be put to him.

237. Evidence accomplices and certain persons not to be used against them

(1) No evidence given by a person referred to in section 236 (1) on behalf of the prosecution in any offence shall, if that person is thereafter prosecuted for an offence referred to in that section be admissible in evidence against him at his trial.

(2) If a person is subsequently prosecuted for perjury arising from the giving of evidence referred to in sub-section (1), nothing in this section shall prevent the admission against him in evidence at his trial for the perjury of the evidence so given.

Sufficiency of evidence

238. Sufficiency of one witness in all cases except perjury and treason

(1) Subject to sub-section (2), any court may convict any person of any offence alleged against him in the charge on the single evidence of any competent and credible witness.

(2) No court shall—

(a) convict any person of perjury on the evidence of any one witness unless, in addition to and independent of the evidence of such witness, some other competent and credible evidence as to the falsity of the statement which forms the subject of the charge is given to the court; or

(b) convict any person of treason except upon the evidence of two witnesses where one overt act is charged, upon the evidence of one witness to each such overt act.

239. Conviction on single evidence of accomplice

Any court may convict any person of any offence alleged against him in the charge on the single evidence of any accomplice, provided the offence has, by competent evidence other than the single and unconfirmed evidence of the accomplice, been proved to the satisfaction of the court to have been actually committed.

240. Conviction of accused on plea of guilty or evidence of confession

(1) If a person charged with any offence before any court pleads guilty to that offence or to an offence of which he might be found guilty on that charge, and the prosecutor accepts that plea the court may—

(a) if it is the High Court, and the person has pleaded guilty to any offence other than murder, bring in a verdict without hearing any evidence; or

(b) if it is a subordinate court, and the prosecutor states the facts disclosed by the evidence in his possession, the court shall, after recording such facts, ask the person whether he admits them, and if he does, bring in a verdict without hearing any evidence.

(2) Any court may convict a person of any offence alleged again to him in the charge by reason of any confession of that offence proved to have been made by him, although the confession is not confirmed by any other evidence, provided the offence has, by competent evidence other than the confession, been proved to have been actually committed.

241. Sufficiency of proof of appointment of public office

Any evidence which would, if credible, be deemed in any criminal case depending in the Supreme Court of Judicature in England prior to the fourth day of October 1966 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 Lesotho, and before any magistrate holding a preparatory examination, sufficient proof of the appointment or authority.

Documentary evidence

242. Certified copies of public documents admissible

(1) Whenever any book or other document is of such a public nature as to be admissible on its mere production from the proper custody, and copy thereof or extract therefrom shall be admissible in evidence in any court or before a magistrate in a preparatory examination, provided it is proved to be an examination copy or extract, or provided it purports to be signed and certified as a true copy or extract by the officer in whose custody the original is entrusted.

(2) An officer in whose custody any book or document is entrusted shall, pursuant to sub-section (1), furnish a certified or extract of any such book or document to any person applying at a reasonable time therefor, upon payment of a reasonable sum therefor not exceeding ten cents for every word.

243. Production of official documents

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 Director of Public Prosecutions.

244. Copies of official document sufficient

(1) Except when the original is ordered to be produced under section 243, it shall be sufficient to produce a copy of or extract from a document described in that section certified as a true copy by the head of the department in whose custody or under whose control the document is, and a copy or extract so certified shall be admissible in evidence before any court or a magistrate holding a preparatory examination, and shall be of like value and effect as the original document.

(2) It shall not be necessary for any head of Government department or office to appear in person to produce any original document in his custody or under his control as such officer, but it shall be sufficient if the document is produced by some person authorised by him so to do.

(3) Certified copies or extracts may be handed in to the court by the party who desires to avail himself of the same.

(4) Any officer authorised or required by this Act to furnish any certified copies or extracts who willfully certifies any documents as being a true copy or extract, knowing that there is not a true copy extract, is guilty of an offence and liable to 2 years imprisonment.

Special provisions as to bankers' book

245. Entries in bankers' books admissible in certain cases

The entries in ledgers, day-books, cash-books and other account books of any bank shall be admissible as *prima facie* evidence of the matters, transaction and accounts recorded therein, on proof being given by the affidavit in writing of a director, manager or an officer of that bank or by other evidence—

(a) that the ledgers, day-books, cash-books or other account books—

(i) are or have been the ordinary books of that bank;

(ii) are in or come immediately from the custody or control of that bank; and

(b) the entries have been made in the usual and ordinary course of business.

246. Examined copies admissible after notice

(1) Copies of all entries in any ledgers, day-books, cash-books or other account books used by any 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 the examination and that the copies sought to be put in evidence are correct except that—

(a) 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 10 days' notice in writing or such other notice as may be ordered by the court or a magistrate holding preparatory examination, containing a copy of the entries proposed to be adduced, and stating the intention to adduce the same in evidence has been given by the party proposing to adduce the same in evidence to the other party; and

(b) the 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 notice pursuant to sub-section (1) 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 in the ledgers, day-books, cash-books or other account books of any bank relating to the matters in question in the criminal proceedings, and such order may be made by the court or magistrate in its or his discretion, either with or without summoning before it or him such bank or other party, and shall be intimated to such bank at least 3 days before the 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 the entries and copies mentioned in the notice shall not be admissible as evidence of the matters, transactions and documents recorded in the ledgers, day-books, cash books and other account books.

247. Bank not compelled to produce books except by court order

(1) Subject to sub-section (2) no bank shall be compelled to produce the ledgers, day-books, cash-books or other account books, of the bank in any criminal proceedings unless the court or the magistrate holding the preparatory examination specially orders that the ledgers, day-books, cash-books or other account books shall be produced.

(2) The police officer of the rank of lieutenant or above may demand the production of bank ledgers, day-books, cashbooks or other account books notwithstanding that there are no criminal proceedings pending.

248. Proceedings to which bank is a party excepted

(1) Sections 245 to 247 shall not apply to any criminal proceedings to which any bank, whose ledgers, day-books, cash-books or other account books are required to be produced in evidence, is a party.

Privileges of witnesses

249. Privileges of accused when giving evidence

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 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 263 or 264, 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.

250. Privilege arising out of the marital state

(1) A husband shall not be compelled to disclose any communication made to him by his wife during the marriage, and a wife shall not be compelled to disclose any communication made to her by her husband during the marriage.

(2) A person whose marriage has been dissolved or annulled by a Competent Court shall not be compelled to give evidence as to any matter or thing which occurred during the subsistence of the marriage or supposed marriage and as to which he or she could not have been compelled to give evidence if the marriage was subsisting.

251. No witness compellable to answer question which the witness's husband or wife might decline

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.

252. Witness not excused from answering questions by reason that the answer would establish a civil claim against him

A witness in criminal proceedings may not refuse to answer a question relevant to the issue, the answering of which has no tendency to incriminate himself, or to expose him to penalty or forfeiture of any nature, by reason only or on the sole ground that the answering of the question would establish or tend to establish that he owes a debt or is otherwise subject to a civil suit.

253. Privilege of professional advisers

No advocate, attorney or other legal practitioner duly qualified to practise in any court, whether within Lesotho or elsewhere, shall be competent to give evidence against any person by whom he was professionally employed or consulted, without the consent of that 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 proceedings depending in the Supreme Court of Judicature in England prior to the fourth day of October, 1966, except that no such legal practitioner shall, in any proceeding, but reason of any such employment or consultation, be incompetent or not legally compellable to give evidence as to any fact, matter or thing relative to or connected with the commission of any offence for which the person, by whom such legal practitioner has been so employed or consulted, is in such proceeding prosecuted whenever such fact, matter or thing has come to the knowledge of such legal practitioner before he was professionally employed for or consulted with reference to the defence of such person against such prosecution.

254. Privilege from disclosure of facts on the ground of public policy

(1) No witness shall, except as in this Act is provided, be compellable or permitted to give evidence in any criminal proceedings as to any fact, matter or thing 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 prior to the fourth day of October 1966, such witness would not be compellable or permitted to give

evidence, by reason that such fact, matter or thing or communication, on the grounds of public policy and from regard to public interest ought not to be disclosed and is privileged from disclosure.

(2) It shall be competent—

(a) for any person, in any criminal proceedings, to adduce evidence of any communication alleging the commission of an offence if the making of that communication *prima facie* constitute an offence,

and the determination of the presiding officer under paragraph (b) shall, for the purpose of those proceedings, be final.

255. Witness excused from answering questions the answers to which would expose him to penalties or degrade his character

(1) No witness in any criminal proceedings 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 prior to the fourth day of October 1966, 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 criminal charge, or to degrade his character.

(2) Notwithstanding sub-section (1) an accused person called as a witness on his own application in accordance with section 217 may be asked any question in cross-examination notwithstanding that it would tend to incriminate him as to the offence charged against him.

Special rules of evidence in particular criminal case

256. Evidence on a charge of treason

On the trial of a person charged with treason, evidence shall not be admitted of any overt act not alleged in the charge, unless relevent to prove some other overt act alleged therein.

257. Evidence on charge of perjury or subornation

On the trial of a person charged with an offence of which the giving of false evidence by any person at the trial of a person charged with an offence is an element, a certificate—

(a) setting out the substance and effect only, without the formal parts of the charge and the proceedings at the trial; and

(b) purporting to be signed by the officer having the custody of the records of the court where the charge was tried or his deputy,

is sufficient evidence of the trial without proof of the signature or official character of the person who appears to have signed the certificate.

258. Evidence of a charge of bigamy

(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.

(2) Unless the contrary is proved it shall be presumed that the marriage between the accused and another person was at the date of the marriage lawful and binding—

(a) in a case where the marriage is alleged to have been solemnised in Lesotho, as soon as there has been produced to the court an extract from a marriage register which is either a duplicate original, or a copy, and which purports to be certified as such by the officer or minister of religion having for the time being the custody of the register of marriage;

(b) in a case where the marriage is alleged to have been solemnised outside Lesotho, as soon as there has been produced to the court a document which purports to be an extract from a marriage register kept according to law of the country where the marriage is alleged to have been solemnised, and which purports to be certified as such by an officer or person having the custody of that register, provided the signature of such officer or person to the certificate is authenticated in accordance with any law of Lesotho governing the authentication of documents executed outside Lesotho.

(3) On the trial of a person charged with bigamy, as soon as the fact of a marriage ceremony in Lesotho between the accused and another person has been proved, the marriage shall be deemed to have been lawful and binding as between them at the date thereof until it is shown —

(a) that they were within the prohibited degrees of consanguinity or affinity, or

(b) that owing to a then subsisting marriage one of them was incapable of contracting a lawful and binding marriage with the other.

(4) On the trial of a person on a charge of bigamy, as soon as the alleged bigamous marriage, wherever solemnized, has been proved, the fact that shortly before the alleged bigamous marriage the accused had been cohabiting with the person to whom the accused is alleged to be lawfully married and had been treating and recognising such person as a spouse shall, if in addition there be evidence of the performance of a marriage ceremony between the accused and such person, be *prima facie* evidence that there was a lawful and binding marriage subsisting between the accused and such person at the time of the solemnisation of the alleged bigamous marriage.

259. Evidence of relationship on charge of incest

(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, or aunt or niece of the other party to the incest;

(b) the accused is, until the contrary is proved, presumed to have knowledge, at the time of the alleged offence, of the relationship existing between him and the other party to the incest.

(2) Where 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 258 for the proof of the existence of a lawful and binding marriage of a person charged with bigamy.

260. Evidence on charge of infanticide or concealment of birth

(1) On the trial of a person charged with murder or culpable homicide of a newly born child, the 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 the child was, at the time of its death, entirely separated from the body of the mother.

(2) On the trial of a person charged with concealment of the birth of a child, it shall not be necessary to prove whether the child died before, at or after its birth.

261. Evidence as to counterfeit coin

When upon the trial of any person it becomes necessary to prove that any coin produced in evidence against him is false or counterfeit, it shall be sufficient to prove that fact by the evidence of any credible witness.

262. Evidence of gambling case

(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 unlicensed premises entered under a warrant or order issued under any law, or on the person of any one found therein or thereon, it shall be *prima facie* evidence in a prosecution under any law for keeping a gambling house—

(a) that the premises are used as a gambling house and

(b) that the persons found in or on those premises were playing therein or thereon,

although no play was actually going on in the presence of the person entering the premises under the warrant or order, or in the presence of the persons accompanying him.

(2) In any prosecution under any law for keeping a gambling house it shall be *prima facie* evidence that that premises are used as a gambling house —

(a) if any policeman authorised to enter upon those premises is wilfully prevented from or obstructed or delayed in entering the same or any part thereof; or

(b) if those premises or any part thereof be found fitted or provided with any means or contrivance for concealing, removing or destroying any instruments of gaming.

(3) On the trial of a person charged with an offence 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.

263. Evidence on charge of receiving stolen goods

(1) Upon trial of a person charged with having received stolen goods knowing them to be stolen or for having in his possession stolen property or property obtained by means of an offence knowing 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 12 months preceding the time when such person was first charged before a magistrate with the offence in respect of which proceedings are being taken.

(2) The evidence referred to in sub-section (1) may be taken into consideration for the purpose of proving that the accused knew the property which forms the subject of the proceedings taken against him to be stolen or obtained by the offence referred to in that sub-section.

(3) No evidence shall be given against any person under this section unless—

(a) at least 3 days' notice in writing has been given to him that it is intended to give such evidence against him

(b) the notice specified the nature or description of the other offence, if known, from whom the property was so stolen or obtained.

264. Evidence of previous conviction on charge of receiving stolen goods

(1) If upon trial of a person charged with having received stolen goods knowing them to be stolen, or for having in his possession stolen property or property obtained by means of an offence, it is proved that the stolen property or property obtained by means of an offence has been found in his possess and if that person has, within 5 years immediately preceding in the date when that person was first charged before a magistrate with the offence on which he is being tried, been convicted of an offence involving fraud or dishonesty, evidence of the previous conviction —

(a) will show an intention that the counterfeit should pass for it.

266. Evidence on charge of defamation

If on the trial of a person charged with the unlawful publication of defamatory matter which is contained in a periodical, it is proved that the number or part of the periodical containing the alleged defamatory matter was published by the accused, other writings or prints purporting to be other numbers or parts of the same periodical, previously or subsequently published and containing a printed statement that they were published by or for the accused, shall be admissible in evidence on either side without further proof of their publication.

[Please note: numbering as in original.]

267. Evidence on charge of theft against clerk or servant

(1) Upon the trial of a person charged with theft

(a) while employed in any capacity in the public service or by the Government, or money or any other property, which belongs to the Government or which came into his possession by virtue of his employment; or

(b) while a clerk, servant or agent, of money or any other property which belongs 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 of supervision, purporting to be an entry of the receipt of any money or other property shall be evidence that the money or other property so purporting to have been received was so received by him.

(2) It shall not be necessary, on the trial of a person charged with an offence referred to in sub-section (1), 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 if the court be satisfied that the accused stole the deficient money or any part of it.

268. Evidence on charges relating to seals and stamps

On the trial of a person charged with an offence relating to a seal or stamp used for the purpose of the public revenue or of the post office in a foreign country, a despatch from the officer administering the government of that country, transmitting to the Minister and stamp mark or impression, and stating it to be a genuine stamp, mark or impression of a die, plate or other instrument provided, made or used by or under the direction of the proper authority of the country in question for the purpose of expressing or denoting any stamp duty or postal charge, shall be admissible as evidence of the facts stated in the despatch, and the stamp, mark or impression so transmitted may be used by the court and by the witnesses for the purposes of comparison.

Miscellaneous matters

269. Impounding documents

Whenever any instrument which has been forged or fraudulently altered is admitted in evidence, the court or judicial officer who admits the instrument may, at the request of the Crown or of any person against whom it is admitted in evidence, direct that it 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 the instrument may determine.

270. Cutting counterfeit coin

If any false or counterfeit coin is produced on a trial for an offence against currency or coin, the court shall order the coin to be destroyed by a person designated by the court for that purpose, or to be disposed of in such manner as the court may deem fit.

271. Unstamped instruments admissible in criminal proceedings

Every instrument liable to stamp duty shall be admitted in evidence in any criminal proceedings, even though it is not stamped as required by law.

272. Onus of proof under laws imposing licences

Where a person—

(a) carries on an occupation or business;

(b) performs an act;

(c) has in his possession or custody or owns any article or

(d) is present at any place,

and he would commit an offence by carrying on the occupation or business, or performing the act or having the article in his possession or custody or owning it, or being present at that place or entering it, if he were not the holder of a licence, permit, permission or other authorisation or qualification (hereafter referred to as "the necessary authorisation"), to carry on the occupation or business, or to perform the act, or to have the article in his possession or to own it or to be present at that place or to enter it, he shall, if charged with having committed that offence, be deemed not to have been the holder of the necessary authorisation, unless the contrary is proved.

273. Admissions

(1) An accused or his representative in his presence may, in any criminal proceedings, admit any fact relevant to the issue and the admission shall be sufficient evidence of that fact.

(2) An admission made by an accused or his representative in his presence at a preparatory examination, which the magistrate presiding thereat noted on the record, may be proved at the subsequent trial of the accused by the production, by any person, of the documents purporting to constitute that record.

274. Impeachment and support of witnesse's credibility

(1) Any party in any 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 prior to the fourth day of October, 1966 the credibility of the witness might be impeached or supported by that party, and in no other manner and by no other evidence whatever.

(2) Any party who has called a witness who has given evidence in any criminal proceedings (whether that witness is or is not, in the opinion of the judicial officer presiding thereat, adverse to the party calling him) may, after he or the judicial officer has asked the witness whether he has or has not previously made a statement with which his evidence in the proceedings is inconsistent, and after sufficient particulars of the alleged previous statement to designate the occasion when it was made, have been mentioned to the witness, prove that he previously made a statement with which his evidence is inconsistent, and thereafter be cross examined as if he had been declared a hostile witness by the party calling him.

275. Onus of proof under taxation laws

When a person is charged with an offence relating to failure to pay tax or impost to government or failure to furnish any information to any office of the Government, is an element, he shall be deemed to have failed to pay the tax or impost or to furnish the information, unless the contrary is proved.

276. Cases not provided for under the Act

The law as to the admissibility of evidence and as to the competency, examination and cross-examination of witnesses which was in force in respect of criminal proceedings in the Supreme Court of Judicature in England prior to the fourth day of October 1966, shall apply in any case not expressly provided for under this Act or any other law.

277. Saving

Nothing in this Part shall be construed as modifying any law whereby in any criminal matter specifically referred to or provided in that 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 XIII – Discharge of accused persons

278. Dismissal of charge in default of prosecution

(1) If a prosecutor—

(a) in the case of a trial by the High Court having given notice of trial, does not appear to prosecute the indictment against the accused before the close of the session of the Court; or

(b) in the case of a trial by a subordinate court, does not appear on the court day appointed for the trial,

the accused may move the court to discharge him and the charge may be dismissed, and where the accused or any other person on his behalf has been bound by recognizance for the appearance of the accused to take his trial, the accused may further move the court to discharge the recognizance.

(2) Where the charge is at the instance of a private prosecutor the accused may move the court that the private prosecutor and his sureties be called on their recognizance, and, in default of his appearance, that the recognizance be estreated, and for an order directing the private prosecutor to pay the costs incurred by the accused in preparing for his defence.

(3) Nothing in this section shall deprive the Director of Public Prosecutions or the public prosecutor with his authority or on his behalf, of the right of withdrawing any charge at any time before the accused has pleaded, and framing a fresh charge for hearing before the same or any other competent court.

279. Liberation of accused

(1) The High Court shall, at the close of each of its criminal sessions, discharge from custody all such accused persons as are then in custody and are then entitled to be discharged by law.

(2) Any person who is acquitted on any charge in a subordinate court, or whose case therein has been dismissed for want of prosecution, shall forthwith be discharged out of custody.

280. General gaol delivery and return

For the purposes of sections 141 and 279 the High Court may have regard to any general gaol return delivered under the Prisons Proclamation 1957.

[Proclamation No. 30 of 1957]

281. Discharge from imprisonment on expiration of recognizance no bar to trial

Neither discharge from imprisonment nor the expiration of the recognizance shall be a bar to any person being brought to trial in any competent court for any offence for which he was formerly committed to prison or admitted to bail.

282. Accused not brought to trial not obliged to find further bail

(1) No person who has been admitted to bail and has not been duly brought to trial or has been discharged from custody pursuant to section 279 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.

(2) The Director of Public Prosecutions may notwithstanding the discharge of the accused from custody pursuant to section 279 or the expiration of his bail, at any time before the period of prescription of the offence to which the discharge or bail relates has run out, indict the accused in any competent court, and if the accused, having been duly served with the indictment and notice of trial, fails to appear at the time mentioned in the notice, the court in which he is indicted may, on the application of the Director of Public Prosecutions, issue a warrant for his arrest and detention in prison until he is brought to trial or until he finds bail for his appearance to stand his trial on the indictment.

Part XIV – Previous convictions

283. Previous conviction not to be alleged in a charge

It shall not be alleged in any charge against any person for any offence that such person has been previously convicted of any offence, whether in Lesotho or elsewhere.

284. Proof of previous convictions

Except where otherwise expressly provided by this Act—

(a) no evidence shall be admissible during the trial of any person for any offence to prove that he has been previously convicted of any offence, whether in Lesotho or elsewhere; and

(b) no accused shall, if called as a witness, be asked whether he has been convicted.

285. Tendering admission of previous conviction after accused has pleaded guilty or been found guilty

(1) Where a person indicted before the High Court for any offence has been previously convicted of any offence whether in Lesotho or elsewhere, the prosecutor may, if—

(a) the accused has under section 76 admitted that he has been so previously convicted and his admission has been subscribed by the magistrate in accordance with that section; and

(b) the accused has pleaded guilty to or been found guilty of the offence,

and before sentence is pronounced, tender the admission in proof of the previous conviction, and the admission shall be received by the Court upon its mere production as proof of the previous

conviction unless it is shown that the admission was not in fact duly made or that the signature or marks thereto are not in fact the signatures or marks of the accused and the magistrate respectively.

(2) Where the accused made the admission under section 76 but refused to subscribe the admission by signature or mark, a solemn declaration signed by the magistrate and attached to the document signed by him under section 76 stating that the accused did so make the admission but refused to subscribe it shall, upon its mere production, be sufficient evidence that the accused admitted the previous conviction.

286. Notice that proof of previous conviction will be offered

Where a person indicted before the High Court for any offence has been previously convicted of any offence whether in Lesotho or elsewhere, the Director of Public Prosecutions may, in cases in which the procedure prescribed by section 76 has not been followed give not less than 72 hours' notice 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 the previous conviction.

287. Mode of proof of previous conviction

(1) Whenever notice has been duly served on a person that evidence of a previous conviction will be given against him as provided by section 286, the prosecutor may, if that person pleads guilty, and before sentence is pronounced, offer to prove the previous conviction and thereupon the High Court shall ask that person whether he admits that he is the person alleged to have been previously convicted and whether he was convicted as alleged.

(2) If the person asked by the High Court under subsection (1) does not admit that he has been so convicted and has been so convicted and has not admitted it at the preparatory examination in manner prescribed in section 76, the High Court shall determine whether that person has been or has not been convicted.

(3) If the trial is before a subordinate court the prosecutor may, after the accused has been found guilty, tender evidence of the previous conviction be alleges in respect of the accused, and thereupon the court shall—

(a) ask the accused whether he is the person alleged to have been previously convicted; and

(b) determine the truth as to such alleged previous convictions as the accused has not admitted.

(4) If on any trial—

(a) any previous conviction is lawfully proved against the accused; or

(b) the accused has admitted the previous conviction,

the court may take it into consideration in awarding sentence for the offence to which he has pleaded, or of which he has been found guilty.

288. Finger print records to be *prima facie* evidence of previous conviction

(1) Notwithstanding anything to the contrary in this Act, any finger print record, photograph or document purporting to be certified by any officer having charge of criminal records of Lesotho or of any other country (whether or not record, photograph or document was obtained under any law and the person concerned was unable to prevent their being obtained) shall, whenever a previous conviction is to be proved under this Act, be admissible in evidence before any court and shall be *prima facie* proof of the facts in the record, photograph or document set forth.

(2) The finger print record photograph or document referred to in sub-section (1) shall only be admissible in evidence if produced to the court by a policeman or prisons officer having the custody thereof.

Part XV – Judgment on criminal trial

289. Withdrawing charges

(1) Where a charge containing more than one count is framed against the same person and a conviction is obtained on one or more of them, the prosecutor may withdraw the remaining count or counts, and such withdrawal shall have the effect of an acquittal on that count or counts unless the conviction is set aside.

(2) Subject to an order of the court setting aside a conviction, the court may, on the application of the Director of Public Prosecutions, proceed with the trial on the count or counts withdrawn pursuant to sub-section (1).

290. Arrest of judgment

(1) A person convicted of an offence before the High Court, whether on his plea of guilty or otherwise, may, at any time before sentence, move the High Court that judgment be arrested on the ground that the indictment does not disclose any offence.

(2) Upon the bearing of the notion under this section the High Court may allow any such amendments of the indictment as it might have allowed before verdict.

(3) The High Court may hear and determine the motion either forthwith or after such adjournment as it considers necessary.

291. Decision may be reserved

The court before which any person is tried for an 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 the trial.

292. Sentence in the High Court

(1) If a motion in arrest of judgment is not made or is dismissed, the High Court may either pass sentence upon the accused forthwith or discharge him on his recognizance conditioned that he shall appear and receive judgment at some future session of the High Court when called upon.

(2) If sentence is not passed forthwith the presiding officer of the Court may, at any subsequent sitting at which the accused is present pass sentence upon him.

293. Committal to High Court for sentence

(1) Where on the trial by a subordinate court a person whose apparent age exceeds 18 years is convicted of an offence, the court may, if it is of opinion that greater punishment ought to be inflicted for the offence than it has power to inflict, for reasons to be recorded in writing of 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 convicting for several offences at one trial, shall be deemed to be a single sentence.

294. Procedure on committal for sentence under section 293

(1) If a subordinate court commits a person for sentence under 79, the court shall forthwith send a copy of the record of the case to the High Court.

(2) A 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 the High Court.

(3) When a person is brought before the High Court pursuant to sub-section (2), the High Court—

(a) shall enquire into the circumstances of the case; and

(b) if satisfied from the record of that person's guilt shall thereafter proceed as if that person had pleaded guilty before the High Court in respect of the offence for which he has been so committed; or

(c) otherwise may decline to proceed and make such orders and give such directives as it may consider appropriate for the purpose of dealing with the question of that person's guilt.

(4) If the High Court passes any sentence under this section upon any person, that person shall be deemed to have been tried and convicted for the offence concerned before the High Court.

(5) Section 293 and this section are in addition to, and not in derogation from any provision of this or any other law relating to criminal appeals and reviews.

295. Provisions applicable to sentence in all courts

(1) All judgment and sentence in criminal proceeding before any court shall be pronounced in open court.

(2) The court may, before passing sentence, receive such evidence as it thinks fit in order to inform itself as to the proper sentence to be passed.

(3) 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 a judicial officer of that court.

(4) If, in a subordinate court, sentence is not passed upon an accused 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 or vary any sentence passed in a subordinate court, or to pass sentence anew in that court, any judicial officer of that court may, in the absence of the judicial officer who convicted or passed the sentence, as the case may be, pass sentence on the accused after consideration of the evidence recorded and in the presence of the accused.

296. Extenuating circumstances

(1) Where the High 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.

(2) In deciding whether or not there are any extenuating circumstances, the High Court shall take into consideration the standards of behaviour of an ordinary person of the class of the community to which the accused belongs.

(3) Failure to comply with the requirements of sub-section (1) shall not affect the validity of the verdict or any sentence imposed as a result thereof.

Part XVI – Punishments

297. Nature of punishments

(1) Subject to sub-section (2) or (3), sentence of death by hanging—

(a) shall be passed by the High Court upon an accused convicted before or by it of murder; and

(b) may be passed by the High Court upon an accused convicted before or by it of treason or rape.

(2) The High Court shall not pronounce a sentence of death by hanging—

(a) against a woman who by any wilful act or omission causes the death of her child being a child under the age of 12 months, but at the time of the 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 the child, notwithstanding that the circumstances were such that but for this sub-section the offence would have amounted to murder, but shall instead find her guilty of culpable homicide and punish her accordingly; and

(b) against a person convicted of an offence punishable by death if in the opinion of the High Court that person was at the time of the commission of the offence under the age of 18 years, but shall instead sentence him to be detained during the King's pleasure, and he shall be detained in such place and under such conditions as the King may direct, and whilst so detained shall be deemed to be in lawful custody.

(3) The High Court may impose any sentence other than death upon any person convicted before or by it of murder if it is of the opinion that there are extenuating circumstances.

(4) Subject to this Act or any other law the following sentences may be passed upon a person convicted of any offence—

(a) imprisonment with or without solitary confinement and spare diet where it is specifically provided by law in respect of the offence charged;

(b) declaration as an habitual criminal;

(c) fine;

(d) detention in juvenile training centre subject to Prisons Proclamation 1957,

[Proclamation No. 30 of 1957]

(e) whipping;

(f) putting the accused under recognisance with conditions.

(5) Nothing in this section shall be construed—

(a) as 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 that court to impose for that offence; or

(b) as derogating from the authority specially conferred on any court by law to impose any other punishment.

(6) Where a person has been sentenced to be detained during the King's pleasure, the King may direct that he be detained in a juvenile training centre and he shall be detained in a juvenile training centre as if he had been sentenced by the court to be detained in a juvenile training centre pursuant to section 7 of the Prisons Proclamation 1957.

[Proclamation No. 30 of 1957]

298. Sentence of death

(1) The form of 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.

299. Sentence of death upon a woman who is pregnant

(1) Where a woman convicted of an offence punishable with death alleges that she is pregnant, or where the court before which a woman is convicted thinks fit to do so, the court shall, before

sentence is passed, determine whether or not the woman is pregnant on such evidence as may be led by either the woman or the Crown.

(2) Where the court before which a woman is convicted of an offence punishable with death is satisfied that the woman is pregnant, it shall pass on her a sentence of imprisonment instead of a sentence of death.

(3) The right conferred by this section on a woman convicted of an offence punishable with death shall be in substitution for the right of the woman to allege a stay of execution that she is quick with child.

300. Manner of carrying out death sentences

(1) If any person has been sentenced to death (otherwise than by a court martial) for any offence, the trial judge shall report thereon in such terms as he may consider fit to the chairman of the Pardons Committee on the Prerogative of Mercy, who shall cause the report together with such other information derived from the record of the case or elsewhere as he may require, to be taken into consideration for the purpose of deciding whether to advise the King to exercise any of His functions.

(2) No sentence of death shall be carried into effect except upon a special warrant signed by the King and sealed with the public seal.

(3) The special warrant referred to in sub-section (2) shall be issued to the sheriff or his deputy who shall, as soon as after receipt thereof as filling arrangements for the carrying out of the sentence may be made, execute the warrant in the place appointed therein.

301. Cumulative or concurrent sentence

(1) When:—

(a) a person is convicted at one trial of two or more different offences; or

(b) a person under sentence or undergoing punishment for one offence is convicted of another offence,

the court may sentence him to such several punishments for such offences or for such last offence, as the case may be, as the court is competent to impose.

(2) The punishment under this section, when consisting of imprisonment shall commence the one after the expiration setting aside or remission of the other, in such order as the court may direct unless the court directs that such punishments shall run concurrently.

302. Amount and nature of punishment at court's discretion

(1) A person liable to a sentence of imprisonment for life or for any period may be sentenced to imprisonment for any shorter period and a person liable to sentence of a fine may be sentenced to a fine of any lesser amount.

(2) Notwithstanding anything in any law, any court sentencing a person over the age of 18 years to imprisonment for any period without the option of a fine may order that, during a period not exceeding 6 months which in case the term of imprisonment is longer than 6 months, shall be the first 6 months of the term, the imprisonment shall be with solitary confinement, for a period not exceeding 28 days.

(3) Whenever a person is sentenced to imprisonment on spare diet and in solitary confinement, the ratio and distribution of the days upon which imprisonment on spare diet and in solitary confinement shall take place, shall be determined in accordance with the Prisons Proclamation 1957.

[Proclamation No. 30 of 1957]

303. Habitual criminals

(1) If any person has been convicted on more than one occasion of any of the offences mentioned in Schedule II, whether of the same or a different kind, and whether in Lesotho or elsewhere, and that person is thereafter convicted within Lesotho by the High Court of any offence mentioned in Schedule II, that person may be declared by the High Court to be an habitual criminal.

(2) Subject to section 332, any person sentenced to be an habitual criminal shall not be released on probation unless he has served at least 9 years of that sentence.

304. Imprisonment in default of payment of fines

(1) Whenever a court convicts a person of any offence punishable by a fine (whether with or without any other direct or alternative punishment) it may, in imposing a fine upon that person, impose, as a punishment alternative to the fine, a sentence of imprisonment of any duration within the limits of its punitive jurisdiction, but the alternative punishment 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 that offence.

(2) Whenever a court has imposed upon any person a fine without an alternative sentence of imprisonment and the fine is not paid in full or is not recovered in full by a levy, the court which passed sentence on that person may issue a warrant directing that he be arrested and brought before the court, which may thereupon sentence him to such term of imprisonment as could have been imposed upon him as an alternative punishment, in terms of sub-section (1).

(3) Whenever by any law passed before the commencement of this Act, a court is empowered to impose upon a person convicted by that court or 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, that court may, notwithstanding that law, impose upon any person convicted of that offence, in lieu of a sentence of imprisonment which is proportionate as aforesaid, any sentence of imprisonment within the limits of the court's punitive jurisdiction.

305. Recovery of fine

(1) Whenever a person is sentenced to pay a fine, the court passing the sentence may 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 that person although the sentence directs that, in default of payment of a fine, that person shall be imprisoned and the amount which may be levied shall be sufficient to cover, in addition to the fine, the costs and expenses of the warrant and of the attachment and sale thereunder.

(2) The warrant issued pursuant to sub-section (1) may be executed anywhere within Lesotho.

(3) If the proceeds of sale of the movable property are insufficient to satisfy the amount of the fine and the costs and expenses under sub-section (1), the High Court may issue a warrant, or in the case of a sentence by any subordinate court may authorise that subordinate court to issue a warrant, for the levy against immovable property of the person sentenced of the amount unpaid.

(4) When a person is sentenced to pay a fine only or, in default of payment of the fine, to imprisonment, and the court issues a warrant under sub-section (1), it—

(a) may suspend the execution of the sentence of imprisonment, and

(b) may release the person upon his executing a bond with or without sureties, as the court thinks fit, on condition that he appears before that court or some other court on the day

appointed for the return of the warrant, the day not being more than 15 days from the time of executing the bond, and

in the event of the amount of the fine not having been recovered, the sentence of imprisonment shall be carried into execution at once.

(5) In any case in which an order for the payment of money is made on non-recovery where imprisonment may be ordered, and the money is not paid forthwith, the court may require the person ordered to make such payments to enter into a bond as prescribed in sub-section (4), and in default of his doing so, may at once pass sentence of imprisonment as if the money had not be recovered.

(6) When a person is sentenced to pay a fine only or, in default of payment of the fine, to a period of imprisonment, and before the expiry of that period any part of the fine is paid or levied the period of imprisonment shall be reduced by a number of days bearing as nearly as possible the same proportion to the number of days to which that person is sentenced as the sum so paid and levied bears the amount of the fine, and an amount which would reduce the imprisonment by a fractional part of a day shall not be received.

(7) No payment of any sum under this section need be accepted otherwise than during the ordinary office hours.

306. Manner of dealing with juveniles

(1) Any court in which a person under the age of 18 has been found guilty of any offence may, instead of imposing any punishment upon him for that offence, but subject to section 297 (2), order that he be placed in the custody of any suitable person designated in the order for a specific period.

(2) The order under sub-section (1) may be made in addition to a whipping, and shall not direct the person found guilty to remain in the custody in which he has been placed after he attains the age of 18 years.

(3) Any person who has been dealt with in terms of subsection (1) and who absconds from the custody in which he has been placed, may be arrested without warrant by any policeman and shall be brought as soon as possible before a magistrate of the district in which he was arrested.

(4) When any person is brought before a magistrate under sub-section (2) the magistrate shall, after having questioned the absconding person as to the reason why he absconded, order that—

(a) he be returned to the custody from which he absconded; or

(b) that he be placed in the custody of another person for the remaining period of the original order; or

(c) that he be committed to prison for the remaining period of the order made under sub-section (1).

307. Sentence of whipping

(1) When any person is liable to be sentenced to be whipped, that punishment may be inflicted in addition to, or in substitution for, any punishment to which that person is otherwise liable, and the court shall specify in the sentence the number of strokes not exceeding fifteen to be inflicted.

(2) In any case in which a sentence of whipping is wholly or partially prevented on grounds of health from being executed, the person so sentenced shall be kept in custody until that sentence is revised by the court which passed it, and the court may either remit the sentence of whipping or sentence that person, in lieu of whipping or of so much of the sentence of whipping as was not executed, to imprisonment for a period not exceeding 12 months, and that period may be in addition to any other punishment to which that person may have been sentenced for the same offence.

308. Sentence of whipping on male person under 21 years

The court before which a male person under the age of 21 years is convicted of an offence may, in lieu of any other punishment, sentence that person to receive in private a moderate correction of whipping not exceeding 15 strokes with a light cane to be administered by such person and in such place as the sentenced may be present thereat.

309. Females not to be sentenced to whipping

No female shall be sentenced to the punishment of whipping.

310. Where sentence of whipping to be carried out

Subject to section 309 the punishment of whipping imposed by any court shall be carried out privately in a convict prison or gaol, and in accordance with the law relating to convict prisons or gaols.

311. Recognizance to be of peace and behaviour keep the good

(1) A person convicted of an offence other than an offence 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, that he shall keep the peace and be of good behaviour for a time to be fixed by the court, and may be ordered to be imprisoned until such recognisance, with sureties, if so directed, is entered into, but the imprisonment for not entering into the recognisance shall, in no case, exceed 12 months.

(2) If any person in convicted of an offence involving assault or injury to any person, a subordinate court may, in lieu of or in addition to any other punishment order that the convicted person shall give security to keep the peace and to refrain from committing any injury against the complainant for a period not exceeding 3 months, and if that person refuses or fails to give the security the court may order him to be committed to gaol for a period not exceeding one month unless the security is sooner given.

(3) If the conditions upon which any recognisance or security was given under this section are not observed by the person who gave it, the court may declare the recognisance or security to be forfeited, and any such declaration or forfeiture shall have the effect of a judgment in a civil action in that court.

312. Recognizances to come up for judgment

When a person is convicted of an offence not punishable with death, the court may, instead of passing sentence, discharge that person upon his entering into his own recognizances with or without sureties, in such as the court may think fit, to appear and receive judgment at some future sitting of the court or when called upon.

313. Payment of fine without appearance in court

When any person has been summoned or warned to appear in a subordinate court or has been arrested or informed by a peace officer that it is intended to institute criminal proceedings against him for any offence and an officer holding a post to be designated by the Minister by notice in the *Gazette*, has reasonable grounds for believing that the court which will try that person for the offence will, on convicting him of the offence, not impose a sentence of imprisonment or whipping or a fine exceeding 50 maloti, that person may sign and deliver to the officer a document admitting that he is guilty of the offence, and

(a) deposit with the officer such sum of money as the officer may fix; or

(b) furnish to the officer such security as the officer considers sufficient for the payment of any fine which the court trying the case may lawfully impose therefor, not exceeding 50 maloti

or the maximum of the fine with which the offence is punishable, whichever amount is the lesser, and that person shall, subject to sub-section (8), thereupon not be required to appear in court to answer a charge of having committed the offence.

(2) Any person may at any time before sentence is passed upon him submit to any person in charge of the document referred to in sub-section (1) an affidavit setting forth any facts which he desires to bring to the notice of the court in mitigation of the punishment to be imposed for the offence, and the affidavit shall be submitted together with the document to the court which is to pass the sentence.

(3) An officer designated by the Minister under this section, if he is not a 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 the public prosecutor.

(4) Whenever a public prosecutor has received a document referred to in sub-section (1), he shall transmit it to the clerk of the court, but before doing so he may report the matter to the Director of Public Prosecutions and ask him for his directions thereon.

(5) After receiving the document the clerk of the court shall enter it in the criminal record book of that court and the person in question shall, subject to sub-section (8), thereupon be deemed to have been convicted by the court of the offence, and the court shall pass sentence upon that person in accordance with law, but the court may decline to pass sentence upon him and may direct that he be prosecuted in the ordinary course, and in that case, if that person has been summoned or warned in terms of sub-section (1), he shall be summoned afresh to answer the charge as the public prosecutor may prefer against him.

(6) If the court imposes a fine on any person under this section, the fine shall be paid out of any sum deposited in terms of sub-section (1) (a), or if security has been given in terms of sub-section (1) (b) and the fine has not been paid in accordance with the terms of the security, the security, if corporeal property, may be sold by public auction and the fine paid out of the proceeds of the sale, but if the whereabouts of that person are known, written notice of the intended sale and of the time and place thereof shall be given to him not less than 3 days before the sale takes place.

(7) If any balance remains of any deposit or of the proceeds of a sale under sub-section (6), after the payment of the fine, the balance shall be paid over to the person who made the deposit or gave security, and if the deposit or security is insufficient to pay the fine imposed, the balance remaining due shall be recovered from the person upon whom the fine was imposed in manner provided in this Act.

(8) At any time before sentence is passed upon the person in question under sub-section (5), the Director of Public Prosecutions may direct that no action be taken in the matter under sub-sections (5), (6) and (7), but that that person be brought to trial in the ordinary manner, and if that person has been summoned or warned in terms of sub-section (1), he shall be summoned afresh to answer such charge as the Director of Public Prosecutions may direct.

(9) If at the conclusion of the trial referred to in subsection (8) the person tried is sentenced to pay a fine, subsections (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 that person shall be returned to the person who made the deposit.

314. Postponement and suspension of sentences

(1) Whenever a person, is convicted before the High Court or any subordinate court of any offence other than an offence specified in Schedule III, the court may postpone for a period not exceeding 3 years the passing of sentence and release that person on one or more conditions (whether as to compensation to be made by that person for damage or pecuniary loss, good conduct or otherwise) as the court may order to be inserted in recognizances to appear at the expiration of that period and

if at the end of that period that person has observed all the conditions of the recognizances, the court may discharge him without passing any sentence.

(2) Whenever a person is convicted before the High Court or any subordinate court of any offence other than an offence specified in Schedule III, the court may pass sentence, but order that the operation of the whole or any part thereof be suspended for a period not exceeding 3 years, which period of suspension, in the absence of any order to the contrary, shall be computed in accordance with sub-sections (3) and (4) respectively, and the order shall be subject to such conditions (whether as to compensation to be made by that person for damage or pecuniary loss, good conduct or otherwise) as the court may specify therein.

(3) The period during which any order for the suspension of a sentence, made under sub-section (2) and affecting a sentence of imprisonment, shall run, shall commence—

(a) on the date upon which the convicted person is lawfully discharged from prison in respect of the unsuspended portion of the sentence; or

(b) if not then discharged because the convicted person has to undergo any other sentence or imprisonment, on the date upon which he is 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 the sentences shall, in the absence of any order to the contrary, run consecutively in the same order as the sentences.

(4) The period during which any order for the suspension of the whole of a sentence of imprisonment shall run shall commence—

(a) where the convicted person is not serving another sentence, from the date from which the sentence wholly suspended is expressed as taking effect; and

(b) where convicted person is serving another sentence, from the date of expiration of that sentence including any period thereof which is subject to an order of suspension.

(5) If during the period of suspension of the whole of a sentence the convicted person is sentenced to imprisonment, the portion remaining of the sentence wholly suspended shall be deemed to be consecutive to the sentence of imprisonment subsequently imposed.

(6) If the convicted person has, during the period of suspension of any sentence under this sub-section, observed all the conditions specified in the order, the suspended sentence shall not be enforced.

(7) Whenever a person is convicted of any offence other than an offence specified in Schedule III, the court may postpone the passing of sentence, release the convicted person and order that, within a period not exceeding 3 years specified by the court, he may be called upon by any magistrate to appear before him.

(8) A convicted person who has been called upon to appear before a magistrate in terms of an order under sub-section (7) may be arrested without warrant upon the order of a magistrate, and the magistrate before whom he appears may pass sentence upon him in respect of the offence of which he has been convicted.

315. Payment of fine by instalments

Whenever a person is convicted before the High Court or any subordinate court of any offence other than an offence specified in Schedule III, the court may order that any fine imposed on that person be paid in instalments or otherwise on such date, and during such period not exceeding 12 months from the date of the order, as the court may determine, and if on such date that person has made all payments in accordance with the order of the court, no warrant shall be issued committing him to prison to undergo any alternative imprisonment prescribed in the sentence.

316. Failure to comply with conditions of postponement or suspension of sentence

(1) If the conditions of any order made, or recognizance entered into, under section 314 or 315 are alleged to have not been fulfilled, the public prosecutor may, without any notice to the convicted person, apply to any subordinate court within the local limits of whose jurisdiction the convicted person, is known or suspected to be, for a warrant for his arrest for the purpose of bringing him before the court to show cause why he should not undergo the sentence which has been, or may be, lawfully imposed.

(2) An application made under sub-section (1) shall be supported by evidence in the form of an affidavit or on oath, that the order or recognizance is still binding upon the convicted person and that he has failed, in a manner to be specified, to observe the conditions thereof.

(3) The court to which application is made under subsection (1) may, if it is satisfied that the convicted person ought to be called upon to show cause why he should not undergo the sentence which has been, or may be, lawfully imposed, grant a warrant for his arrest for the purpose of bringing him to court to show cause as aforesaid.

(4) The court before which any convicted person appears pursuant to an application under sub-section (1) shall—

(a) read, or cause to be read, to him, the application and the evidence given in support thereof; and

(b) thereupon call upon him to say whether he opposes the application, and

if he—

(aa) 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 that person to undergo the sentence which was, or is then imposed upon him or may make an order under section 317 if the original order was made under section 314(2) or 315; or

(bb) denies the allegations and opposes the application, the court shall hear the matter in accordance with principles generally applicable to criminal trials under this Act, and if it finds that he has not fulfilled the conditions of an order made, on recognizance entered into the court may thereupon order that person to undergo sentence which was, or is then imposed upon him, or may make an order under section 317 if the original order was made under section 314(2) or 315.

317. Further postponement or deferment of sentence

The court before which any convicted person appears if—

(a) the original order related to the suspension of a sentence under section 314(2), or to the payment of a fine by instalments or otherwise under section 315, and

(b) he proves to the satisfaction of the court that he has been unable through circumstances beyond his control to fulfill the conditions of the order,

may grant an order further suspending the person of the sentence or further deferring payment of the fine, subject to such conditions as might have been imposed at the time the original order was made.

318. Subordinate court not to impose sentences of less than four days

A subordinate court may not sentence any person to imprisonment for a period of less than 4 days, unless the sentence is that that person be detained until the rising of the court.

319. Discharge with caution or reprimand

Whenever a person is convicted before the High Court or any subordinate court of any offence other than an offence specified in Schedule HI, the court may discharge that person with a caution or reprimand, and such discharge shall be deemed to be a sentence.

320. Regulations

The Minister may make regulations providing for—

(a) the appointment powers and duties of probation officers to whom may be entrusted the care or supervision of convicted persons whose sentences of imprisonment have been suspended under this Act;

(b) the circumstances under which law courts may entrust the care or supervision to probation officers;

(c) the conditions to be observed by convicted persons while on probation and the varying of such conditions; and

(d) generally for the better carrying out of the objects and purposes of this Part.

Costs, compensations and restitution

321. Payment of compensation

(1) When any person is 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 the application of the injured party, award him compensation for the injury, damage or loss where the compensation claimed does not exceed the civil jurisdiction of the court if the compensation, save as is otherwise provided in any other law, does not exceed 400 maloti.

(2) For the purposes of determining the amount of compensation or the liability of the accused therefore, the court may refer to the proceedings and evidence at the trial or hear further evidence either upon affidavit or verbal.

(3) The court may order a person convicted upon a private prosecution to pay the costs and expenses of the prosecution in addition to the sum (if any) awarded under sub-section (1), but if the private prosecution was instituted after a certificate by the Director of Public Prosecutions that he declines to prosecute, the court may order the cost thereof to be paid by the Crown.

(4) When a subordinate court makes any award of compensation, costs or expenses under this section the award shall have the effect of a civil judgment of that court, and when the High Court has made any such award the Registrar of the High Court shall forward a certified copy of the award to the clerk of the subordinate court of the area of jurisdiction wherein the convicted person underwent the preparatory examination held in connection with the offence in question, and thereupon the award shall have the same effect as a civil judgment of that subordinate court.

(5) Any costs awarded under this section shall be taxed according to the scale, in civil cases, of the court which made the awards.

(6) Where any money of the accused has 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 from that money.

(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 made, and who has accepted the award, to any other civil proceedings in respect of the injury for which compensation has been awarded.

322. Damage or loss of Government property

(1) When any person is convicted by any court of an offence involving damage or loss of Government property, the conviction shall in respect of the loss or damage sustained by Government, have the effect of a civil judgment for the payment of money, and shall be enforced in the same manner as any other judgment for the payment of money in a civil court.

(2) Notwithstanding the Subordinate Courts Proclamation 1938, a judgment under sub-section (1) shall be deemed to be a valid and binding judgment of a subordinate court whether or not the amount of judgment exceeds the civil jurisdiction of the court.

[Proclamation No. 58 of 1938]

(3) Where any money of the accused has been taken from him upon his apprehension, the court may order payment in satisfaction or on account of the judgment out of the money so taken.

(4) For the purpose of determining the amount of the judgment regard shall be had to the record of the proceedings at the trial or such further evidence either upon affidavit or verbally as may be necessary.

323. Compensation to innocent purchaser of stolen property

When any person is 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 the property or part of it to any person who had no knowledge that it was stolen or unlawfully obtained, and that the money has been taken from the convicted person on his apprehension, the court may, on the application of the purchaser and on restitution of the property to its owner, order that, out of the money so taken from the convicted person and belonging to him, a sum not exceeding the amount of the proceeds of the sale, be delivered to the purchaser.

324. Restitution of stolen property

(1) If any person is convicted of theft or receiving stolen property knowing it to have been stolen, or otherwise unlawfully obtaining any property, the court may on application by the owner or his representative, restore the property to the owner or his representative.

(2) The court before which any person is tried for any offence mentioned in sub-section (1) may award from time to time writs of restitution in respect of the property affected or may order restitution thereof in a summary manner.

(3) If it appears—

(a) 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 trasfer or delivery by any person for a just and valuable consideration without notice or without any reasonable cause to suspect that the property had been stolen or otherwise unlawfully obtained; or

(b) that the property 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 the security or property.

325. Awards or orders of restitution

(1) Any award or order of restitution made under this Part may be made subject to the application 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) Where any award or order is made against two or more persons it shall be joint and several.

Part XVIII – Appeals

[Please note: Part XVII missing in original.]

326. When Execution of sentence may be suspended

(1) The execution of the sentence of a subordinate court shall not be suspended by reason of any appeal against a conviction, unless—

(a) the sentence is that the accused be whipped, in which case sentence shall not be executed until the appeal has been heard and decided or

(b) the 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 imprisonment, that he be treated as an unconvicted person until the appeal has been heard and decided.

(2) When the accused—

(a) is ultimately sentenced to imprisonment, the time during which he is released on bail shall be excluded in computing the term for which he is so sentenced; or

(b) has been detained as an unconvicted person, the time during which he has been detained shall be included or excluded in computing the term for which he is ultimately sentenced as the court of appeal may determine.

327. Summary dismissal of appeal

If an appeal against a conviction or sentence from a subordinate court has been duly noted, the court of appeal, on perusing the record of the case, including the appellant's statement setting out the grounds upon which the appeal is based, and any due notice of amendment thereof, and any further document that may have duly become part of the record, may if it considered that there is no sufficient ground for interfering, dismiss the appeal summarily.

328. Notice of time, place and hearing

If the court of appeal does not dismiss the appeal summarily under section 327, it shall cause notice to be given to the appellant or his counsel, and the Director of Public Prosecutions or in the case of a private prosecution to the complainant or his counsel, of the time and place at which the appeal will be heard, furnishing the Director of Public Prosecutions or that complainant or his counsel with a copy of the record of the case, including the appellant's statement setting out the grounds upon which the appeal is based and any due notice of amendment thereof and any further document that may have duly become part of the record.

329. Powers of court of appeal

(1) In case of any appeal against a conviction or sentence, which has not been dismissed summarily under section 327, the High Court in its appelate jurisdiction, without prejudice to the exercise by the High Court of its power under section 73 of the Subordinate Courts Proclamation 1938 or under section 8 of the High Court Act 1978 —

(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 court of appeal may forthwith commit him to custody for the purpose of undergoing any punishment to which he may have been sentenced; or

(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 at the trial); or

(d) make such order as justice requires.

(2) Notwithstanding that the High 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 the court of appeal that a failure of justice has resulted therefrom.

330. Order of the court to be certified

The order or direction of the court of appeal shall be certified under the hand of the presiding judge or the registrar of the court before which the case was tried, and the 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 XIX – Pardons and commutation

331. Pardons Committee on prerogative of mercy

(1) There shall be a Pardons Committee on the prerogative of mercy which shall consist of a chairman and two other persons appointed by the King acting in accordance with the advice of the Prime Minister from among persons who are not public officers or members of the Legislature.

(2) The office of the Chairman or any other member of the Committee appointed under sub-section (1) shall become vacant—

(a) at the expiration of three years from the date of his appointment;

(b) if the King acting in accordance with the advice of the Prime Minister so directs; or

(c) if any circumstances arise, that if he were not a member of the Committee should cause him to be disqualified to be appointed as such under sub-section (1).

(3) The Committee may act notwithstanding any vacancy in its membership and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings.

(4) The Committee may regulate its own procedure.

332. Prerogative of mercy

(1) The King may—

(a) grant to any person convicted of any offence under the law of Lesotho, a pardon, cither free or subject to lawful conditions;

(b) grant any person a respite, either indefinite or for a specified period of the execution of any punishment imposed on that person for such an offence;

(c) substitute a less severe form of punishment for any punishment imposed on any person for such an offence;

(2) Powers of the King under sub-section (1) shall be exercised by him acting in accordance with the advice of the Pardons Committee.

(3) The powers conferred on the King by sub-section (1) shall not extend to any trial before or any conviction in or any sentence penalty or forfeiture imposed by any court martial.

(4) A free or unconditional pardon by the King shall have the effect of discharging the convicted person from the consequence of that conviction.

333. Further evidence

(1) If a person convicted of any offence in any court or sentenced to death in respect of any offence, has in respect of the conviction or the sentence of death exhausted all the recognized legal procedures pertaining to appeals or review, or if such procedures are no longer available to him and such person or his legal representative addresses the King by way of petition, supported by affidavits stating that further evidence has since become available, which materially affects his conviction or the sentence of death imposed on him, the King may, if he considers that such further evidence, if true, might reasonably affect the conviction or sentence of death, direct the Minister to refer the petition and supporting affidavits to the court in which the conviction occurred or in which sentence was imposed.

(2) The court shall receive the said affidavits as evidence and may examine and permit the examination of any witness in connection therewith, including any witness on behalf of the Crown, and to this end the provisions of this Act relating to witnesses shall apply as if the matter before the court were a criminal trial in that court.

(3) Unless the court directs otherwise, the presence of the convicted person or the person under sentence of death shall not be essential at the hearing of further evidence.

(4) The court shall assess the value of further evidence and advise the King whether and to what extent, such evidence affects the conviction or the sentence in question.

(5) The court shall not as part of its proceedings announce its finding as to the further evidence or the effect thereof on the conviction or sentence in question.

(6) The court shall be constituted as it was when the conviction or, if it cannot be so constituted, the Chief Justice, or as the case may be, the Senior Magistrate of the Subordinate court in question shall direct how the court may be constituted.

(7) The King may upon consideration of the finding or advice of the court under sub-section (4) and (5) —

(a) direct that conviction in question be expunged from all official records by way of endorsement on such records and the effect of such a direction and endorsement shall be that conviction in question had never occurred; or

(b) Substitute for the conviction in question a conviction of lesser gravity and substitute for punishment imposed for such conviction any other punishment provided by the law; or

(c) Commute the sentence of death to any other punishment provided by the law.

(8) The King shall direct the Minister to advice the person concerned in writing of any decision taken under sub-section (9), other than the decision under sub-section 9 (b).

(9) No appeal, review or other proceeding of whatever nature shall lie in respect of:—

(a) a refusal by the King to issue a direction under subsection (1) or to act upon the finding or advise of the court under sub-sections (4) or (5).

(b) any aspect of the proceedings, finding or advise of the court under this section.

Part XX – General and supplementary

334. Service of documents

(1) Unless some period is expressly provided any notice or document required to be served upon an accused 10 days before the day specified therein for his trial if his trial is before the High Court, or 2

days (Sundays and public holidays excluded) before that day if his trial is before a subordinate court, or, when the accused cannot be found—

(a) by leaving a copy of the notice or document with a member of his household at his dwelling; or

(b) if no person belonging to his household can be found, by affixing the copy to the principal outer door of the dwelling or of any place where he actually resides or was last known to reside.

(2) Where the accused is admitted to bail any notice or document may either be served upon him personally or left at the place specified in the recognizance as that at which any notice of trial and service of the charge may be made.

(3) The officer serving any notice or document shall forthwith deliver 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 the return shall be *prima facie* evidence that the service of the notice or document was made in the manner and form stated therein.

(4) Any policeman may, subject to the rules of court, serve any notice or document under this Act as if he had been appointed deputy sheriff or deputy messenger or other like officer of the court.

335. Person making a statement entitled to copy

Whenever a person has made to a peace officer a statement in writing, or a statement which was reduced to writing, relating to any transaction, and criminal proceedings are thereafter instituted in connection with that transaction, any person in possession of the statement shall furnish the person who made the statement, at his request with a copy of the statement.

336. Proof of service of process

Whenever it is necessary to prove service of any summons, subpoena, notice or other process, or the execution of any judgment or warrant under this Act, the service or execution may be proved by affidavit made before a commissioner of oaths having jurisdiction to take affidavits in the district wherein the affidavit is made or in any other manner in which the service or execution might have been proved if it had been effected in the district or other area wherein the summons, subpoena, or notice or other process or judgment or warrant emanated.

337. Transmission of process by telegraph

Any summons, writ, warrant, rule, order, notice or other process, or communication which is required or directed to be served or executed upon any person by any law, or left at the house or place of abode or business of any person pursuant to any law, in order that that person may be affected thereby, may be transmitted by telegraph, and a telegraph copy served or executed upon that 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 that person, or left, as the case may be.

338. Liability for Corporate bodies, partnerships, etc.

(1) In any criminal proceedings against a company under any law or at common law—

(a) an act performed, with or without a particular intent, by or on instructions or with permission express or implied, given by a director or a servant of that Corporate body; and

(b) the omission, with or without a particular intent, of any act which ought to have been but was not performed by or on instructions given by a director or servant of that Corporate body in the exercise of his powers or in the performance of his duties as such director or servant or in furthering or endeavouring to further the interests of that Corporate body, shall be deemed to have been performed, with the same intent, if any, by that Corporate body or as

the case may be, to have been an omission, with the same intention, if any on the part of that corporate body.

(2) In any criminal proceedings referred to in sub-section (1), a director or servant of a corporate body shall be cited as a representative of that Corporate body, as the offender and thereupon, the person so cited may, as such a representative, be dealt with as if he were the person accused of having committed the offence in question;

Provided that—

(a) if that person pleads guilty, the plea shall not be valid unless the corporate body authorized him to plead guilty;

(b) if at any stage of the proceedings that person ceases to be a director or servant of that corporate body or absconds or is unable to attend, the court in question may, at the request of the prosecutor, from time to time substitute for that person any other person who is a director or servant of that corporate body at the time of the substitution, and thereupon the proceedings shall continue as if no substitution had taken place.

(c) If the person representing the corporate body is convicted, the court convicting him shall not impose upon him in his representative capacity any punishment, whether direct or as alternative, other than a fine, even if the relevant law makes no provision for the imposition of a fine in respect of the offence in question, and such fine shall be payable by the body corporate and may be recorded by attachment and sale of property of the corporate body.

(d) the citation of the director or servant of a corporate body to represent that corporate body in any criminal proceedings against it, shall not exempt that director servant from prosecution for that offence under subsection 5.

(3) In any criminal proceeding against a company, any record which was made or kept by a director or servant or agent of that body corporate within the scope of his activities as a director, servant or agent, or any document which was at any time in the custody or under the control of any such director, servant or agent, shall be admissible in evidence against the accused.

(4) For the purposes of sub-section (3) any record made or kept by a director, servant or agent of a corporate body or any document which was at any time under his custody or under his control, shall be presumed to have been made or kept by him or to have been made or kept by him or to have been in his custody or under his control within the scope of his activities as director, servant or agent unless the contrary is proved.

(5) When an offence has been committed, whether by the performance of any act or by failure to perform any act for which a corporate body is or was liable to prosecution, any person who was, at the time of commission of the offence, a director or servant of that corporate body, shall be guilty of that offence, unless it is proved that he did not take part in the commission of the offence and that he could not have prevented it, and shall be liable to prosecution therefor, either jointly with the company or apart therefrom, and shall on conviction be personally liable to punishment therefor.

(6) In any criminal proceedings against a director or servant of a corporate body in respect of an offence—

(a) any evidence which was or would be admissible against that company shall be admissible against the accused;

(b) whether or not the corporate body is or was liable to prosecution for the offence, any document, memorandum, book or record which was drawn up, entered up or kept in the ordinary course of business of that corporate body or which was at any time in the custody or under the control of any director, servant or agent of that corporate body in his capacity as director, servant or agent, shall be *prima facie* proof of its contents and admissible in evidence against the accused, unless he proves that at all material times he had had no knowledge of that document, memorandum, book or record, in so far as its contents are relevant to the offence charged, and was in no way a party to drawing up of such document, memorandum or the making of any relevant entries in such book or record.

(7) Where a member of an association, not being a corporate body has in carrying on the business or affairs of that association or in furthering or endeavouring to further its interests, committed an offence whether by the performance of any act or by failure to perform any act, any person who was, at any time of the commission of that offence, a member of that association shall be guilty of that offence unless it is proved that he did not take part in the commission of that offence and that he could not have prevented it.

Provided that if the business or affairs of the association are government or controlled by a committee or other similar governing body this sub-section shall not apply to a person who was not at the time of commission of the offence a member of that Committee or other governing body.

(8) In any criminal proceedings against a member of an association under sub-section (7) any record which was made or kept by any member or servant or agent of that association within the scope of his activities as such member, servant or agent, or any document which was at any time in the custody or under the control of such a member, servant or agent within the scope of his activities as such a member or servant or agent shall be admissible in evidence against the accused.

(9) For the purposes of sub-section (8) any record made or kept by a member, servant or agent of an association, or any document which was at any time in his custody or under his control, shall be presumed to have been made or kept by him or to have been in his control within the scope of his activities as such a member, servant or agent, unless the contrary is proved.

(10) The provisions of this section are additional to and not in substitution for or in derogation from any other law which provides for the prosecution against companies or their directors or servants or against associations or persons or their members.

(11) In this section the word 'director' in relation to a corporate body means any person who controls or governs that corporate body or who is a member of a body or group of persons which controls or governs that corporate body or, where there is no such body or group, who is a member of that corporate body.

339. Provisions for offences under two or more laws

Where an act or omission constitutes an offence under two or more laws, or is an offence against a statute and the common law, the offender shall, unless the contrary intention appears, be liable to be prosecuted and 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 the offence. In this section "statute" includes a statutory regulation.

340. Estimating age of person

If in any criminal proceedings the age of any person is a relevant fact of which no or insufficient evidence is available the court may estimate the age of that person by his appearance or from any information which is available, and the age so estimated shall be deemed to be the correct age of that person unless—

(a) it is subsequently proved that the estimated age is incorrect; and

(b) the accused in those proceedings could not have been lawfully convicted of the offence with which he was charged if that person's correct age had been proved.

341. Binding over of persons to keep the peace

(1) Whenever a complaint on oath is made to a magistrate that any person is conducting himself violently towards or is threatening injury to the person or property of another, or that he has used language or behaved in a manner towards another likely to provoke a breach of the peace or assault,

whether the conduct occurred or the language was used or the threat was made in public or private place, the magistrate made in public or private place, the magistrate—

(a) may order that person to appear before him, and if necessary may cause him to be arrested and brought before him; and

(b) shall thereupon enquire into and determine upon the complaint and—

(i) may place the parties or any witnesses threat on oath; and

(ii) may order the person against whom the complaint is made to give recognizances with or without sureties in an amount not exceeding 6 maloti to keep the peace towards the complainant and refrain from doing or threatening injury to his person or property and

(c) may, upon the enquiry, order the person against whom the complaint is made or the complainant to pay the costs of and incidental to the inquiry.

(2) If any person after having been ordered to give recognizances under this section refuses or fails to do so, the magistrate may order him to be committed to gaol for a period not exceeding one month unless the security is sooner found.

(3) If the conditions upon which the recognisances were given are not observed by the person who gave the same, the magistrate may declare the recognizances to be forfeited, and any such declaration of forfeiture shall have the effect of a judgment in a civil action in the subordinate court of the district.

342. Finger-prints and other marks

(1) Any policeman or gaoler may take the finger-prints and foot-prints of any person arrested upon any charge, and any such policeman, gaoler or a medical officer may take or cause to be taken such steps as he may consider necessary in order to ascertain whether the body of any such person, not being a woman bears any marks characteristic or distinguishing feature, or shows any condition or appearance,

Provided that—

(a) the finger-prints, palm-prints or foot-prints of any person not guilty of such charge shall be destroyed; or

(b) any print made or taken under this section previous to the occurrence which is the subject of criminal proceedings, whenever no order exists for the destruction of the finger-print or record, may be used as evidence in a criminal trial.

(2) The presiding officer of any court may—

(a) order that the finger-prints, palm-prints and foot-prints of any person accused before that court of any offence, be taken; and

(b) take all such steps as he considers necessary to ascertain whether the body of the accused bears any mark, characteristic or distinguishing feature, or shows any condition or appearance.

(3) Any record from a finger-print bureau, whether within or outside Lesotho, produced by the person appointed to be in charge of that bureau which purports to be the record of a fingerprint, palm-print or foot-print of the accused shall be admissible and shall be accepted as *prima facie* evidence of the facts stated in the record.

343. Failure to account for possession of goods

Any person who is found in possession of any goods, other than stock or produce as defined in the Stock Theft Proclamation 1921, in regard to which there is reasonable suspicion that they have been stolen and

is unable to give a satisfactory account of the possession, is guilty of an offence and liable to the penalties which may be imposed on a conviction of theft.

344. Absence of reasonable cause for believing goods properly acquired

(1) Any person who in any manner, otherwise than at a public sale, acquires or receives into his possession, from any other person stolen goods other than stock or produce as defined in the Stock Theft Proclamation 1921, without having reasonable cause, proof of which shall be on him, for believing at the time of the acquisition or receipt that the goods are the property of the person from whom he receives them, or that person has been duly authorised by the owner thereof to deal with or dispose of them, is guilty of an offence and liable to the penalties which may be imposed on a conviction of receiving stolen property knowing it to have been stolen.

(2) For the purposes of this section "public sale" means a sale effected—

(a) at any public market;

(b) by any shopkeeper during the hours when his shop may, in terms of any law, remain open for the transaction of business;

(c) by a duly licensed auctioneer at a public auction; or

(d) in pursuance of an order of a competent court.

345. Unauthorised borrowing an offence

Any person who, without a *bona fide* claim of right and without the consent of the owner or the person having the control thereof, removes any property from the control of the owner or such person with intent to use it for his own purposes without the consent of the owner or any other person competent to give such consent, whether or not he intend throughout to return the property to the owner or person from whose control he removes it, is, unless it is proved that that person, at the time of the removal, had reasonable grounds for believing that the owner or such other person would have consented to such use if he had known about it, guilty of an offence and the court convicting him may impose upon him any penalty which may lawfully be imposed for theft.

346. Repeal

The Criminal Procedure and Evidence Proclamation 1938 is repealed.

Schedule I

Part I – Offences in connection wherewith vehicles and receptacles may be sealed and confiscated under Section 51 and 52

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. Breaking or entering any premises, whether under the common law or a statutory provision, with intent to commit an offence.

Robbery

Theft, whether under common law or a statutory provision

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 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 6 months, without the option of a fine.

Any conspiracy, incitement or attempt to commit any of the above-mentioned offences.

Schedule II

Offences, a second or subsequent conviction whereof renders the offender liable to be declared an habitual criminal under Part XVI

Rape or any statutory offence of a sexual nature against a girl of or under a precribed 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 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 habitforming drugs.

Any conspiracy, incitement, or attempt to commit any of the above mentioned offences.

Schedule III

Offences on conviction whereof the offender cannot be dealt with under section three hundred and fourteen

Murder.

Robbery.

Any conspiracy, incitement or attempt to commit any of the above-mentioned offences.