BRITISH INDIAN OCEAN TERRITORY

REVISED ORDINANCES OF THE BRITISH INDIAN OCEAN TERRITORY

THE CRIMINAL PROCEDURE CODE 2019

CHAPTER C.8

Revised Edition

Showing the law as at 1 September 2020

Published by Authority

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Revised Edition

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This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Ordinance 2015 and contains a consolidation of the following laws:

The Criminal Procedure Code 2019 - Ordinance No. 5 of 2019

As amended by:

Ordinance No.2 of 2020
Ordinance No.7 of 2020

REVISED ORDINANCES OF THE BRITISH INDIAN OCEAN TERRITORY

THE CRIMINAL PROCEDURE CODE 2019

CHAPTER C.8

ARRANGEMENT OF SECTIONS

THE CRIMINAL PROCEDURE CODE 2019

CHAPTER C.8

An Ordinance to amend and reform the law relating to criminal procedure in courts of the Territory.

PART I

PRELIMINARY

Citation.

1. This Ordinance may be cited as the Criminal Procedure Code 2019, ROBIOT c.C.8, and is referred to in this Ordinance as **this Code**.

Definitions.

2. In this Code, unless the context otherwise requires –

child means a person under the age of fourteen years;

Court of Appeal means the Court of Appeal constituted under the British Indian Ocean Territory (Court of Appeal) Order 1976;

judicial officer includes the Chief Justice, a Magistrate and the Registrar;

oath includes **affirmation** and **swear** and its grammatical variants includes **affirm** and its grammatical variants;

Police Officer means a person so appointed by the Commissioner under the Courts Ordinance 1983;

public prosecutor means any person appointed under section 55 and includes the Principal Legal Adviser and any person acting under the directions of the Principal Legal Adviser;

Registrar means the Registrar of the Supreme Court;

vessel means anything or device capable of being used for the conveyance of goods or persons on water from one place to another and

includes a hovercraft and any vessel being towed or carried by another vessel;

young person means a person who has attained the age of fourteen years and is under the age of sixteen years.

Trial of offences.

3. (1) All offences under the Penal Code shall be inquired into, tried and otherwise dealt with according to the provisions contained in this Code.

(2) All offences under any other law shall be inquired into, tried and otherwise dealt with according to the provisions contained in this Code, subject, however, to any enactment for the time being in force regulating the manner or place of inquiring into, trying or otherwise dealing with such offences.

(3) Despite anything contained in this Code, the Supreme Court or the Magistrate's Court may, subject to the provisions of any law for the time being in force in the Territory, in exercising criminal jurisdiction in respect of any matter or thing to which the procedure described by this Code is inapplicable, or for which no procedure is so prescribed, exercise such jurisdiction according to the course of procedure and the practice observed by and before the Crown Court or, as the case may be, a Magistrate's Court in England and Wales.

Promotion of reconciliation.

4. In all cases a court may promote reconciliation and encourage and facilitate the settlement in an amicable way of proceedings for common assault, or any other offence of a personal or private nature and not aggravated in degree, on terms of payment of compensation or other terms approved by the court, and may thereupon order the proceedings to be stayed or terminated.

PART II

PREVENTION OF OFFENCES

Police Officers to prevent breaches of the peace or offences.

5. Subject to the provisions contained within the Police and Criminal Evidence Ordinance 2019, every Police Officer may interpose for the purpose of preventing and shall to the best of his ability prevent, a breach of the peace or the commission of any offence.

Binding over to keep the peace or be of good behaviour.

6. Whenever a Magistrate is informed that any person is likely to commit a breach of the peace or disturb the public tranquillity, or do any wrongful act that may injure the informant or his property, the Magistrate may, in the manner

provided by this Part, require such person to show cause why he should not be bound over to keep the peace or be of good behaviour towards the informant, by entering into his own recognizance, with or without sureties, for such period, not exceeding one year, as the Magistrate shall think fit.

Order to be made.

7. When a Magistrate acting under section 6 deems it necessary to require any person to show cause under that section, he shall make an order in writing setting forth –

(a) the substance of the information received;

(b) the amount of the recognizance;

(c) the term for which it is to be in force; and

(d) the number, character, and class of sureties, if any, required.

Procedure in respect of person present in court.

8. If, when an order pursuant to section 7 is made, the person who has been required to show cause is present in court, it shall be read over to him or, if he so desires, the substance thereof shall be explained to him.

Procedure in respect of person not present in court.

9. If, when an order pursuant to section 7 is made, the person who has been required to show cause is not present in court, the Magistrate shall issue a summons requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is to bring him before the court:

Provided that whenever it appears to such Magistrate, upon the report of a Police Officer or upon other information (the substance of which report or information shall be recorded by the Magistrate) that there is reason to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest.

Copy of order to accompany summons or warrant.

10. Every summons or warrant issued under section 9 shall be accompanied by a copy of the order made under section 7 and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with or arrested under the same.

Power to dispense with personal attendance.

11. The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not

be ordered to enter into a recognizance for keeping the peace, or for maintaining good behaviour towards the informant, and may permit him to appear by an advocate.

Inquiry as to truth of information.

12. (1) When an order under section 7 has been read or explained under section 8 to a person present in court, or when any person appears or is brought before a Magistrate in compliance with or in execution of a summons or warrant issued under section 9, the Magistrate shall proceed to inquire into the truth of the information upon which the action has been taken, and to take such further evidence as may appear necessary.

(2) Such inquiry shall be made, as nearly as may be practicable, in the manner prescribed by Part XI for conducting trials and recording evidence in trials before the court.

(3) Where two or more persons have been associated together in the matter under inquiry, they may be dealt with in the same or separate inquiries as the Magistrate thinks just.

Order to enter into recognizance.

13. (1) If upon such inquiry it is proved that it is necessary for keeping the peace or maintaining good behaviour towards the informant, as the case may be, that the person in respect of whom the inquiry is made should enter into a recognizance, with or without sureties, the Magistrate shall make an order accordingly:

Provided that –

(a) no person shall be ordered to enter into a recognizance for an amount larger than that specified in the order made under section 7; and

(b) the amount of every recognizance shall be fixed with due regard to the circumstances of the case and shall not be excessive.

(2) Any person ordered by a Magistrate to give security under this section may appeal to the Supreme Court, and the provisions of Part XIV shall apply to every such appeal.

Discharge of person informed against.

14. If on an inquiry under section 12 it is not proved that it is necessary for keeping the peace or maintaining good behaviour towards the informant, as the case may be, that the person in respect of whom the inquiry is made should enter into a recognizance, the Magistrate shall make an entry on the record to that effect and, if such person is in custody only for the purposes of the inquiry, shall release him or, if such person is not in custody, shall discharge him.

Commencement of period for which recognizance is required.

15. (1) If any person in respect of whom an order requiring that person to enter into a recognizance is made under section 7 or section 13 is, at the time such order is made, sentenced to or undergoing a sentence of imprisonment, the period for which such recognizance is required shall commence on the expiration of such sentence.

(2) In other cases such period shall commence on the date of such order unless the Magistrate, for sufficient reason, fixes a later date.

Contents of recognizance.

16. The recognizance to be entered into by any such person shall bind him to keep the peace or to be of good behaviour towards the informant, as the case may be.

Power to reject sureties.

17. The Magistrate may refuse to accept any surety offered under any of the preceding sections on the ground that, for reasons to be recorded by him, such surety is an unfit person.

Procedure on failure of person to enter into a recognizance.

18. If any person ordered to enter into a recognizance pursuant to section 7 or section 13 fails to comply with that order, the court may commit him to custody for a period not exceeding 6 months or until he sooner complies with the order.

Power to release persons imprisoned for failure to enter into a recognizance.

19. Whenever a Magistrate is of the opinion that any person imprisoned pursuant to section 18 may be released without hazard to the community or to the informant, as the case may be, such Magistrate may order such person to be discharged.

Discharge of sureties.

20. (1) Any surety for the peaceable conduct or good behaviour of another person may at any time apply to a Magistrate to cancel any surety entered into under any of the preceding sections.

(2) On such application being made, the Magistrate shall issue a warrant to arrest the person bound by the recognizance as principal and bring him before the Magistrate's Court, or a summons requiring the principal to appear before such court.

(3) The Magistrate's Court before which the principal appears or is brought in pursuance of such a summons or warrant as aforesaid may, unless it adjudges the recognizance to be forfeited, order the recognizance to be discharged and order the principal to enter into a new recognizance, with or without sureties, to keep the peace or to be of good behaviour.

PART III

ARREST AND SEARCH

Power to break open doors and windows for purpose of liberation.

21. Any Police Officer or other person authorised to make an arrest may break open any outer or inner door or window of any house or place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

Arrest by Police Officer without warrant.

22. Subject to the provisions contained in the Police and Criminal Evidence Ordinance 2019, any Police Officer may, without an order from a judicial officer and without a warrant, arrest –

(a) any person who commits a breach of the peace in his presence;

(b) any person whom he suspects upon reasonable grounds of being a deserter from Her Majesty's Forces;

(c) any person for whom he has reasonable cause to believe a warrant of arrest has been issued.

Disposal of person arrested by private person.

23. Any private person arresting any other person pursuant to section 24A of the Police and Criminal Evidence Ordinance 2019 shall without unnecessary delay make over the person so arrested to a Police Officer, or in the absence of a Police Officer shall take such person to a Magistrate.

Offences committed in judicial officer's presence.

24. When any offence is committed in the presence of a judicial officer, he may himself arrest or order any person to arrest the offender, and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody.

Arrest by judicial officer.

25. A judicial officer may at any time arrest or direct the arrest in his presence of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

Assistance to judicial officer or Police Officer.

26. Every person is bound to assist a judicial officer or Police Officer reasonably demanding his aid –

(a) in the taking or preventing the escape of any other person whom such judicial officer or Police Officer is authorised to arrest;

(b) in the prevention or suppression of a breach of the peace or in the prevention of any injury attempted to be committed to any telegraph or public property.

PART IV

BAIL

Meaning of "bail in criminal proceedings".

27. (1) Where a court has power to remand a person in custody or on bail, the court shall either remand that person in custody or grant bail in criminal proceedings, in accordance with this Part of the Code.

(2) In this Code **bail in criminal proceedings** means bail grantable in or in connection with proceedings for an offence to a person who is accused or convicted of the offence.

(3) In this Code **bail** means bail grantable under the law (including common law) for the time being in force.

(4) This section applies –

(a) whether the offence was committed in the Territory or elsewhere, and

(b) whether it is an offence under the law of the Territory, or of any other country or territory.

(5) Bail in criminal proceedings shall be granted (and in particular shall be granted unconditionally or conditionally) in accordance with this Code.

Other definitions.

28. (1) In this Code, unless the context otherwise requires, **conviction** includes –

(a) a finding of guilt,

(b) a finding that a person is not guilty by reason of insanity,

(c) a conviction of an offence for which an order is made discharging the offender absolutely or conditionally,

and **convicted** shall be construed accordingly.

(2) In this Code, unless the context otherwise requires –

court includes a judge of a court, or a Magistrate;

offence includes an alleged offence;

surrender to custody means, in relation to a person released on bail, surrendering himself into the custody of the court at the time and place for the time being appointed for him to do so;

vary, in relation to bail, means imposing further conditions after bail is granted, or varying or rescinding conditions, and

(3) Where an enactment (whenever passed) which relates to bail in criminal proceedings refers to the person bailed appearing before a court it is to be construed unless the context otherwise requires as referring to his surrendering himself into the custody of the court.

(4) Any reference in this Code to any other enactment is a reference thereto as amended, and includes a reference thereto as extended or applied, by or under any other enactment, including this Code.

Incidents of bail in criminal proceedings

General provisions.

29. (1) A person granted bail in criminal proceedings shall be under a duty to surrender to custody, and that duty is enforceable in accordance with section 32 of this Code.

(2) No recognizance for his surrender to custody shall be taken from him.

(3) Except as provided by this section –

(a) no security for his surrender to custody shall be taken from him,

(b) he shall not be required to provide a surety or sureties for his surrender to custody, and

(c) no other requirement shall be imposed on him as a condition of bail.

(4) He may be required, before release on bail, to provide a surety or sureties to secure his surrender to custody.

(5) He may be required, before release on bail, to give security for his surrender to custody.

The security may be given by him or on his behalf.

(6) He may be required to comply, before release on bail or later, with such requirements as appear to the court to be necessary –

(a) to secure that he surrenders to custody,

(b) to secure that he does not commit an offence while on bail,

(c) to secure that he does not interfere with witnesses or otherwise obstruct the course of justice whether in relation to himself or any other person,

(d) for his own protection or, if he is a child or young person, for his own welfare or in his own interests,

and, in any Ordinance, **the normal powers to impose conditions of bail** means the powers to impose conditions under paragraph (a), (b), (c) or (d) above.

(7) If a parent or guardian of a child or young person consents to be surety for the child or young person for the purposes of this subsection, the parent or guardian may be required to secure that the child or young person complies with any requirement imposed on him by virtue of subsection (6) above, but –

(a) no requirement shall be imposed on the parent or the guardian of a young person by virtue of this subsection where it appears that the young person will attain the age of seventeen before the time to be appointed for him to surrender to custody; and

(b) the parent or guardian shall not be required to secure compliance with any requirements to which his consent does extend, be bound in a sum greater than £50.

(8) Where a court has granted bail in criminal proceedings that court may on application –

(a) by or on behalf of the person to whom bail was granted, or

(b) by the prosecutor,

vary the conditions of bail or impose conditions in respect of bail which has been granted unconditionally.

Bail for accused persons and others

General right to bail of accused persons and others.

30. (1) A person to whom this section applies shall be granted bail except as provided in section 36 of this Code.

(2) This section applies to a person who is accused of an offence when –

(a) he appears or is brought before a Magistrate's Court or the Supreme Court in the course of or in connection with proceedings for the offence, or

(b) he applies to a court for bail or for a variation of the conditions of bail in connection with the proceedings.

This subsection does not apply as respects proceedings on or after a person's conviction of the offence.

(3) This section also applies to a person who, having been convicted of an offence, appears or is brought before a Magistrate's Court or the Supreme Court.

(4) Section 36 of this Code also has effect as respects conditions of bail for a person to whom this section applies.

(5) In section 36 of this Code **the accused** means a person to whom this section applies.

(6) This section is subject to the restriction that a Magistrate may not grant bail where a person is accused of murder or treason.

Supplementary

Supplementary provisions about decisions on bail.

31. (1) Subject to subsection (2) below, where –

(a) a court grants bail in criminal proceedings, or

(b) a court withholds bail in criminal proceedings from a person to whom section 30 of this Code applies, or

(c) a court appoints a time or place or a different time or place for a person granted bail in criminal proceedings to surrender to custody, or

(d) a court varies any conditions of bail or imposes conditions in respect of bail in criminal proceedings,

that court shall make a record of the decision and, if requested to do so by the person in relation to whom the decision was taken, shall cause him to be given a copy of the record of the decision as soon as practicable after the record is made.

(2) Where a Magistrate's Court or the Supreme Court –

(a) withholds bail in criminal proceedings, or

(b) imposes conditions in granting bail in criminal proceedings, or

(c) varies any conditions of bail or imposes conditions in respect of bail in criminal proceedings,

and does so in relation to a person to whom section 30 of this Code applies, then the court shall give reasons for withholding bail or for imposing or varying the conditions.

(3) A court which is by virtue of subsection (2) above required to give reasons for its decision shall include a note of those reasons in the record of its decision and shall give a copy of that note to the person in relation to whom the decision was taken.

(4) Where a person has given security in pursuance of section 29(4) above and a court is satisfied that he failed to surrender to custody then, unless it appears that he had reasonable cause for his failure, the court may order the forfeiture of the security.

(5) If a court orders the forfeiture of a security under subsection (4) above, the court may declare that the forfeiture extends to such amount less than the full value of the security as it thinks fit to order.

(6) An order under subsection (4) above shall, unless previously revoked, have effect at the end of twenty-one days beginning with the day on which it is made.

(7) A court which has ordered the forfeiture of a security under subsection (4) above may, if satisfied on an application made by or on behalf of the person who gave it that he did after all have reasonable cause for his failure to surrender to custody, by order remit the forfeiture or declare that it extends to such amount less than the full value of the security as it thinks fit to order.

(8) An application under subsection (7) above may be made before or after the order for forfeiture has taken effect, but shall not be entertained unless the court is satisfied that the prosecution was given reasonable notice of the applicant's intention to make it.

(9) A security which has been ordered to be forfeited by a court under subsection (4) above shall, to the extent of the forfeiture –

(a) if it consists of money, be accounted for and paid in the same manner as a fine imposed by that court would be;

(b) if it does not consist of money, be enforced by such magistrates' court as may be specified in the order.

(10) Where an order is made under subsection (7) above after the order for forfeiture of the security in question has taken effect, any money which would have fallen to be repaid or paid over to the person who gave the security if the order under subsection (7) had been made before the order for forfeiture took effect shall be repaid or paid over to him.

Offence of absconding by person released on bail.

32. (1) If a person who has been released on bail in criminal proceedings fails without reasonable cause to surrender to custody he shall be guilty of an offence.

(2) If a person who –

(a) has been released on bail in criminal proceedings, and

(b) having reasonable cause therefor, has failed to surrender to custody,

fails to surrender to custody at the appointed place as soon after the appointed time as is reasonably practicable he shall be guilty of an offence.

(3) It shall be for the accused to prove that he had reasonable cause for his failure to surrender to custody.

(4) A failure to give to a person granted bail in criminal proceedings a copy of the record of the decision shall not constitute a reasonable cause for that person's failure to surrender to custody.

(5) An offence under subsection (1) or (2) above shall be punishable either on summary conviction or as if it were a criminal contempt of court.

(6) A person who is convicted of an offence under subsection (1) or (2) above shall be liable to imprisonment for a term not exceeding 3 months or to a fine not exceeding £5,000 or to both.

(7) In any proceedings for an offence under subsection (1) or (2) above a document purporting to be a copy of the part of the prescribed record which relates to the time and place appointed for the person specified in the record to surrender to custody and to be duly certified to be a true copy of that part of the record shall be evidence of the time and place appointed for that person to surrender to custody.

(8) For the purposes of subsection (8) above –

(a) **the prescribed record** means the record of the decision of the court made in pursuance of section 31(1) of this Code;

(b) the copy of the prescribed record is duly certified if it is certified by the Magistrate.

Liability to arrest for absconding or breaking conditions of bail.

33. (1) If a person who has been released on bail in criminal proceedings and is under a duty to surrender into the custody of a court fails to surrender to custody at the time appointed for him to do so the court may issue a warrant for his arrest.

(2) If a person who has been released on bail in criminal proceedings absents himself from the court at any time after he has surrendered into the custody of the court and before the court is ready to begin or to resume the hearing of the proceedings, the court may issue a warrant for his arrest; but no warrant shall be issued under this subsection where that person is absent in accordance with leave given to him by or on behalf of the court.

(3) A person who has been released on bail in criminal proceedings and is under a duty to surrender into the custody of a court may be arrested without warrant by a Police Officer –

(a) if the Police Officer has reasonable grounds for believing that that person is not likely to surrender to custody;

(b) if the Police Officer has reasonable grounds for believing that that person is likely to break any of the conditions of his bail or has reasonable grounds for suspecting that that person has broken any of those conditions; or

(c) in a case where that person was released on bail with one or more surety or sureties, if a surety notifies a Police Officer in writing that that person is unlikely to surrender to custody and that for that reason the surety wishes to be relieved of his obligations as a surety.

(4) a person arrested in pursuance of subsection (3) above –

(a) shall, except where he was arrested within 24 hours of the time appointed for him to surrender to custody, be brought as soon as practicable and in any event within 24 hours after his arrest before the Magistrate; and

(b) in the said excepted case shall be brought before the court at which he was to have surrendered to custody.

(5) The Magistrate before whom a person is brought under subsection (4) above may, if of the opinion that that person –

(a) is not likely to surrender to custody, or

(b) has broken or is likely to break any condition of his bail,

remand him in custody or commit him to custody, as the case may require, or alternatively, grant him bail subject to the same or to different conditions, but if not of that opinion shall grant him bail subject to the same conditions (if any) as were originally imposed.

(6) In reckoning for the purposes of this section any period of 24 hours, no account shall be taken of Christmas Day, Good Friday or any Sunday.

(7) In the case of a person charged with murder or treason –

(a) subsections (4) and (5) have effect as if for **Magistrate** there were substituted **Chief Justice**, and

(b) subsection (6) has effect, for the purposes of subsection (4), as if at the end there were added ", Saturday or bank holiday."

Bail with sureties.

34. (1) This section applies where a person is granted bail in criminal proceedings on condition that he provides one or more surety or sureties for the purpose of securing that he surrenders to custody.

(2) In considering the suitability for that purpose of a proposed surety, regard may be had (amongst other things) to –

(a) the surety's financial resources;

(b) his character and any previous convictions of his; and

(c) his proximity (whether in point of kinship, place of residence or otherwise) to the person for whom he is to be surety.

(3) Where a court grants a person bail in criminal proceedings on such a condition but is unable to release him because no surety or no suitable surety is available, the court shall fix the amount in which the surety is to be bound and

subsections (4) and (5) below shall apply for the purpose of enabling the recognizance of the surety to be entered into subsequently.

(4) Where this subsection applies the recognizance of the surety may be entered into before such of the following persons or descriptions of persons as the court may by order specify or, if it makes no such order, before any of the following persons, that is to say –

(a) where the decision is taken by the Magistrate's Court, before the Magistrate or the Chief of Police;

(b) where the decision is taken by the Supreme Court, before any of the persons specified in paragraph (a) above or, any person specified by the Chief Justice;

(c) where the decision is taken by the Court of Appeal, before any of the persons specified in paragraph (b) above.

(5) Where a surety seeks to enter into his recognizance before the Chief of Police in accordance with subsection (4) above but that person declines to take his recognizance because he is not satisfied of the surety's suitability, the surety may apply to –

(a) the court which fixed the amount of the recognizance in which the surety was to be bound, or

(b) the Magistrate's Court,

for that court to take his recognizance and that court shall, if satisfied of his suitability, take his recognizance.

(6) Where, in pursuance of subsection (4) above, a recognizance is entered into otherwise than before the court that fixed the amount of the recognizance, the same consequences shall follow as if it had been entered into before that court.

(7) If a surety has entered into a recognizance which is conditioned for the appearance of a person before a court and that person fails to surrender to the custody of the court in accordance with the condition, the court shall –

(a) declare the recognizance to be forfeited;

(b) issue a summons directed to each person bound by the recognizance as surety, requiring him to appear before the court on a date specified in the summons to show cause why he should not be adjudged to pay the sum in which he is bound;

and on that date the court may proceed in the absence of any surety if it is satisfied that he has been served with the summons.

(8) The court which declares a recognizance to be forfeited in accordance with subsection (7) may, instead of adjudging any person to pay the whole sum in which he is bound, adjudge him to pay part only of the sum or remit the sum.

(9) Payment of any sum adjudged to be paid under this subsection (8) may be enforced as if it were a fine.

Miscellaneous

Offence of agreeing to indemnify sureties in criminal proceedings.

35. (1) If a person agrees with another to indemnify that other against any liability which that other may incur as a surety to secure the surrender to custody of a person accused or convicted of or under arrest for an offence, he and that other person shall be guilty of an offence.

(2) An offence under subsection (1) above is committed whether the agreement is made before or after the person to be indemnified becomes a surety and whether or not he becomes a surety and whether the agreement contemplates compensation in money or in money's worth.

(3) A person guilty of an offence under subsection (1) above shall be liable on summary conviction, to imprisonment for a term not exceeding 3 months or to a fine not exceeding £400 or to both.

(4) No proceedings for an offence under subsection (1) above shall be instituted except by or with the consent of the Principal Legal Adviser.

Exceptions to right to bail.

36. (1) The accused need not be granted bail if the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not) would –

(a) fail to surrender to custody, or

(b) commit an offence while on bail, or

(c) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person.

(2) The accused may not be granted bail unless the court is satisfied that there is no significant risk of his committing an offence while on bail (whether subject to conditions or not) if it appears to the court that he was on bail in criminal proceedings on the date of the offence.

(3) The defendant need not be granted bail if the court is satisfied that the defendant should be kept in custody for his own protection or, if he is a child or young person, for his own welfare.

(4) If the defendant is charged with murder, the defendant may not be granted bail unless the Chief Justice is of the opinion that there is no significant risk of the defendant committing, while on bail, an offence that would, or would be likely to, cause physical or mental injury to any person other than the defendant.

(5) In taking the decisions required by paragraph (1), the court shall have regard to such of the following considerations as appear to it to be relevant, that is to say –

(a) the nature and seriousness of the offence or default (and the probable method of dealing with the accused for it),

(b) the character, antecedents, associations and community ties of the accused,

(c) the accused's record as respects the fulfilment of his obligations under previous grants of bail in criminal proceedings,

(d) except in the case of an accused who has been convicted of the offence before the court, the strength of the evidence of his having committed the offence,

(e) if the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not), would commit an offence while on bail, the risk that the defendant may do so by engaging in conduct that would, or would be likely to, cause physical or mental injury to any person other than the defendant,

as well as to any others which appear to be relevant.

PART V

JURISDICTION AND CONSTITUTION OF COURTS

By what court offences triable.

37. (1) Subject to the provisions of this Code, any offence under the Penal Code or under any law other than the Penal Code may be tried –

(a) by the Supreme Court; or

(b) by the Magistrate's Court, unless it is an offence excluded from trial by the Magistrate's Court by subsection (2).

(2) No offence punishable with imprisonment for a period exceeding fourteen years shall be triable by the Magistrate's Court:

Provided that any offence under any of the following sections of the Penal Code shall be triable by the Magistrate's Court –

Section	Description of Offence
68	Rioters demolishing buildings, machinery, etc.;
104(1)	Rescue;
204	Acts intended to cause grievous harm or prevent arrest;
205	Preventing escape from wreck;
242	Robbery, and assault with intent to rob;
244	Aggravated burglary;
266 and 269(1)	Arson;
277	Forgery of a will or certain other documents;
280 and 281	Uttering certain false documents;
282	Procuring execution of documents by false pretences;
285	Demanding property upon forged testamentary instrument;
292	Counterfeiting coin;
293	Preparations for coining,

and aiding, abetting, counselling or procuring or attempting to commit, inciting to commit or conspiring to commit any of the offences listed in this proviso.

Power to remand in custody.

38. Subject to the provisions contained in Part IV, every court shall have the power to remand an accused person in custody, whether or not it has power to try such person, at any time from the time he is charged until the time, if any, that he is discharged.

Limitation of time for trials in certain cases.

39. Except where a longer time is specially allowed by law, no offence, the maximum punishment for which does not exceed imprisonment for six months

and/or a fine of £250, shall be triable unless the charge or complaint relating to it is laid within twelve months from the time when the matter of such charge or complaint arose.

General authority of courts.

40. Every court has authority to cause to be brought before it any person who is charged with an offence committed within the Territory, or which according to law may be dealt with as if it had been committed within the Territory and to deal with the accused person according to its jurisdiction.

Place of inquiry or trial.

41. Every court may inquire into or try any offence subject to its jurisdiction at any place where it has power to hold sittings.

Power of Supreme Court to change venue.

42. (1) Whenever it appears to the Supreme Court that it is necessary or expedient so to do, it may order that an accused against whom proceedings have been instituted in the Magistrate's Court be brought for trial to itself or that an accused against whom proceedings have been instituted in the Supreme Court be sent for trial to the Magistrate's Court if that court has jurisdiction to try the case.

(2) The Supreme Court may act either on the report of the Magistrate's Court or on the application of an interested party or on its own initiative.

Court to be open.

43. The place in which a court is held for the purpose of inquiring into or trying an offence shall be deemed an open court to which the public generally may have access, so far as the same can conveniently contain them:

> Provided that the Chief Justice or Magistrate may, if he thinks fit, order at any stage in the trial of any particular case that the public generally, or any particular person or class of persons, shall not have access to, or be or remain in, the room or building used by the court.

Place and date of sittings and constitution of Supreme Court.

44. (1) For the exercise of its criminal jurisdiction the Supreme Court shall hold sittings at such places and on such dates as the Chief Justice may direct.

(2) The Registrar shall ordinarily give notice beforehand of all such sittings.

(3) The Supreme Court shall consist of the Chief Justice sitting with or without assessors according to its decision under section 45.

Discretion of court to sit with assessors.

45. (1) The Supreme Court or the Magistrate's Court may sit with an assessor or assessors in any trial, if the court considers it in the interests of justice to do so.

(2) In deciding whether to sit with assessors the court may act on its own motion or on the application of a party.

(3) The number of assessors may be one or two, at the discretion of the court.

(4) The court may consult with the assessor or assessors at any stage of the trial but all decisions shall be taken by the court alone.

Liability to serve as an assessor.

46. (1) Every person within the jurisdiction of the court who has attained the age of twenty-one years and is not over sixty-five years of age and who has sufficient familiarity with the English language to enable him to follow and readily understand the proceedings in a criminal trial and who is not rendered ineligible by subsection (2) is liable to sit as an assessor.

(2) The following persons shall not be assessors –

(a) the Commissioner;

(b) judicial officers;

(c) Police Officers;

(d) persons who have suffered imprisonment and have not received a free pardon.

(3) The following persons may claim exemption from sitting as assessors –

(a) members of Her Majesty's Forces or of the armed forces of any other country;

(b) civilian personnel accompanying such forces and in their employment who are not ordinarily resident in the Territory and who are there solely for the purposes of such employment;

(c) medical practitioners and dentists;

(d) masters in command of vessels.

(4) The court may excuse from sitting any person summoned as an assessor, on any ground which the court thinks sufficient.

Summoning of assessors.

47. (1) All assessors, whether for the Supreme Court or a Magistrate's Court, shall be summoned by the Magistrate, and he shall summon as many persons as he thinks necessary for the trial or trials for which assessors are required. If practicable, enough assessors shall be summoned to enable a selection to be made by the court.

(2) Every summons to an assessor shall be in writing and shall require his attendance as an assessor at a time and place to be therein specified.

Penalty for non-attendance as an assessor.

48. (1) Any person summoned to attend as an assessor who, without lawful excuse, fails to attend as required, or who, having attended, departs without having obtained the permission of the court, or fails to attend after adjournment of the court after being ordered to attend, shall be liable by order of the court to a fine of £500.

(2) In default of payment of such fine within the time specified by the court, the court may employ any means provided by this Code for the enforcement of payment of fines.

Selection of assessors.

49. If more assessors are in attendance than are needed by the court for a trial, the court shall select one or two from among them to sit.

Absence of assessors.

50. The court may proceed with a trial despite the absence of an assessor or, if there are two, of both assessors. Such absence shall not invalidate the trial.

Assessors to attend at adjourned sittings.

51. If the trial is adjourned, the assessor or assessors shall be required to attend at the adjourned sitting and at any subsequent sitting until the conclusion of the trial.

Expenses of assessors.

52. The Commissioner may make rules for regulating the payment to assessors of out of pocket expenses incurred by them in consequence of being summoned and sitting as assessors. In the absence of such rules assessors may be paid their reasonable out of pocket expenses.

PART VI

CONTROL OF PROCEEDINGS BY THE CROWN AND APPOINTMENT OF PUBLIC PROSECUTORS

Principal Legal Adviser.

53. (1) The Principal Legal Adviser is vested with the right of prosecuting all crimes and offences committed within the Territory.

(2) The right and power of prosecuting vested in the Principal Legal Adviser is absolutely under his management and control and any person who is or may be appointed a public prosecutor under section 55 shall be under the control of the Principal Legal Adviser and be bound to conform to any direction given to him by the Principal Legal Adviser.

Nolle prosequi.

54. (1) In any criminal case and at any stage thereof before judgment the Principal Legal Adviser or a public prosecutor acting on his directions may enter a *nolle prosequi*, either by stating in court or by informing the court in writing that the Crown intends that the proceedings shall not continue, and thereupon the accused shall be at once discharged in respect of the charge for which the *nolle prosequi* is entered, and if he has been committed to prison shall be released, or if on bail any security shall be returned and any surety shall be discharged, but such discharge of an accused person shall not operate as a bar to any subsequent proceedings against him on account of the same facts.

(2) If the accused shall not be before the court when such *nolle prosequi* is entered, the Registrar or clerk of such court shall forthwith cause notice in writing of the entry of such *nolle prosequi* to be given to the keeper of the prison in which such accused may be detained.

Appointment of public prosecutors.

55. (1) The Commissioner may appoint generally, or in any case, or for any specified class of cases, one or more officers to be called public prosecutors.

(2) Every Police Officer shall be ex officio a public prosecutor.

(3) The Principal Legal Adviser by writing under his hand may appoint any fit and proper person to be a public prosecutor for the purpose of any case.

(4) Every public prosecutor shall be subject to the express directions of the Principal Legal Adviser.

Powers of public prosecutors.

56. A public prosecutor may appear and plead without any written authority before any court in which any case of which he has charge is under trial or appeal and if any private person institutes criminal proceedings, a public prosecutor may undertake, at any stage, the conduct of those proceedings, if the Principal Legal Adviser so directs.

Withdrawal from prosecution.

57. In a trial before any court a public prosecutor may, with the consent of the court or on the instructions of the Principal Legal Adviser, and any other complainant may with the consent of the court, at any time before judgment is pronounced, withdraw from the prosecution of any person and upon such withdrawal –

(a) if it is made before the accused is called upon to make his defence, he shall be discharged, but such discharge of an accused shall not operate as a bar to subsequent proceedings against him on account of the same facts;

(b) if it is made after the accused is called upon to make his defence, he shall be acquitted.

Permission to conduct prosecution.

58. (1) The Chief Justice or Magistrate trying any case may permit the prosecution to be conducted by any person, but no person other than a public prosecutor or other officer generally or specially authorised by the Commissioner in this behalf shall be entitled to do so without permission. With the like permission, any manager or employee may prosecute for an offence committed to the prejudice of his principal or employer.

(2) Any such person or officer shall have the like power of withdrawing from the prosecution as is provided by section 57, and the provisions of that section shall apply to any withdrawal by such person or officer.

(3) Any person conducting the prosecution may do so personally or by advocate.

PART VII

INSTITUTION OF PROCEEDINGS

Institution of proceedings.

59. Proceedings may be instituted either –

(a) by a Police Officer charging a person with an offence, or

(b) by any person making a complaint that an offence has been committed.

Complaint and charge.

60. (1) Any person who believes from reasonable and probable cause that an offence has been committed by any person may make a complaint thereof to a judicial officer.

(2) A complaint may be made orally or in writing but if made orally shall be reduced to writing by the judicial officer and, in either case, shall be signed by the complainant and the judicial officer.

(3) The judicial officer upon receiving any such complaint shall, subject to the provisions of subsection (4), draw up or cause to be drawn up and shall sign a formal charge containing a statement of the offence with which the accused is charged.

(4) Where the judicial officer is of opinion that any complaint or formal charge made or presented under this section does not disclose any offence, the judicial officer shall make an order refusing to admit such complaint or formal charge and shall record his reasons for such order.

Issue of summons or warrant.

61. (1) Upon receiving a complaint and having signed the charge in accordance with the provisions of section 60, the judicial officer may, in his discretion, issue either a summons or a warrant to compel the attendance of the accused before the Magistrate's Court:

Provided that a warrant shall not be issued in the first instance unless the complaint has been made on oath either by the complainant or by a witness or witnesses.

(2) The validity of any proceedings taken in pursuance of a complaint or charge shall not be affected either by any defect in the complaint or charge or by the fact that a summons or warrant was issued without a complaint or charge.

(3) Any summons or warrant may be issued on a Sunday.

Person arrested without warrant how to deal with.

62. (1) Where a person who has been charged with an offence by a Police Officer is brought before the Magistrate's Court, or surrenders to the custody of that court, the Magistrate before whom the person is brought shall draw up or cause to be drawn up and shall sign a formal charge containing a statement of the offence with which such person is charged.

(2) The court, if it has jurisdiction, may try the offence alleged to have been committed.

(3) If the court has no such jurisdiction, it shall direct that the accused appears or be brought before a court having such jurisdiction and may admit the accused to bail or remand him in custody to appear or be brought before the appropriate court.

Form and contents of summons.

63. (1) Every summons issued by a judicial officer under this Code shall be in writing, in duplicate and signed by such judicial officer.

(2) Every summons shall be directed to the person summoned and shall require him to appear at a time and place to be therein appointed before the Magistrate's Court. It shall state the offence for which the person against whom it is issued is charged.

Service of summons or other documents.

64. (1) Every summons or other document shall be served by a Police officer or by an usher of the Supreme Court or other public servant and shall, if practicable, be served personally on the person summoned by delivering or tendering to him one of the duplicates of the summons or other document.

(2) Every person on whom a summons or other document is so served shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

(3) Whenever a summons or other document –

(a) is to be served on a person whose last known address is not within the Territory a copy thereof may be served by post addressed to that last known address;

(b) has been served by post and no acknowledgement therefor has been received a court may treat that summons or other document as served upon the person to whom it was addressed if 28 days have elapsed from the date of posting.

(4) A certificate of posting endorsed on a summons or other document which is signed and dated by the person posting that summons or document shall be admissible in evidence, and shall be deemed to be correct unless and until the contrary is proved.

Service when person cannot be found.

65. (1) Where the person summoned cannot by the exercise of due diligence be found, the summons may be served by leaving one of the duplicates for him with some adult member of his family or with his employer and the person with

whom the summons is so left shall, if required by the serving officer, sign a receipt therefor on the back of the other duplicate.

(2) If any person with whom a summons is left pursuant to this section fails or refuses to take all reasonable steps to cause the same to be served he shall be guilty of contempt of court.

Procedure when service cannot be effected as before provided.

66. If service in the manner provided by sections 64 or 65 cannot by the exercise of due diligence be effected, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the building, vessel, tent or some other place in which the person summoned ordinarily resides, and thereupon the summons shall be deemed to have been duly served.

Service on company.

67. Service of a summons on an incorporated company or other body corporate may be effected by serving it on the secretary, local manager or other principal officer of the corporation or by leaving it at the registered office or other principal place of business of the corporation in the Territory.

Proof of service.

68. (1) Where the officer who has served a summons is not present at the hearing of the case, an affidavit purporting to be made before a judicial officer that such summons has been served and a duplicate of the summons purporting to be indorsed in accordance with section 64, by the person to whom it was delivered or tendered or with whom it was left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved.

(2) The affidavit mentioned in this section may be attached to the duplicate of the summons and returned to the court.

Warrant in case of absconding, etc.

69. (1) Where a prosecution has been instituted and a Magistrate or the Registrar has reason to believe that the accused is avoiding service or that he is unlikely to obey the summons or surrender to his bail or attend the resumed hearing, as the case may be, the Magistrate or Registrar may issue a warrant for the arrest of the accused.

(2) An application for a warrant under this section may be made either in writing or orally by a public prosecutor or by the complainant or a surety, and the Magistrate or Registrar shall examine the applicant and any necessary witness on oath or affirmation and record the substance of his information.

Warrant on disobedience to summons.

70. If the accused does not appear at the time and place appointed in and by the summons, the court may issue a warrant to apprehend him and cause him to be brought before such court. But no such warrant shall be issued unless a complaint has been made upon oath.

Form, contents and duration of warrant.

71. (1) Every warrant of arrest shall be under the hand of the judicial officer issuing the same.

(2) Every warrant shall state shortly the offence with which the person against whom it is issued is charged and shall name or otherwise describe such person, and it shall order the person or persons to whom it is directed to apprehend the person against whom it is issued and bring him before the court having jurisdiction in the case to answer to the charge therein mentioned and to be further dealt with according to law.

(3) Every such warrant shall remain in force until it is executed or until it is cancelled by the judicial officer who issued it.

Warrant to whom directed.

72. (1) A warrant of arrest may be directed to one or more Police Officers, or generally to all Police Officers. But a judicial officer issuing such a warrant may, if its immediate execution is necessary, and no Police Officer is immediately available, direct it to any other person or persons, and such person or persons shall execute the same.

(2) When a warrant is directed to more officers or persons than one, it may be executed by all or by any one or more of them.

Execution of warrant directed to Police Officers.

73. A warrant directed to any Police Officer may also be executed by any other Police Officer whose name is indorsed upon the warrant by the officer to whom it is directed or indorsed.

Notification of substance of warrant.

74. The Police Officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested and, if so required, shall show him the warrant.

Persons arrested to be brought before court without delay.

75. The Police Officer or other person executing a warrant of arrest shall without unnecessary delay bring the person arrested before the court before which he is required by law to produce such person.

Where warrant of arrest may be executed.

76. A warrant of arrest may be executed at any place in the Territory.

Irregularities in warrant.

77. Any irregularity or defect in the substance or form of a warrant, and any variance between it and the written complaint or information, or between either and the evidence produced on the part of the prosecution at any inquiry or trial shall not affect the validity of any proceedings at or subsequent to the hearing of the case, but if any such variance appears to the court to be such that the accused has been thereby deceived or misled, such court may, at the request of the accused, adjourn the hearing of the case to some future date and in the meantime remand the accused or admit him to bail.

Power of court to order prisoner to be brought before it.

78. (1) When any person for whose appearance or arrest a court is empowered to issue a summons or warrant is confined in any prison, the court may issue an order to the officer in charge of such prison requiring him to bring such prisoner in proper custody, at a time to be named in the order, before such court.

(2) The officer so in charge, on receipt of such order, shall act in accordance therewith, and shall provide for the safe custody of the prisoner during his absence from the prison for the purpose set out in subsection (1).

Provisions of this Part applicable generally to summonses and warrants.

79. The provisions contained in this Part relating to a summons and warrant, and their issue, service and execution, shall, so far as may be, apply to every summons and every warrant of arrest issued under this Code.

References to Principal Legal Adviser.

80. (1) When a person appears or is brought before a Magistrate, not being a Senior Magistrate, charged with any offence, the Magistrate –

(a) may, if the alleged offence is one which he has jurisdiction to try; and

(b) shall, if the alleged offence is one which he has no jurisdiction to try, apply to the Principal Legal Adviser for directions and shall inform the accused that he is so doing.

(2) On applying to the Principal Legal Adviser for directions under subsection (1) the Magistrate shall, in respect of every person to whom a summons could be issued under section 111 if the matter were for trial by him, issue a notice to the employer of such person informing him that the person named is liable to be called as a witness and specifying the matter in respect of which he is liable to be called.

Powers of Principal Legal Adviser.

81. (1) On receipt of an application under section 80 and after making any inquiries that he may consider necessary, the Principal Legal Adviser shall –

(a) inform the Magistrate that he intends to file an information for the trial of the matter in the Supreme Court;

(b) direct that the case be tried before the Senior Magistrate;

(c) direct that the case be tried before the Magistrate; or

(d) inform the Magistrate that the Crown intends that the proceedings shall not continue.

(2) When drawing up an information, the Principal Legal Adviser may charge the accused with any offence that appears to be disclosed, either in addition to or in substitution for that with which the accused was charged.

(3) When exercising the powers conferred by subsection (1)(b) or (c), the Principal Legal Adviser may direct that a fresh charge be substituted for the charge originally signed.

Action on receipt of directions.

82. (1) On receipt of the directions of the Principal Legal Adviser, the Magistrate shall cause the accused to be brought before the court and shall inform him of the substance of the directions and shall –

(a) where the case is to be tried before the Supreme Court or the Senior Magistrate, remand the accused in custody or on bail;

(b) where the case is to be tried before the Magistrate, proceed with the trial or fix a date therefor and remand the accused in custody or on bail; or

(c) in any other case, discharge the accused.

(2) When an accused has been discharged under the provisions of subsection (1)(c), the Magistrate shall inform any person to whom he has issued a notice under section 80(2) that the person named in the notice is no longer liable to be called as a witness in respect of the matter specified in the notice.

Rules for the framing of charges and informations.

83. (1) A charge or information shall be in the form in Schedule 1 or in a form substantially to the like effect.

(2) Subject to the provisions of section 86, every charge or information shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the person is charged describing the offence shortly together with such particulars as may be necessary for giving reasonable information as to the nature of the offence charged.

(3) A charge or information for a specific offence shall not be open to objection in respect of its form if it is framed in accordance with a form of charge or information for that offence set out in Schedule 2.

Joinder of counts in a charge or information.

84. (1) Any offences may be charged together in the same charge or information if the offences charged are founded on the same facts or form, or are part of, a series of offences of the same or similar character.

(2) Where more than one offence is charged in a charge or information, the statement and particulars of each offence shall be set out in a separate paragraph called a count, and sections 83 and 86 shall apply to each count in the charge or information as they apply to a charge or information where one offence is charged.

(3) The counts shall be numbered consecutively.

(4) Where, before or at any stage of a trial, the court is of the opinion that a person accused may be embarrassed in his defence by reason of being charged with more than one offence in the same charge or information, or that for any other reason it is desirable to direct that the person should be tried separately for any one or more offences charged in a charge or information, the court may order a separate trial of any count or counts in such charge or information.

Joinder of two or more accused in one charge or information.

85. The following persons may be joined in one charge or information and may be tried together namely –

(a) persons accused of the same offence committed in the course of the same transaction;

(b) persons accused of an offence and persons accused of abetment, or of an attempt to commit such offence;

(c) persons accused of more offences than one of the same kind (that is to say, offences punishable with the same amount of

punishment under the same section of the Penal Code or of any other law) committed by them jointly within a period of twelve months;

(d) persons accused of different offences committed in the course of the same transaction;

(e) persons accused of any offence under Chapters XXV or XXVI of the Penal Code and persons accused of handling stolen goods under section 264 of the Penal Code, such stolen goods being the subject matter of any such offence alleged to have been committed by the first named persons, and the term **stolen goods** being construed in accordance with section 265 of the Penal Code or of abetment or of attempting to commit such last-named offence;

(f) persons accused of any offence relating to counterfeit coin under Chapter XXXI of the Penal Code and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment or of attempting to commit any such offence;

(g) any number of persons charged, with reference to the same theft (construed in accordance with section 265 of the Penal Code) with having at different times or at the same time handled all or any of the stolen goods (similarly construed).

Requirements of charges and informations.

86. Where the specific offence with which an accused is charged in a charge or information is one created by or under an enactment, then (without prejudice to the generality of section 83) –

(a) the statement of offence shall contain a reference to –

(i) the section of, or the paragraph of the Schedule to, the Ordinance creating the offence in the case of an offence created by a provision of an Ordinance;

(ii) the provision creating the offence in the case of an offence created by a provision of a subordinate instrument;

(b) the particulars shall disclose the essential elements of the offence:

Provided that an essential element need not be disclosed if the accused person is not prejudiced or embarrassed in his defence by the failure to disclose it;

(c) it shall not be necessary to specify or negative an exception, exemption, proviso, excuse or qualification.

Statement in the alternative.

87. Where an offence created by or under an enactment states the offence to be the doing or the omission to do any one of any different acts in the alternative, or the doing or the omission to do any act in any one of any different capacities, or with any one of any different intentions, or states any part of the offence in the alternative, the acts, omissions, capacities or intentions, or other matters stated in the alternative in the enactment or subordinate instrument may be stated in the alternative in an indictment charging the offence.

References to persons unknown.

88. It shall be sufficient in a charge or information to describe a person whose name is not known as a person unknown.

Accused to receive free copy on request.

89. A person charged with an offence shall, if he so requests, be supplied by the proper officer of the court of trial with a copy of the charge or information free of charge.

Trials upon information.

90. No person shall be put up on his trial before the Supreme Court unless the Principal Legal Adviser has filed an information in respect of such person and furnished to the Registrar a list of such persons whom it is intended to call as witnesses for the prosecution at the trial and a summary of the evidence of each witness it is intended to adduce together with a copy thereof for each accused.

Information by Principal Legal Adviser.

91. All informations drawn up in pursuance of section 90 shall be in the name of and signed by the Principal Legal Adviser and when so signed shall be as valid and effectual in all respects as an indictment in England which has been signed by the proper person in accordance with the law.

Form of information.

92. Every information shall bear the date of the day when the same is signed and, with such modifications as shall be necessary to adapt it to the circumstances of the case, may commence in the form set out in Schedule 1.

Notice of trial.

93. The Registrar shall indorse on or annex to every information filed and to every copy thereof delivered to an officer of the court or Police Officer for

service thereof, a notice of trial which shall be in the following form or as near thereto as may be –

"A.B.

Take notice that you will be tried on the information of which this is a copy at the Supreme Court on the ....day 20..."

Copy of information to be served.

94. (1) In this section **information** shall include the list of witnesses and summaries of their evidence furnished under section 90.

(2) The Registrar shall deliver or cause to be delivered to the officer of the court or Police Officer serving the information a copy thereof with the notice of trial indorsed thereon or annexed thereto, and if there are more accused than one, then as many copies as there are accused.

(3) The officer of the court or Police Officer shall, as soon as may be after having received the copy or copies of the information and notice or notices of trial, and twenty-one days at least before the day specified therein for trial, by himself or his deputy or other officer, deliver to the accused, or each of them, the said copy or copies of the information and notice or notices of trial and explain to him or them the nature and exigency thereof.

(4) When any accused shall have been admitted to bail and cannot readily be found, the officer shall leave a copy of the information and notice of trial with someone of his household for him at his dwelling house or other place of residence or with a surety for him, and if none such can be found shall affix the said copy and notice to the outer or principal door of the dwelling house or other place of residence of the accused or any surety.

Return of service.

95. The officer serving the copy or copies of the information and notice or notices of trial shall forthwith make to the Registrar a return of the mode of service thereof.

Additional witnesses.

96. (1) A person, a summary of whose evidence as a witness has not been served under the provisions of section 94, shall not be called by the prosecution to give evidence at the trial unless such person is –

(a) a co-accused who has already been convicted or acquitted;

(b) a witness whose evidence is of a formal nature; or

(c) a witness who became available between the date on which the names of the witnesses and summaries of evidence were

furnished under section 90 and the date of the trial or a witness who, although available, was not known to have or suspected of having any relevant information, and in respect of whom a notice in writing has been served on the accused or his advocate (if any) containing the name of the witness and a summary of his evidence.

(2) Despite anything contained in subsection (1), the court may permit an additional witness to be called for the prosecution if it considers that the public prosecutor could not with reasonable diligence have served a notice under the provisions of this Part.

Additional evidence.

97. Nothing in sections 90 to 96 shall prevent the court, in its discretion, from admitting evidence of a witness which was not included in the summary of his evidence furnished under section 90.

PART VIII

PREVIOUS CONVICTION OR ACQUITTAL

Person convicted or acquitted not to be tried again for same offence.

98. A person who has been once tried by a court of competent jurisdiction for an offence and has been convicted or acquitted of such offence shall, while such conviction or acquittal has not been reversed or set aside, not be liable to be tried again on the same facts for the same offence, or for any other offence of which he could have been convicted on the charge or information at the previous trial.

Person may be tried again for separate offence.

99. Subject to the provisions of section 98, a person convicted or acquitted of any offence may afterwards be tried for any other offence with which he might have been charged on the former trial under section 84.

Consequences supervening or not known at time of former trial.

100. A person convicted or acquitted of any act causing consequences which together with such act constitute a different offence from that for which such person was convicted or acquitted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened or were not known to the court to have happened at the time when he was acquitted or convicted.

Where plea of guilty to another offence is accepted.

101. Where a person charged on a charge or information pleads not guilty of an offence charged in the charge or information but guilty of some other offence of which he might be found guilty on that charge or information and he is convicted on that plea of guilty without trial for the offence of which he has pleaded not guilty then (whether or not the two offences are separately charged in distinct counts) his conviction of the one offence shall be an acquittal of the other.

PART IX

PROCEDURE IN CASES OF INSANITY

Inquiry by court as to insanity of accused.

102. (1) When in the course of a trial the court has reason to believe that the accused may be of unsound mind and consequently incapable of making his defence, it shall inquire into the fact of such unsoundness, and may for that purpose order him to be detained in custody in such place as the court may direct for medical observation and report for any period not exceeding one month.

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

(3) If the case is one in which bail is not granted pursuant to the operation of the provisions contained in Part IV the court shall report the case for the order of the Commissioner and shall meanwhile order the accused to be kept in custody in such place and in such manner as the court may direct.

(4) In any case which has been reported to him pursuant to subsection (4), the Commissioner may order the accused to be confined in a place of safe custody, and the court shall issue a warrant in accordance with such order.

Resumption of trial.

103. (1) Whenever any trial is postponed, the court may at any time resume the trial and require the accused to be brought or appear before it when, if the court considers him capable of making his defence, the trial shall proceed.

(2) If, after acting as provided in subsection (1), the court considers the accused to be still incapable of making his defence, it shall act as if the accused were brought before it for the first time.

Certificate of medical practitioner as to sanity to be evidence.

104. If a person is confined in custody under the provisions of section 102 and a qualified medical practitioner certifies that the accused is capable of making his defence, such accused shall be taken before the court at such time as the court appoints to be dealt with according to law, and the certificate of such medical practitioner shall be receivable in evidence.

Procedure when accused does not understand proceedings.

105. If the accused, though not insane, cannot be made to understand the proceedings, the court may proceed with the trial. If such trial is in the Magistrate's Court and results in a conviction, the proceedings shall be forwarded to the Chief Justice with a report of the circumstances and the Chief Justice shall pass such order thereon as he thinks fit.

Defence of insanity at trial.

106. (1) Where 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 for his actions at the time when the act was done or 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 as aforesaid at the time when he did or made the same, the court shall make a special finding to the effect that the accused is not guilty by reason of insanity.

(2) When such special finding is made the court shall report the case for the order of the Commissioner and shall meanwhile order the accused to be kept in custody as a criminal person of unsound mind in such place and in such manner as the court shall direct.

(3) The Commissioner may order such person to be confined in a place of safe custody.

PART X

EVIDENCE

Competence of accused.

107. (1) Every person charged with an offence shall be a competent witness for the defence, provided as follows –

(a) a person so charged shall not be called as a witness in pursuance of this section except upon his own application;

(b) the failure of any person charged with an offence to give evidence shall not be made the subject of any comment by the prosecution;

(c) a person charged and being a witness in pursuance of this section may be asked any question in cross-examination whether or not it would tend to criminate him as to the offence charged;

(d) a person charged and called as a witness in pursuance of this section shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of or been charged with any offence other than that wherewith he is charged, or is of bad character, unless –

(i) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged;

(ii) he has personally or by his advocate asked questions of the witnesses for the prosecution with a view to establishing his own good character, or the nature or conduct of the defence is such as to involve imputations on the character of the complainant or of the witnesses for the prosecution; or

(iii) he has given evidence against any other person charged in the same proceedings.

(2) Every person called as a witness in pursuance of this section shall, unless otherwise ordered by the court, give his evidence from the witness box or other place from which the other witnesses have given their evidence.

Evidence as to affairs of state and official communications.

108. No person shall be permitted to give evidence derived from unpublished official records relating to any affairs of state or from any official communication made to him, disclosure of which would be prejudicial to the state or the public service, unless the court considers that the public interest in non-disclosure is outweighed by the public interest in seeing that justice is done.

Evidence on charge of handling stolen goods.

109. (1) Where a person is being proceeded against for handling stolen goods (but not for any offence other than handling stolen goods) then at any stage of the proceedings, if evidence has been given of his having or arranging to have in his possession the goods the subject of the charge, or of his undertaking or assisting in, or arranging to undertake or assist in their retention, removal, disposal or realisation, the following evidence shall be admissible for the purpose of proving that he knew or believed the goods to be stolen goods –

(a) evidence that he has in his possession, or has undertaken or assisted in the retention, removal, disposal or realisation of, stolen goods from any theft taking place not earlier than twelve months before the offence charged; and

(b) (provided that three days' notice in writing has been given to him of the intention to prove the conviction) evidence that he has within the five years preceding the date of the offence charged been convicted of theft or of handling stolen goods.

(2) This section shall be construed in accordance with section 265 of the Penal Code, and in subsection (1)(b) the reference to handling stolen goods shall include any corresponding offence committed before the commencement of that Code.

Notice of alibi.

110. (1) On a trial before the Supreme Court, the accused shall not without leave of the court adduce evidence in support of an alibi unless, before the end of the prescribed period, he gives notice of the particulars of the alibi.

(2) Without prejudice to subsection (1), on any such trial the accused shall not without the leave of the court call any other person to give such evidence unless –

(a) the notice under that subsection includes the name and address of the witness, or if the name or address is not known to the accused at the time he gives the notice, any information in his possession which might be of material assistance in finding the witness;

(b) if the name or the address is not included in that notice, the court is satisfied that the accused, before giving the notice, took and thereafter continued to take all reasonable steps to secure that the name and address would be ascertained;

(c) if the name or the address is not included in that notice, but the accused subsequently discovers the name or address or receives other information which might be of material assistance in finding the witness, he forthwith gives notice of the name, address or other information, as the case may be; and

(d) if the accused is notified by or on behalf of the Principal Legal Adviser that the witness has not been traced by the name or at the address given, he forthwith gives notice of any such information which is then in his possession or, on subsequently receiving any such information, forthwith gives notice of it.

(3) The court shall not refuse leave under this section if it appears to the court that the accused was not informed in writing of the requirements of this section at the time when the information was served on him.

(4) Any evidence tendered to disprove an alibi may, subject to any directions by the court as to the time it is to be given, be given before or after evidence is given in support of alibi.

(5) Any notice purporting to be given under this section on behalf of the accused by his advocate shall, unless the contrary is proved, be deemed to be given with the authority of the accused.

(6) A notice given under this section shall be given to the Magistrate.

(7) In this section –

evidence in support of an alibi means evidence tending to show that by reason of the presence of the accused at a particular place or in a particular area at a given time he was not, or was unlikely to have been, at the place where the offence is alleged to have been committed at the time of its alleged commission;

the prescribed period means the period of seven days from the day when the accused was informed of the requirements of this section under subsection (3).

Summons for witness.

111. If it is made to appear that material evidence can be given by or is in the possession of any person, it shall be lawful for a court having cognisance of any criminal cause or matter to issue a summons to such person requiring his attendance before such court or requiring him to bring and produce to such court for the purpose of the evidence all documents and writings in his possession or power which may be specified or otherwise sufficiently described in the summons.

Warrant for witness who disobeys summons.

112. If without sufficient excuse, a witness does not appear in obedience to the summons, the court, on proof of the proper service of the summons a reasonable time before, may issue a warrant to bring him before the court at such time and place as shall be therein specified.

Warrant for witness in first instance.

113. If the court is satisfied by evidence on oath that such person will not attend unless compelled to do so, it may at once issue a warrant for the arrest and production of the witness before the court at a time and place to be therein specified.

Mode of dealing with witness arrested under warrant.

114. When any witness is arrested under a warrant the court may, on his furnishing security by recognizance to the satisfaction of the court for his appearance at the hearing of the case or depositing a sufficient sum of money, order him to be released from custody, or shall, on his failing to furnish such security or to make such a deposit, order him to be detained for production at such hearing.

Power to order production of prisoner as witness.

115. (1) Any court desirous of examining as a witness, in any case pending before it, any person confined in any prison may issue an order to the officer in charge of such prison requiring him to bring such prisoner in proper custody, at a time to be named in the order, before the court for examination.

(2) The officer so in charge, on receipt of such order, shall act in accordance therewith and shall provide for the safe custody of the prisoner during his absence from the prison for the purpose set out in subsection (1).

Penalty for non-attendance of witness.

116. (1) Any person summoned to attend as a witness who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the court, or fails to attend after adjournment of the court after being ordered to attend, shall be liable by order of the court to a fine of £2,000 and to imprisonment for fifteen days.

(2) Such fine shall be levied by attachment and sale of any movable property belonging to such witness.

(3) For good cause shown the Supreme Court may remit or reduce any sentence imposed under this section by the Magistrate's Court.

Power of court to summon material witness or examine person present.

117. Any court may at any stage of any trial or other proceeding under this Code summon or call any person as a witness, or examine any person in attendance though not summoned as a witness or recall and re-examine any person already examined, and the court shall summon and examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case:

> Provided that the prosecutor or the defendant or his advocate, shall have the right to cross-examine any such person, and the court shall adjourn the case for such time (if any) as it thinks necessary to enable such cross-examination to be adequately prepared if, in its opinion, either party may be prejudiced by the calling of any such person as a witness.

Expenses of witnesses.

118. The Commissioner may make rules for regulating the payment to witnesses of out of pocket expenses incurred by them in consequence of attendance as witnesses. In the absence of such rules witnesses may be paid their reasonable out of pocket expenses.

Evidence to be given on oath.

119. Every witness in any criminal cause or matter shall be examined upon oath, and the court before which any witness shall appear shall have full power and authority to administer the usual oath, provided that –

(a) where in the opinion of the court a child of tender years is unable to understand the nature of an oath but is of sufficient intelligence to justify the reception of his evidence, it may receive his evidence without oath if, after it has admonished him to tell the truth and warned him that failure to heed the admonition would render him liable to punishment, the court considers that he understands the duty to tell the truth; and

(b) where evidence admitted by virtue of this section is given on behalf of the prosecution, the accused shall not be liable to be convicted unless that evidence is corroborated by some other material evidence in support thereof implicating him.

Evidence to be taken in presence of accused.

120. Except as otherwise expressly provided, all evidence taken in any trial under this Code shall be taken in the presence of the accused:

Provided that if the accused so conducts himself as to make it impractical to carry on the trial in his presence he may be removed.

Interpretation of evidence to accused or his advocate.

121. (1) Whenever any evidence is given in a language not understood by the accused it shall be interpreted to him in open court in a language understood by him.

(2) If he is represented by an advocate and the evidence is given in a language other than English and not understood by the advocate it shall be interpreted to such advocate in English.

(3) All documents which are put in for the purpose of formal proof shall be translated into a language that the accused and the advocate can understand.

Procedure where person charged is only witness called.

122. (1) Where the only witness to the facts of the case called by the defence is the person charged, he shall be called as a witness immediately after the close of the evidence for the prosecution.

(2) Where any witness other than the person charged is called on behalf of the defence, the person charged shall not be permitted to give evidence after such witness without permission of the court.

Procedure where two or more accused.

123. (1) Where two or more accused are tried jointly, the one first charged shall make his election first and after he has given his evidence (if he so elects) the others shall do so successively in the order in which they were charged.

(2) Where two or more accused are tried jointly, the witnesses called on behalf of the accused first charged shall, so far as is practicable, be examined first and witnesses called on behalf of the other accused shall be examined successively, in the order in which the accused were charged.

(3) A witness called on behalf of an accused may be examined or cross-examined on behalf of any other accused and may then be cross-examined on behalf of the prosecution.

(4) Where two or more accused are defended by separate advocates a witness shall be examined first by the advocate for the accused on whose behalf he was called and may be examined or cross-examined by the other accused or their advocate in the order in which the accused were charged, and then by the prosecutor.

Evidence in rebuttal.

124. If the accused adduces evidence in his defence introducing new matter which the prosecutor could not by the exercise of reasonable diligence have foreseen, the court may allow the prosecutor to adduce evidence in reply to rebut the matter. A witness called in rebuttal may be a previous witness recalled or a new witness.

Refractory witnesses.

125. (1) Whenever any person appearing either in obedience to a summons or by virtue of a warrant or being present in court and being required by the court to give evidence –

(a) refuses to be sworn;

(b) having been sworn, refuses to answer any question put to him which he is lawfully bound to answer;

(c) refuses or neglects to produce any document or thing he is required to produce; or

(d) refuses to sign his deposition,

without in any such case offering any sufficient excuse for such refusal or neglect, the court may adjourn the case for any period not exceeding eight days and may in the meantime commit such person to prison unless he sooner consents to do what is required of him.

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

(3) Nothing herein contained shall affect the liability of any such person to any other punishment or proceeding for refusing or neglecting to do what is so required of him, or shall prevent the court from disposing of the case in the meantime according to any other sufficient evidence taken before it.

Taking evidence in absence of accused.

126. (1) If it appears that an accused has absconded and that there is no immediate prospect of arresting him, a Magistrate may, in his absence, examine the witnesses produced and record their depositions. Any such depositions may, on the arrest of such person be given in evidence on his trial if the deponent is dead or incapable of giving evidence or, if living and capable of giving evidence, is outside the Territory and is either unwilling to attend and give evidence or, if willing, his attendance cannot be procured without an amount of delay, expense or inconvenience which, in the circumstances of the case, would be unreasonable.

(2) If it appears that an offence has been committed by some person unknown, a Magistrate may hold an inquiry and record the depositions of any person who can give evidence concerning the offence. Any such depositions may be given in evidence on the trial of any person who is subsequently tried for the offence if the deponent is dead or incapable of giving evidence, or if living and capable of giving evidence, is outside the Territory and is either unwilling to attend and give evidence or, if willing, his attendance cannot be procured without an amount of delay, expense or inconvenience which, in the circumstances of the case, would be unreasonable.

Evidence of persons likely to depart before trial.

127. (1) Where –

(a) a person has been charged with an offence and it is anticipated that he will be tried before the Supreme Court or the Senior Magistrate; and

(b) some other person is able to give material evidence relevant to the alleged offence but is likely to leave the Territory before the trial begins, a Magistrate may, on the application of a Police Officer or of the accused or of his own motion, summon that other person to appear and give evidence before him.

(2) A copy of any summons served under subsection (1) shall be served on the accused or the Police Officer or both, as may be appropriate, and they shall have the right to attend the hearing and to examine the witness.

(3) The procedure for examination, cross-examination and re-examination shall be the same as if the witness were giving evidence at the trial.

(4) Evidence taken under the provisions of this section may be read as evidence at the trial of the accused, unless the witness is then present in the Territory and the prosecutor or the accused or the court requires him to attend and give evidence at the trial.

Statements of persons dangerously ill.

128. (1) Where it appears to a Magistrate that a person who is able and willing to give material evidence of facts relevant to an offence is dangerously ill or hurt and is not likely to recover, he may take the statement of that person on oath in writing.

(2) The Magistrate shall sign a statement taken by him under subsection (1) and shall add a note of his reason for taking it and of the date and place where and when it was taken.

(3) So far as is practicable and the condition of the witness permits, any person who has been charged with the offence shall be given the opportunity of being present when any such statement is taken and of putting questions to the witness.

(4) A statement taken under this section may be read as evidence at any subsequent hearing but, unless the person charged has had the opportunity of being present and putting questions to the witness, no conviction shall be founded on it unless it is corroborated by other evidence incriminating the accused:

Provided that no such statement shall be so read, except by consent, if the witness is living and in the Territory and capable of giving evidence at the time of the trial or unless, if living and capable of giving evidence and outside the Territory, is either unwilling to attend the hearing or, if willing, his attendance cannot be procured without an amount of delay, expense or inconvenience which, in the circumstances of the case, would be unreasonable.

(5) In this section **hearing** includes a trial or other proceedings under this Code and an inquest.

Proof by written statement.

129. (1) In any criminal proceedings, a written statement by any person shall, if such of the conditions mentioned in the next following subsection as are applicable are satisfied, be admissible as evidence to the like extent as oral evidence to the like effect by that person.

(2) The said conditions are –

(a) the statement purports to be signed by the person who made it;

(b) the statement contains a declaration by that person to the effect that it is true to the best of his knowledge and belief and that he made the statement knowing that, if it were tendered in evidence, he would be liable to prosecution if he wilfully stated in it anything which he knew to be false or did not believe to be true;

(c) before the hearing at which the statement is tendered in evidence, a copy of the statement is delivered, by or on behalf of the party proposing to tender it, to each of the other parties to the proceedings; and

(d) none of the other parties or their advocates, within three days from the delivery of the copy of the statement, delivers a notice to the party so proposing, objecting to the statement being tendered in evidence under this section:

Provided that the conditions mentioned in sub-subsections (c) and (d) shall not apply if the parties agree before or during the hearing that the statement shall be so tendered.

(3) The following provisions shall also have effect in relation to any written statement tendered in evidence under this section, that is to say –

(a) if the statement is made by a person under the age of 18, it shall give his age;

(b) if it is made by a person who cannot read it, it shall be read to him before he signs it and shall be accompanied by a declaration by the person who so read the statement to the effect that it was so read; and

(c) if it refers to any other document as an exhibit, the copy delivered to any other party to the proceedings under subsection (4)(c) shall be accompanied by a copy of that document or by

such information as may be necessary in order to enable the party to whom it is delivered to inspect that document or a copy thereof.

(4) Despite circumstances where a written statement made by any person may be admissible as evidence by virtue of this section –

(a) the party by whom or on whose behalf a copy of the statement was delivered may call that person to give evidence; and

(b) the court may, of its own motion or on the application of any party to the proceedings, require that person to attend before the court and give evidence.

(5) An application under subsection (4)(b) to the Supreme Court or the Magistrate's Court may be made before the hearing and on any such application the powers of the court shall be exercisable by the Chief Justice, the Registrar, or, as the case may be, by a Magistrate.

(6) So much of any statement as is admitted in evidence by virtue of this section shall, unless the court otherwise directs, be read aloud at the hearing and where the court so directs an account shall be given orally of so much of any statement as is not read aloud.

(7) Any document or object referred to as an exhibit and identified in a written statement tendered in evidence under this section shall be treated as if it had been produced as an exhibit and identified in court by the maker of the statement.

Reports of pathologists, etc.

130. (1) Subject to the provisions of this section, any report of a pathologist, analyst, ballistics or fingerprint expert or any other expert on any matter within his discipline, on any matter submitted to him for examination or analysis and report may be used in evidence of the facts and opinions stated therein at any hearing.

(2) Subject to an application under subsection (3) being granted, a report under this section shall only be admissible if, not less than thirty days before the hearing, the party seeking to use the report has served a copy on the other party (together with a notice of the fact that if written notice is not given within the stipulated time the report will be admissible without consent) and such other party has not within three days of such service, or within such further time as the court may allow, given written notice to the first-mentioned party requiring the attendance at the hearing of the maker of the report:

Provided that the party to whom notice of intention to use the report was given may waive the requirement of thirty days' notice.

(3) Where a party has given notice requiring the attendance of the maker of a report, the party wishing to use the report may apply for leave to put the

report in evidence without calling the maker thereof despite such notice having been given by the other party.

(4) An application under subsection (3) shall, where the hearing at which the report is proposed to be used in evidence is to be before the Magistrate or the Coroner, be made to the Magistrate or the Coroner, as the case may be, and shall be made in the Territory.

(5) An application under subsection (3) shall, where the hearing at which the report to be used in evidence is to be before the Chief Justice or the Senior Magistrate, be made to the Chief Justice or the Senior Magistrate, as the case may be, and may be made in the United Kingdom or the Territory:

Provided that if the application is made in the United Kingdom it shall be made to the Chief Justice whether or not the hearing is to be before him.

(6) On the hearing of an application under subsection (4) or (5), there shall be considered all the circumstances including whether the maker of the report is dead or incapable of giving evidence and, if outside the Territory, is either unwilling to attend the hearing or, if willing, his attendance cannot be procured without an amount of delay, expense or inconvenience which, in the circumstances of the case, would be unreasonable.

(7) Nothing in this section shall affect any other law under which any report, certificate or other document is made admissible in evidence, and the provisions of this section are additional to and not in substitution for any such law.

(8) In this section, except where it is first used in subsection (6), **hearing** includes a trial or other proceeding under this Code and an inquest.

Statutory declarations.

131. (1) In any proceedings for theft of anything in the course of transmission (whether by post or otherwise) or for handling stolen goods from such a theft, a statutory declaration made by any person that he despatched or received or failed to receive any goods or postal packet or that any goods or postal packet when despatched or received by him were in a particular state or condition, shall be admissible evidence of the facts stated in the declaration, subject to the following conditions –

(a) a statutory declaration shall only be admissible where and to the extent to which oral evidence to the like effect would have been admissible in the proceedings; and

(b) a statutory declaration shall only be admissible if at least four days, or, in the case of a statutory declaration by a person who is outside the Territory, thirty days, before the hearing or trial a copy of it has been given to the person charged and he has not,

within three days of receiving it, or within such further time as the court may allow, given the prosecutor written notice requiring the attendance at the trial of the person making the declaration.

(2) This section is to be construed in accordance with section 265 of the Penal Code.

Proof by formal admissions.

132. (1) Subject to the provisions of this section, any fact of which oral evidence may be given in any criminal proceedings may be admitted for the purpose of those proceedings by or on behalf of the prosecutor or accused, and the admission by any party of such fact under this section shall, as against that party, be conclusive evidence in those proceedings of the fact admitted.

(2) An admission under this section –

(a) may be made before or at the proceedings;

(b) if made otherwise than in court, shall be in writing; and

(c) if made at any stage before the trial by an accused, must be approved by his advocate (if any) whether at the time it was made or subsequently, before or at the proceedings in question.

(3) An admission under this section for the purpose of proceedings relating to any matter shall be treated as an admission for the purpose of any subsequent criminal proceedings relating to that matter (including any appeal or retrial).

(4) An admission under this section may, with the leave of the court, be withdrawn in the proceedings for the purpose of which it was made or any subsequent criminal proceedings relating to the same matter.

PART XI

CONDUCT OF THE TRIAL

Non-appearance of prosecutor at hearing.

133. If, in any case which a court has jurisdiction to hear and determine, the accused appears in obedience to the summons served upon him at the time and place appointed in the summons for the hearing of the case, or is brought before the court under arrest, then if the prosecutor, having had notice of the time and place appointed for the hearing of the charge, does not appear the court shall dismiss the charge, unless for some reason it shall think proper to adjourn the hearing of the case until some other date, upon such terms as it shall think fit, in

which event it may, pending such adjourned hearing, either admit the accused to bail or remand him to prison.

Appearance of both parties.

134. If at the time appointed for the hearing of the case both the prosecutor and the accused appear before the court which is to hear and determine the charge, the court shall proceed to hear the case.

Additional or substituted charges.

135. (1) A public prosecutor may at any time before an accused has been called upon to plead to the charge against him, add or substitute a charge to or for the existing charge.

(2) Where a public prosecutor has added or substituted a charge under subsection (1) the court shall, before calling upon the accused to plead, ask him whether he is ready and willing to plead to the additional or substituted charge forthwith. If the accused states that he is not so ready and willing the court may grant an adjournment for such a period as it shall consider necessary in the interests of justice. In deciding whether or not to grant an adjournment the court shall consider, *inter alia*, when the additional or substituted charge was served on the accused and to what extent the additional or substituted charge differs from the original charge.

Adjournment.

136. Before or during the hearing of any case, it shall be lawful for the Court in its discretion to adjourn the hearing to a certain time and place to be then appointed and stated in the presence and hearing of the party or parties or their respective advocates then present, and in the meantime the court may remand the accused in custody or on bail:

> Provided that, if the accused has been remanded in custody, no such adjournment shall be for more than fifteen clear days, the day following that on which the adjournment is made being counted as the first day.

Non-appearance of both parties after adjournment.

137. (1) If at the time or place to which the hearing or further hearing shall be adjourned, the accused shall not appear before the court which shall have made the order of adjournment, it shall be lawful for such court, if the accused is charged with an offence punishable with imprisonment for a term not exceeding six months or to a fine not exceeding £2,500, to proceed with the hearing or further hearing as if the accused were present, and if the prosecutor shall not appear the court may dismiss the charge with or without costs as the court shall think fit.

(2) If the court convicts the accused in his absence, it may set aside such conviction upon being satisfied that his absence was from causes over which he had no control, and that he had a probable defence on the merits.

(3) Any sentence passed under subsection (1) shall be deemed to commence from the date of apprehension, and the person effecting the apprehension shall endorse the date thereof on the back of the warrant of commitment.

(4) If the accused who has not appeared is charged with an offence other than as specified in subsection (1), or if the court, in its discretion, refrains from convicting the accused in his absence, the court shall issue a warrant for the apprehension of the accused and cause him to be brought before the court.

Accused to be called upon to plead.

138. (1) The substance of the charge or complaint shall be stated to the accused by the court, and he shall be asked whether he admits or denies the truth of the charge.

(2) If the accused admits the truth of the charge, his admission shall be recorded as nearly as possible in the words used by him, and the court shall convict him and pass sentence upon or make an order against him, unless there shall appear to it sufficient cause to the contrary.

(3) If the accused does not admit the truth of the charge or if the court does not accept his admission the court shall proceed to hear the case as provided by section 139.

(4) If the accused refuses to plead, the court shall order a plea of "not guilty" to be entered for him.

Procedure on plea of not guilty.

139. (1) If the accused does not admit the truth of the charge the court shall proceed to hear the prosecutor and his witnesses and other evidence, if any.

(2) The accused or his advocate may put questions to each witness produced against him.

(3) If the accused does not employ an advocate the court shall, at the close of the examination of each witness for the prosecution, ask the accused person whether he wishes to put any questions to that witness and shall record his answer.

Recording evidence before Magistrate.

140. In trials, other than trials under section 142, by or before a Magistrate, the evidence of the witnesses shall be recorded in the following manner –

(a) the evidence of each witness shall be taken down in writing in English by the Magistrate, or in his presence and hearing and under his personal direction and superintendence, and shall be signed by the Magistrate and shall form part of the record;

(b) such evidence shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative, provided that the Magistrate may, in his discretion, take down or cause to be taken down any particular question and answer:

Provided that the provisions of subsections (a) and (b) shall not apply if and to the extent that shorthand notes or a tape recording of the proceedings are taken in pursuance of section 259.

Remarks respecting demeanour of witness.

141. When a Magistrate has recorded the evidence of a witness he shall also record such remarks (if any) as he thinks material respecting the demeanour of such witness whilst under examination.

Cases where evidence need not be recorded.

142. (1) Despite anything in this Code, any Magistrate having jurisdiction to try any of the offences mentioned in subsection (2) may try any such offence without recording the evidence in accordance with section 140, but in any such case he shall enter the following particulars –

(a) the serial number;

(b) the date of the alleged commission of the offence;

(c) the date of the complaint;

(d) the name of the complainant;

(e) the name, surname and residence of the accused;

(f) the offence complained of and the offence (if any) proved, and in cases coming under sub-subsection (d) of subsection (2) the value of the property in respect of which the offence has been committed;

(g) the plea of the accused;

(h) the finding and, where evidence has been taken, a judgment embodying the substance of such evidence;

(i) the sentence or other final order;

(j) the date on which the proceedings terminated.

(2) The offences referred to in subsection (1) are as follows –

(a) offences punishable with imprisonment for a term not exceeding six months or a fine not exceeding £2,500;

(b) offences under Chapter XVII of the Penal Code;

(c) common assault under section 219 of the Penal Code;

(d) offences under sections 241, 250 to 255 inclusive or 264 of the Penal Code, where the value of the property in respect of which the offence is alleged to have been committed does not exceed £500;

(e) any other offence which the Commissioner may, by order in the *Gazette*, direct to be tried in accordance with the provisions of this section;

(f) aiding, abetting, counselling, or procuring the commission of any of the offences specified in this subsection;

(g) attempting to commit any of the offences specified in this subsection.

(3) When in the course of a trial under the provisions of this section it appears to the Magistrate that the case is of a character which renders it undesirable that it should be so tried, the Magistrate shall recall any witnesses and proceed to rehear the case in a manner provided by the preceding sections of this Part.

(4) No sentence of imprisonment for a term exceeding three months and no fine of an amount exceeding £1,000 shall be passed or inflicted in the case of any conviction under this section.

Evidence recorded partly by one Magistrate and partly by another.

143. Whenever any Magistrate after having heard and recorded the whole or any part of the evidence in any trial, ceases to exercise jurisdiction therein and is succeeded by another Magistrate who has and who exercises such jurisdiction, the Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly by himself, or he may resummons the witnesses and recommence the trial:

Provided that –

(a) in any trial the accused may when the second Magistrate commences his proceedings, demand that the witnesses or any of them be re-summoned and reheard;

(b) the Supreme Court may, whether there be an appeal or not, set aside any conviction passed on evidence not wholly recorded by the Magistrate before whom the conviction was had, if it is of opinion that the accused has been materially prejudiced thereby, and may order a new trial.

Manner of recording evidence in the Supreme Court.

144. The Chief Justice may from time to time, by rules, prescribe the manner in which evidence shall be taken down in cases coming before the Supreme Court. In the absence of rules evidence shall be recorded in one of the manners specified in sections 140 and 259.

Inspection and examination.

145. A court may make or cause to be made such local inspections as circumstances may require and may make or cause to be made any examination of the person of the accused as circumstances may require.

When offence proved is included in offence charged.

146. (1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete lesser offence, and such combination is proved but the remaining particulars are not proved, he may be convicted of the lesser offence although he was not charged with it.

(2) When a person is charged with an offence, and facts are proved which reduce it to a lesser offence, he may be convicted of the lesser offence although he was not charged with it.

Person charged with offence may be convicted of attempt, etc.

147. (1) When a person is charged with an offence he may be convicted of having attempted to commit that offence although he was not charged with the attempt.

(2) When a person is charged with the attempting to commit an offence, or with any assault or other act preliminary to an offence, but not with the completed offence, then he may be convicted of the offence charged whether or not he is shown to be guilty of the completed offence.

Alternative conviction to murder or manslaughter in cases of complicity in another's suicide.

148. When a person is charged with murder or manslaughter and it is proved that he aided, abetted, counselled or procured the suicide of the person in question, he may be convicted of that offence although he was not charged with it.

Alternative conviction in various offences involving the homicide of children.

149. (1) When a woman is charged with the murder of her child, being a child under the age of twelve months, and the court is of opinion that she, by any wilful act or omission, caused its death but at the time of the act or omission she had not fully recovered from the effect of giving birth to such child and that by reason thereof or by reason of the effect of lactation consequent upon the birth of the child, the balance of her mind was then disturbed, she may, despite circumstances where but for the provisions of section 199 of the Penal Code she might be convicted of murder, be convicted of the offence of infanticide although she was not charged with it.

(2) When a person is charged with the murder or manslaughter of any child or with infanticide, or with an offence under section 144 of the Penal Code (relating to the procuring of an abortion) and the court is of opinion that he is not guilty of murder, manslaughter or infanticide or of an offence under section 144 of the Penal Code, but that he is guilty of the offence of killing an unborn child, he may be convicted of that offence although he was not charged with it.

(3) When a person is charged with killing an unborn child and the court is of opinion that he is not guilty of that offence but that he is guilty of an offence under section 144 of the Penal Code he may be convicted of that offence although he was not charged with it.

(4) When a person is charged with the murder or infanticide of any child or with killing an unborn child and the court is of opinion that he is not guilty of any of the said offences, but that he is guilty of the offence of concealment of birth, he may be convicted of the offence of concealment of birth although he was not charged with it.

Alternative conviction in charge of manslaughter resulting from the driving of a motor vehicle.

150. When a person is charged with manslaughter in connection with the driving of a motor vehicle by him and the court is of opinion that he is not guilty of that offence but that he is guilty of an offence under sections 26, 27 or 28 of the Road Traffic Ordinance 1998, he may be convicted of any of those offences although he was not charged with it.

Alternative conviction in charge of causing death by reckless driving.

151. (1) When a person is charged with causing death by reckless driving contrary to section 26 of the Road Traffic Ordinance 1998 and the court is of opinion that he is not guilty of that offence but that he is guilty of an offence under section 27 or 28 of that Ordinance, he may be convicted of either of those offences although he was not charged with it.

(2) When a person is charged with an offence under section 27 of the Road Traffic Ordinance 1998 and the court is of opinion that he is not guilty of

that offence but that he is guilty of an offence under section 28 of that Ordinance, he may be convicted of that offence although he was not charged with it.

Person charged with burglary, etc., may be convicted of criminal trespass.

152. When a person is charged with an offence under section 243 or 244 of the Penal Code and the court is of opinion that he is not guilty of the offence charged but that he is guilty of an offence under section 245 or 248 of the Penal Code he may be convicted of that offence although he was not charged with it.

Alternative convictions in charges of stealing and kindred offences.

153. (1) When a person is charged with stealing anything and –

(a) it is proved that he is guilty of handling stolen goods contrary to section 264 of the Penal Code, he may be convicted of the offence of handling stolen goods although he was not charged with it;

(b) it is proved that he obtained the thing in any such manner as would amount to obtaining it by deception contrary to section 250 of the Penal Code he may be convicted of the offence of obtaining it by deception although he was not charged with it;

(c) it is proved that he committed an offence under section 246 of the Penal Code, he may be convicted of that offence although he was not charged with it.

(2) When a person is charged with obtaining property by deception, and it is proved that he stole the property, he may be convicted of the offence of stealing although he was not charged with it.

(3) On the trial of two or more persons charged with jointly handling any stolen goods the court may find any of the accused guilty if the court is satisfied that he handled all or any of the stolen goods, whether or not he did so jointly with the other accused or any of them.

(4) This section shall be construed in accordance with section 265 of the Penal Code.

Construction of sections 146 to 153.

154. The provisions of sections 146 to 153 inclusive shall be construed as in addition to, and not in derogation of the provisions of any other Ordinance and the other provisions of this Code, and the provisions of sections 147 to 153 inclusive shall be construed as being without prejudice to the generality of the provisions of section 146.

Acquittal of accused when no case to answer.

155. If at the close of the evidence in support of the charge it appears to the court that a case is not made out against the accused sufficiently to require him to make a defence, the court shall dismiss the case and shall forthwith acquit him.

The defence.

156. (1) At the close of the evidence in support of the charge, if it appears to the court that a case is made out against the accused sufficiently to require him to make out a defence, the court shall again state the substance of the charge to the accused and shall inform him that he has the right to give evidence on oath from the witness box and that, if he does so, he will be liable to cross examination or that he has the right to remain silent. The court shall ask him whether he has any witnesses to examine or other evidence to adduce in his defence, and the court shall then hear the accused and his witnesses and other evidence (if any).

(2) If the accused states that he has witnesses to call but they are not present in court, and the court is satisfied that the absence of such witnesses is not due to any fault or neglect of the accused and that there is a likelihood that they could, if present, give material evidence on behalf of the accused, the court may adjourn the trial and issue process or take other steps to compel the attendance of such witnesses.

Addressing the Court.

157. (1) The prosecutor or his advocate may address the court at the commencement of the prosecution case.

(2) The accused or his advocate may address the court at the commencement of the defence case when witnesses to the facts other than the accused himself are to be called for the defence.

(3) After the close of the evidence for the defence and in rebuttal, if any, the addresses to the court shall be in the following order –

(a) the prosecutor may address the court, except in a case where the accused is not represented by an advocate and has not called witnesses to the facts other than himself;

(b) the accused or his advocate may address the court whether or not the prosecutor has addressed the court.

(4) Where there are several accused the order of addresses to the court by or on behalf of the accused shall follow in the order in which their names appear on the charge or information.

Amendment of charge.

158. (1) Where it appears to the court that the charge is defective, the court may make such order for the amendment of the charge as the court thinks necessary to meet the circumstances of the case, unless, having regard to the merits of the case, the required amendments cannot be made without injustice.

(2) An amendment may be made –

(a) before trial or at any stage of a trial, except that in a trial held by the Magistrate's Court no amendment may be made after the close of the case for the prosecution;

(b) up to the close of the case for the prosecution by way of substitution or addition of a new charge.

(3) Where a charge is amended –

(a) the amendment shall be noted on the charge and it shall be treated for the purposes of the trial and of all proceedings in connection therewith as having been originally drawn up or presented by the proper officer in the amended form:

Provided that, where the amendment is by way of substitution or addition of a new charge, the accused shall be called upon to plead to the new charge;

(b) the court shall, if it is of opinion that the interests of justice so require, adjourn the trial for such period as may be necessary;

(c) the court shall ask the accused whether he wishes to adduce additional evidence or to recall any witnesses for the purpose of further examination or cross-examination and if he so wishes the court shall allow him to do so.

(4) Variance between the charge and the evidence adduced in support of it with respect to the time at which the alleged offence was committed is not material and the charge need not be amended for such variance if it is proved that the proceedings were in fact instituted within the time, if any limited by law for the institution thereof.

Alternative charges.

159. Subject to section 101, where there are more charges than one against the same accused and he has been convicted of one or more of them the person conducting the prosecution may, with the consent of the court, withdraw the others or the court of its own motion may stay the proceeding on the others. Such withdrawal shall have the same effects as a withdrawal under section 57.

The decision.

160. (1) When the evidence and the addresses, if any, have been completed the court shall record a conviction or acquittal on each charge, except in cases to which section 159 applies.

(2) Where the accused is convicted of an offence other than that charged the offence of which he is convicted shall be recorded.

(3) The court shall pass and record a sentence or order on each charge on which the accused is convicted.

Summary Conviction.

161. Where the accused is convicted of an offence before the Magistrate's Court, that conviction is a "summary conviction", which expression shall, subject to the provisions of any law for the time being in force in the Territory, have the same meaning as it does in England and Wales.

Mode of delivering judgment.

162. (1) The judgment in every trial in any criminal court in the exercise of its original jurisdiction shall be pronounced, or the substance of such judgment shall be explained in open court either immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties and their advocates, if any:

Provided that the whole judgment shall be read out by the Chief Justice or Magistrate if he is requested so to do either by the prosecution or the defence.

(2) The accused shall, if in custody, be brought up or, if not in custody, be required by the court to attend to hear judgment delivered.

(3) No judgment delivered by any court shall be deemed to be invalid by reason only of the absence of any party or his advocate on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties or their advocates or any of them, the notice of such day and place.

(4) Nothing in this section shall be construed to limit in any way the provisions of section 254.

Contents of judgment.

163. (1) Every such judgment shall, except as otherwise expressly provided by this Code, be written by the presiding officer of the court in the language of the court, and shall contain the point or points for determination, the decision thereon and the reasons for the decision, and shall be dated and signed by the presiding officer in open court at the time of pronouncing it.

(2) In the case of a conviction the judgment shall specify the offence of which, and the section of the Penal Code or other law under which the accused person is convicted, and the punishment to which he is sentenced.

(3) In the case of an acquittal the judgment shall state the offence of which the accused is acquitted and shall direct that he be set at liberty unless he is in custody on account of another matter.

Copy of judgment to be given to accused on application.

164. On the application of the accused, a copy of the judgment shall be given to him, free of cost, without delay.

Drawing up conviction or order.

165. The conviction or order may, if required, be afterwards drawn up and shall be signed by the court making the conviction or order, or by the clerk or other officer of the court.

Order of acquittal to bar further proceedings.

166. The production of a copy of the order of acquittal certified by the clerk or other officer of the court, shall without other proof be a bar to any subsequent information or complaint for the same matter against the same accused.

Procedure on acquittal.

167. When the accused is acquitted he shall forthwith be removed from the courtroom in custody and shall thereafter be released, unless he is in custody on account of another matter.

PART XII

SENTENCES

Sentences which the Supreme Court may pass.

168. The Supreme Court may pass any sentence authorised by this Code or any other law.

Sentences which the Magistrate's Court may pass.

169. (1) The Magistrate's Court may pass any sentence authorised by this Code or any other law, provided that such sentence shall not exceed, in the case of imprisonment, twelve months and, in the case of a fine, £5,000, or, when the court is presided over by the Senior Magistrate, three years and £10,000.

(2) Nothing in subsection (1) shall affect the provision of any other Ordinance which provides that a Magistrate may pass a more severe sentence than that allowed by subsection (1).

Committal for sentence.

170. (1) When a Magistrate has convicted a person and he is of opinion that a higher sentence should be passed in respect of the offence than he has power to pass he may commit the offender for sentence to the Supreme Court in accordance with the following provisions of this section.

(2) The Magistrate may either admit the offender to bail or remand him in custody until he appears or is brought before the Supreme Court.

(3) When an offender is committed pursuant to subsection (1), the Supreme Court may –

(a) exercise any of its powers of revision under section 230; and

(b) whether any such powers have been exercised or not, deal with the offender in any manner in which he could be dealt with if he had been convicted by the Supreme Court.

Combination of sentences.

171. (1) Any court may pass any lawful sentence combining any of the sentences which it is authorised by law to pass.

(2) In determining the extent of the court's jurisdiction under section 169 to pass a sentence of imprisonment, the court shall be deemed to have jurisdiction to pass the full sentence of imprisonment provided for in the said section in addition to any term of imprisonment which may be awarded in default of payment of a fine, costs or compensation.

Sentences in case of conviction of several offences at one trial.

172. (1) When a person is convicted at one trial of two or more distinct offences the court may sentence him for such offences, to the several punishments prescribed therefor which such court is competent to impose, such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the court may direct, unless the court directs that such punishments shall run concurrently:

Provided that if the case is tried by the Magistrate's Court the aggregate punishment shall not exceed twice the amount of punishment which the court is, in the exercise of its ordinary jurisdiction, competent to impose.

(2) For the purpose of appeal the aggregate of consecutive sentences imposed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.

Absolute and conditional discharge.

173. (1) When a court by or before which a person is convicted of an offence (not being an offence the sentence for which is fixed by law) is of the opinion, having regard to all the circumstances including the nature of the offence and the character of the offender, that it is inexpedient to inflict punishment, the court may make an order discharging him absolutely or, if the court thinks fit, discharging him subject to the condition that he commits no offence during such period, not exceeding three years, from the date of the order as may be specified in the order.

(2) Before making an order for conditional discharge, the court shall explain to the offender in ordinary language that if he commits another offence during the period of conditional discharge he will be liable to be sentenced for the original offence.

(3) Nothing in this section shall be construed as taking away any power of the court, on discharging an offender absolutely or conditionally, to order him to pay costs or compensation.

Commission of further offence by person conditionally discharged.

174. When it is proved to the court by which an order for conditional discharge was made that the person in whose case the order was made has been convicted in the Territory of an offence during the period of conditional discharge, the court may deal with him, for the offence for which the order was made, in any manner in which it could deal with him if he had just been convicted by that court of that offence:

> Provided that when the order was made by the Supreme Court and the person in respect of whom the order was made is subsequently convicted by the Magistrate's Court that court may, with the consent of the Chief Justice, deal with such person as if that court had made the order for conditional discharge.

Power to postpone sentence.

175. If the Chief Justice thinks it is inexpedient to pass sentence immediately he may remand the accused in custody for such period as he thinks fit.

Warrant in cases of sentence of imprisonment.

176. A warrant under the hand of the Chief Justice or Magistrate by whom any person shall be sentenced to imprisonment, ordering that the sentence shall be carried out in any prison within the Territory, shall be issued by the Chief Justice or Magistrate, and shall be full authority to the officer in charge of such prison and to all other persons for carrying into effect the sentence described in such warrant. Subject to the provisions of section 36 of the Penal Code, every sentence shall be deemed to commence from and to include, the whole of the

day of the date on which it was pronounced, except where otherwise provided in this Code.

Suspended sentences of imprisonment.

177. (1) A court which passes a sentence of imprisonment for a term of not more than two years for an offence may order that the sentence shall not take effect, or that any part of the sentence after the person sentenced has served a period in prison specified by the court, which period shall not be less than five days, shall not take effect unless, during a period specified in the order, being not less than one year or more than three years from the date of the order, the offender commits in the Territory another offence punishable with imprisonment and thereafter a court having power to do so orders under section 178 that the original sentence shall take effect.

(2) A court which passes a suspended sentence on any person for an offence shall not make an order under section 32 of the Penal Code in his case in respect of another offence of which he is convicted by or before the court or for which he is dealt with by the court.

(3) On passing a suspended sentence the court –

(a) may impose such conditions as it thinks fit;

(b) shall explain to the offender in ordinary language his liability under section 178 if during the operational period he commits an offence punishable with imprisonment or breaks any condition imposed under subsection (3)(a).

(4) Subject to any provision to the contrary contained in this or any other Ordinance –

(a) a suspended sentence which has not taken effect under section 178 shall be treated as a sentence of imprisonment for the purposes of all Ordinances except any Ordinance which provides for disqualification for or loss of office, or forfeiture of pensions, of persons sentenced to imprisonment; and

(b) where a suspended sentence has taken effect under section 178, the offender shall be treated for the purposes of the said excepted Ordinances as having been convicted on the ordinary date on which the period allowed for making an appeal against an order under section 178 expires or, if such an appeal is made, the date on which it is finally disposed of or abandoned or fails for non-prosecution.

Power of court on conviction of further offence to deal with suspended sentence.

178. (1) If an offender is convicted of an offence punishable with imprisonment committed during the operational period of a suspended sentence or if, during such period, he breaks a condition imposed under section 177(3)(a) and either he is so convicted by or before a court having power under section 179 to deal with him in respect of the suspended sentence or he subsequently appears or is brought before such a court, then, unless the sentence has already taken effect, that court shall consider his case and deal with him by one of the following methods –

(a) the court may order that the suspended sentence shall take effect with the original term or, in the case of a partly suspended sentence, the part suspended, unaltered;

(b) it may order that the sentence shall take effect with the substitution of a greater or lesser term for the original term;

(c) it may by order vary the original order under section 177(1) by substituting for the period specified therein a period expiring not later than three years from the date of the variation; or

(d) it may make no order with respect to the suspended sentence,

and a court shall make an order under subsection (1)(a) unless the court is of opinion that it would be unjust to do so in view of all the circumstances which have arisen since the suspended sentence was passed, including the facts of the subsequent offence, and where it is of that opinion the court shall state its reasons.

(2) Where a court orders that a suspended sentence shall take effect, with or without any variation of the original term, the term of such sentence shall commence on the expiration of any other term of imprisonment passed on the offender by that or another court, unless the court is of opinion that, by reason of special circumstances, the sentence should take effect immediately.

(3) In proceedings for dealing with an offender in respect of a suspended sentence which takes place before the Supreme Court, any question whether the offender has been convicted of an offence punishable with imprisonment committed during the operational period of the suspended sentence shall be determined by the court.

(4) Where a court deals with an offender under this section in respect of a suspended sentence the clerk of the court shall notify the clerk of the court which passed the sentence of the method adopted.

(5) For the purposes of any Ordinance (including this Code) conferring rights of appeal in criminal cases, any such order made by a court shall be treated

as a sentence passed on the offender by that court for the offence for which the suspended sentence was passed.

Court by which suspended sentence is to be dealt with.

179. (1) An offender may be dealt with in respect of a suspended sentence by any court before which he appears or is brought.

(2) Where an offender is convicted by the Magistrate's Court of an offence punishable with imprisonment and the Magistrate is satisfied that the offence was committed during the operational period of a suspended sentence passed by the Supreme Court –

(a) the Magistrate may, if he thinks fit, commit him in custody or on bail to the Supreme Court; and

(b) if he does not, shall give written notice of the conviction to the Registrar of the court by which the suspended sentence was passed.

(3) For the purposes of this section and section 180, a suspended sentence passed on an offender on appeal shall be treated as having been passed by the court by which he was originally sentenced.

Discovery of further offences.

180. (1) If it appears to the Chief Justice or a Magistrate that an offender has been convicted in the Territory of an offence punishable with imprisonment committed during the operational period of a suspended sentence and that he has not been dealt with in respect of the suspended sentence, the Chief Justice or Magistrate may issue a summons requiring the offender to appear at the place and time specified therein, or may, subject to the following provisions of this section, issue a warrant for his arrest.

(2) A Magistrate shall not issue a summons under this section except on information and shall not issue a warrant under this section except on information in writing and on oath.

(3) A summons or warrant issued under this section shall direct the offender to appear or to be brought before the court by which the suspended sentence was passed, but if a warrant is so issued requiring him to be brought before the Supreme Court and he cannot forthwith be brought before that court because that court is not being held, the warrant shall have the effect as if it directed him to be brought before a Magistrate and the Magistrate shall commit him in custody or on bail to the Supreme Court.

Breach of condition.

181. If, during the operational period of a suspended sentence, an offender is guilty of the breach of any condition imposed on him by a court under section

177(3)(a), he shall be liable to be dealt with as if, during such period, he had been convicted of an offence punishable with imprisonment.

Definitions.

182. In sections 177, 178, 179, 180, 181 and 247 –

court includes the Supreme Court and the Magistrate's Court;

operational period, in relation to a suspended sentence, means the period specified in an order made under section 177(1);

suspended sentence includes a partly suspended sentence.

Liability of persons jointly convicted.

183. Where several persons shall be prosecuted before any court under one complaint or charge, and shall be convicted, each person shall be individually responsible for the fine imposed upon him, and for such part of the costs as shall have been apportioned to him by such court.

Sentence of imprisonment in default of payment of fine, costs and compensation.

184. In any case where an accused is found guilty and sentenced to a fine with or without costs and/or compensation, or to a fine with or without costs and/or compensation with imprisonment, it shall be competent for the court to direct that in default of payment of the fine, costs and/or compensation the accused shall suffer imprisonment for a certain term. Such imprisonment shall be in addition to any other imprisonment to which he may have been sentenced.

Limit of imprisonment in default.

185. (1) No sentence of imprisonment in default of payment of a fine and/or costs and/or compensation shall exceed six months in all, or in default of payment of costs only or compensation only shall exceed sixty days.

(2) Subject to the following provisions of this section, the periods set out in the second column of the following Table shall be the maximum periods of imprisonment applicable respectively to the amounts set out opposite thereto, being amounts due at the time the imprisonment is imposed.

TABLE

An amount not exceeding £100…….……..seven days

An amount exceeding £100 but not exceeding £250……...fourteen days

An amount exceeding £250 but not exceeding £500…….…thirty days

An amount exceeding £500 but not exceeding £1,000……...sixty days

An amount exceeding £1,000 but not exceeding £2,500…...ninety days

An amount exceeding £2,500……..…...…....six months

(3) Where the amount due at the time imprisonment is imposed is so much of a sum ordered to be paid as a fine and/or costs and/or compensation as remains due after part payment, the maximum period applicable to the amount shall be the period applicable to the whole sum reduced by such number of days as bears to the total number of days therein the same proportion as the part paid bears to the whole sum:

Provided that in calculating the reduction required under this subsection any fraction of a day shall be left out of account and the maximum period shall not be reduced to less than five days.

Commencement of imprisonment in default.

186. When imprisonment is imposed in lieu of payment of a fine and/or costs and/or compensation such imprisonment shall be reckoned in the first instance as imprisonment in lieu of the fine and then in lieu of the costs and then in lieu of the compensation, and where imprisonment as well as fine, costs or compensation have been decreed by the convicting court such imprisonment shall be in addition to, and shall begin after, any such term of imprisonment so decreed.

Time within which fine may be levied.

187. The fine, costs or compensation or any part thereof which remains unpaid, may be levied at any time within six years after the passing of the sentence, and if under the sentence the offender be liable to imprisonment for a longer period than six years, then at any time previous to the expiration of that period, and the death of the offender does not discharge from the liability any property which would, after his death, be legally liable for his debts.

Payment of fine.

188. (1) Whenever any court shall sentence any offender to pay any sum as a fine or for costs or compensation, such court may at any time –

(a) allow time for payment;

(b) extend such time;

(c) direct payment to be made by instalments;

(d) allow further time for the payment of any instalment;

(e) vary the instalment.

(2) If the offender fails to pay any instalment within the time fixed for the payment of such instalment and does not obtain further time or a variation of the instalment, execution shall forthwith be issued for the recovery of all the instalments then remaining unpaid in the same manner as if, after the conviction, no order has been made for the payment of the sum by instalments.

Process for securing attendance of offender.

189. (1) A Magistrate's Court may, for the purpose of securing the attendance of an offender who has failed to pay any sum as a fine or for costs or compensation, or failed to pay any instalment within the time fixed for the payment of such instalment, –

(a) issue a summons requiring the offender to appear before the court at the time and place appointed in the summons; or

(b) issue a warrant to arrest him and bring him before the court.

(2) On the failure of the offender to appear before the court in answer to a summons issued under this section, the court may issue a warrant to arrest him and bring him before the court.

(3) Subsection (1) shall apply where any sum has been registered as being payable in default of payment of a fixed penalty and that sum has not been not paid forthwith to the Clerk to the Magistrate's Court.

(4) **fixed penalty** means a penalty imposed in connection with a fixed penalty notice issued under any Ordinance.

Warrant for levy of fine, etc.

190. (1) When a court orders money to be paid by an accused or by a prosecutor or complainant for fine, penalty, compensation, costs, expenses or otherwise, the money may be levied on the movable and immovable property of the person (other than the Crown) ordered to pay the same by distress and sale under warrant. If he shows sufficient movable property to satisfy the order his immovable property shall not be sold.

(2) Such person may pay or tender to the officer having the execution of the warrant the sum therein mentioned, together with the amount of the expenses

of the distress up to the time of payment or tender, and thereupon the officer shall cease to execute the same.

(3) All sums realised by the execution pursuant to subsection (2) shall be applied, in the following order to the payment –

(i) of the costs of execution;

(ii) of the fine;

(iii) of the costs;

(iv) of the compensation,

due by such offender in virtue of the conviction or order.

(4) A warrant under this section may be executed by the distress and sale of any property belonging to such person wherever found in the Territory.

Objections to attachment.

191. (1) Any person claiming to be entitled to or to have a legal or equitable interest in the whole or part of any property attached in execution of a warrant issued under section 190 may, at any time prior to the receipt by the court of the proceeds of sale of such property, give notice in writing to the court of his objection to the attachment of such property. Such notice shall set out shortly the nature of the claim which such person (in this section referred to as the **objector**) makes to the whole or part of the property attached, and shall certify the value of the property claimed by him. Such value shall be deposed to upon affidavit, which shall be filed with the notice.

(2) Upon receipt of a valid notice given under subsection (1), the court shall, by an order in writing addressed to the officer having the execution of the warrant, direct the stay of the execution proceedings.

(3) Upon the issue of an order under subsection (2), the court shall, by notice in writing, direct the objector to appear before such court and establish his claim upon a date to be specified in the notice.

(4) A notice shall be served upon the person whose property was, by the warrant issued under section 190, directed to be attached, and unless the property is to be applied to the payment of a fine, upon the person entitled to the proceeds of the sale of such property. Such notice shall specify the time and place fixed for the appearance of the objector and shall direct the person upon whom the notice is served to appear before the court at the same time and place if he wishes to be heard upon the hearing of the objection.

(5) Upon the date fixed for the hearing of the objection, the court shall investigate the claim and, for such purpose, may hear any evidence which the

objector may give or adduce and any evidence given or adduced by any person served with a notice in accordance with the provisions of subsection (4).

(6) If, upon investigation of the claim, the court is satisfied that the property was not, when attached, in the possession of the person ordered to pay the money or of some person in trust for him, or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the person ordered to pay the money at such time it was so in his possession not on his own account or as his own property but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the court shall make an order releasing the property, wholly or to such an extent as it thinks fit from attachment.

(7) If, upon the date fixed for his appearance the objector fails to appear, or if, upon investigation of the claim in accordance with the provisions of subsection (5), the court is of opinion that the objector has failed to establish his claim, the court shall order the attachment and execution to proceed, and shall make such order as to costs as it deems fit.

(8) Nothing in this section shall be deemed to deprive a person who has failed to comply with the requirements of subsection (1) of the right to take any other proceedings which, apart from the provisions of this section, may lawfully be taken by a person claiming an interest in property attached under a warrant.

Commitment in lieu of distress.

192. When it appears to the court that distress and sale of property would be ruinous to the person ordered to pay the money, or his family, or (by his confession or otherwise) that he has no property whereon the distress may be levied, or for any other sufficient reason, the court may if it thinks fit, instead of or after issuing a warrant of distress, commit him to prison for a time specified in the warrant, unless the money and all expenses of the commitment and conveyance to prison, to be specified in the warrant, are sooner paid.

Payment in full after commitment.

193. Any person committed for non-payment may pay the sum mentioned in the warrant, with the amount of expenses therein authorised (if any) to the person in whose custody he is, and that person shall thereupon discharge him if he is in custody for no other matter.

Part payment after commitment.

194. (1) If any person committed to prison for non-payment shall pay any sum in part satisfaction of the sum adjudged to be paid, the term of his imprisonment shall be reduced by a number of days bearing as nearly as possible the same proportion to the total number of days for which such person is committed as the sum so paid bears to the sum for which he is liable.

(2) The officer in charge of a prison in which a person is confined who is desirous of taking advantage of the provisions of subsection (1) shall, on application being made to him by such prisoner, at once take him before a court, and such court shall certify the amount by which the term of imprisonment originally awarded is reduced by such payment in part satisfaction and shall make such order as is required in the circumstances.

Who may issue warrant.

195. Every warrant for the execution of any sentence may be issued either by the Chief Justice or Magistrate who passed the sentence or by a judicial officer of the same court.

Errors and Omissions in orders and warrants.

196. The court may at any time amend any defect in substance or in form in any order or warrant, and no omission or error as to time and place, and no defect in form in any order or warrant given under this Code shall be held to render void or unlawful any act done or intended to be done by virtue of such order or warrant provided that it is therein mentioned, or may be inferred therefrom, that it is founded on a conviction or judgment, and there is a valid conviction or judgment to sustain the same.

PART XIII

COSTS, COMPENSATION, FORFEITURE AND RESTITUTION

Costs.

197. (1) The Chief Justice or Magistrate may order any person convicted before him of an offence to pay to the public or private prosecutor, as the case may be, such reasonable costs as he may think fit in addition to any other penalty imposed:

> Provided that such costs shall not exceed £1,000 in the case of the Supreme Court and £500 in the case of the Magistrate's Court.

(2) The Chief Justice or Magistrate who acquits or discharges a person accused of an offence may order the prosecutor to pay to the accused such reasonable costs as he may think fit:

> Provided that such costs shall not exceed £1,000 in the case of the Supreme Court and £500 in the case of the Magistrate's Court,
>
> Provided further, that no such order shall be made if the Chief Justice or Magistrate considers that the prosecutor had reasonable grounds for making his complaint.

(3) Costs awarded under this section may be in addition to any compensation awarded under section 199.

Order to pay costs appealable.

198. An appeal shall lie from any order awarding costs under section 197 and the appellate court shall have power to award such costs of the appeal as it considers reasonable.

Compensation in case of frivolous or vexatious charge.

199. If on the dismissal of any case the court shall be of the opinion that the charge was frivolous or vexatious, the court may order the prosecutor to pay to the accused a reasonable sum as compensation for the trouble and expense to which such person may have been put by reason of such charge in addition to his costs.

Costs and compensation to be specified in order, how recoverable.

200. Sums allowed for costs or compensation awarded under section 197 or section 199 shall in all cases be specified in the conviction or order. If the person who has been ordered to pay such costs or compensation fails so to pay, he shall, in default of distress levied in accordance with section 190, be liable to imprisonment in accordance with the scale laid down in section 185 unless such costs or compensation be sooner paid.

Power to award expenses or compensation out of fine and restoration.

201. (1) Whenever any court imposes a fine, or confirms on appeal, revision or otherwise a sentence of fine, or a sentence of which a fine forms part, the court may, when passing judgment, order the whole or any part of the fine recovered to be applied –

(a) in defraying expenses properly incurred in the prosecution;

(b) in the payment to any person of compensation for any loss or injury caused by the offence when substantial compensation is in the opinion of the court recoverable by civil suit.

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

(3) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the court shall take into account any sum paid or recovered as compensation under this section.

(4) It shall also be lawful for the Commissioner to restore any article or articles which have been seized or forfeited, or to restore the proceeds of the same if sold, in any case in which the said seizure or forfeiture may have been

made or decreed by way of penalty for any contravention of any law in the Territory.

Compensation on conviction for destroying or damaging property.

202. (1) On conviction of any person of an offence under section 266 of the Penal Code of destroying or damaging property belonging to another the court may, on application or otherwise, and on being satisfied as to the approximate cost of making good the loss of or damage to the property order him to pay to the person or any of the persons to whom the property belongs or belonged immediately before its destruction or damage such sum by way of compensation in respect of the whole or part of the loss of or damage to the property (not exceeding £5,000 in the case of the Magistrate's Court) as the court thinks just.

(2) An appeal shall lie from any order made under this section, if made by the Magistrate's Court to the Supreme Court, and if made by the Supreme Court to the Court of Appeal.

(3) Any order under this section for the payment of compensation made by the Magistrate's Court shall be suspended –

(a) in any case until the expiration of the period for the time being prescribed by law for the giving of notice of appeal against a decision of the Magistrate's Court;

(b) where notice of appeal is given within the period so prescribed, until the determination of the appeal.

(4) This section shall be without prejudice to any other enactment which provides for the payment of compensation by a person convicted of an offence of damaging property or otherwise proved to have committed such an offence.

Disposal of property in possession of Police Officer.

203. (1) Where any property of whatsoever description comes into the possession of a Police Officer in the course of his duties he shall hand it over to the Magistrate's Court and a Magistrate may direct that it be disposed of by sale or otherwise unless claimed by the owner of the said property –

(a) within one day in the case of perishable goods;

(b) within fifteen days in the case of all other goods when the total value of such goods belonging to the same person is less than £100;

(c) in all other cases one month after an announcement shall have been promulgated in such manner as the Magistrate may direct giving a description of the property and requesting the owner to claim it from the Court.

(2) All moneys resulting from the sale or disposal of such property shall belong to the Crown and no claim shall lie against the Crown by the owner or any other person in respect of such property.

(3) This section shall not apply to any property that shall be forfeited to the Crown, in which case such property shall be disposed of as the Commissioner shall direct.

Forfeiture.

204. (1) In addition to any forfeiture specially provided for by this Code or under any other law, the court, on the conviction of any offender of an offence punishable with imprisonment (not being imprisonment solely in default of payment of a fine, costs or compensation) may order the forfeiture to the Crown of any property in the possession of the offender which the court is satisfied was used or was intended to be used for the purpose of committing or facilitating the commission of any offence.

(2) For the purpose of this section facilitating the commission of any offence shall be taken to include the taking of any steps after it has been committed for the purpose of disposing of any property to which it relates or of avoiding apprehension or detection.

(3) An appeal shall lie by any person aggrieved (including the offender) by an order under this section, if made by a Magistrate's Court to the Supreme Court, and if made by the Supreme Court to the Court of Appeal.

Order for restitution.

205. (1) Where goods have been stolen, and a person is convicted of any offence with reference to the theft (whether or not the stealing is the gist of his offence) the court by or before which the offender is convicted may on the conviction exercise any of the following powers –

(a) the court may order anyone having possession or control of the goods to restore them to any person entitled to recover them from him;

(b) on the application of a person entitled to recover from the person convicted any other goods directly or indirectly representing the first-mentioned goods (as being the proceeds of any disposal or realisation of the whole or part of them or of goods so representing them) the court may order those other goods to be delivered or transferred to the applicant; or

(c) on the application of a person who, if the first-mentioned goods were in the possession of the person convicted, would be entitled to recover them from him, the court may order that a sum not exceeding the value of those goods shall be paid to the applicant out of any money of the person convicted which was taken out of his possession on his apprehension.

(2) Where under subsection (1) the court has power on a person's conviction to make an order against him both under sub-subsection (b) and under sub-subsection (c) with reference to the stealing of the same goods, the court may make orders under both sub-subsections provided that the applicant for the orders does not recover thereby more than the value of the goods.

(3) Where under subsection (1) the court on a person's conviction makes an order under sub-subsection (a) for the restoration of any goods and it appears to the court that the person convicted has sold the goods to a person acting in good faith, or has borrowed money on the security of them from a person so acting, then on the application of the purchaser or lender the court may order that there shall be paid to the applicant, out of any money of the person convicted which was taken out of his possession on his apprehension, a sum not exceeding the amount paid for the purchase by the applicant or, as the case may be, the amount owed to the applicant in respect of the loan.

(4) The court shall not exercise the powers conferred by this section unless in the opinion of the court the relevant facts sufficiently appear from evidence given at the trial or the available documents, together with admissions made by or on behalf of any person in connection with any proposed exercise of the powers, and for this purpose **the available documents** means any written statements or admissions which were made for use, and would have been admissible, as evidence at the trial.

(5) Section 204(3) shall apply to orders made under this section as it applies to orders made under that section.

(6) References in this section to stolen goods shall be construed in accordance with section 265 of the Penal Code.

Property found on accused person.

206. Where, upon the apprehension of a person charged with an offence, any property is taken from him, the court before which he is charged may order –

(a) that the property or a part thereof be restored to the person who appears to the court to be entitled thereto, and if he be the person charged, that it be restored either to him or to such other person as he may direct; or

(b) that the property or part thereof be applied to the payment of any fine or any costs or compensation directed to be paid by the person charged.

Costs to be borne by the Crown in certain cases.

207. When a criminal prosecution shall have been instituted by a private individual and shall have resulted in the conviction of the accused, it shall be lawful for the court to certify in writing upon the record that in its opinion the

prosecution has been of material benefit to the public and thereupon the fees of the court already paid by such person shall be refunded to him, and such person shall not be liable for the costs of witnesses whom, in the opinion of the court, it was proper to summon in connection with such case, but such costs shall after due taxation be paid by the Crown.

Recovery of costs from complainant.

208. Costs awarded to the accused under section 197(2) may after taxation be recovered from the complainant in the same manner as any civil claim for which the creditor shall have obtained a judgment in his favour.

PART XIV

APPEALS FROM THE MAGISTRATE'S COURT

Appeal to the Supreme Court.

209. (1) Save as provided in this Part, any person convicted on a trial held by the Magistrate's Court may appeal to the Supreme Court against conviction and/or sentence.

(2) An appeal to the Supreme Court may be on a matter of fact as well as on a matter of law.

No appeal on plea of guilty.

210. No appeal shall be allowed in the case of any accused person who has pleaded guilty and has been convicted on such plea by the Magistrate's Court, except as to the extent or legality of the sentence.

Procedure on appeal.

211. (1) Every appeal shall be brought by notice in writing which shall be lodged with the Magistrate's Court within 14 days after the date of the order or sentence appealed against.

(2) Such notice shall be signed or marked by the appellant or, if the appellant is represented by an advocate, the notice may be signed by such advocate.

(3) Within 14 days after the filing of his notice of appeal, the appellant shall lodge with the Magistrate's Court a memorandum of appeal.

(4) Every memorandum of appeal shall be signed or marked by the appellant or signed by his advocate and shall contain particulars of the matters of law or of fact in regard to which the Magistrate's Court appealed from is alleged to have erred, and, except by leave of the Supreme Court, the appellant

shall not be permitted on the hearing of the appeal, to rely on any ground of appeal other than those set forth in the memorandum:

Provided that nothing in this subsection shall restrict the power of the Supreme Court to make such order as the justice of the case may require.

(5) If a memorandum is not lodged within the time prescribed by subsection (3), the appeal shall be deemed to have been withdrawn but nothing in this subsection shall be deemed to limit or restrict the power of the Supreme Court to extend time.

(6) The Supreme Court shall have power to extend any time herein provided for the taking of any necessary step in appeal, as it may deem fit.

Appellant in prison.

212. (1) If the appellant is in prison he shall be deemed to have complied with the requirements of section 211 if he gives to the officer in charge of the prison notice of his intention to appeal and the particulars required to be included in the memorandum of appeal within the times prescribed by such section.

(2) Such officer shall forthwith record the date of receipt of such notice or memorandum and shall forward the same to the Registrar.

Documents to be sent to the Registrar.

213. The Magistrate's Court shall transmit the notice and memorandum of appeal and the record of the case to the Registrar of the Supreme Court as soon as possible.

Summary rejection of appeal.

214. (1) When a memorandum of appeal has been lodged, the Chief Justice shall peruse the same together with the record of the case and if he considers that there is not sufficient ground for interfering, may, despite the provisions of section 217, reject the appeal summarily:

Provided that no appeal shall be rejected summarily except in the case mentioned in subsection (2), unless the appellant or his advocate has had the opportunity of being heard in support of the same.

(2) Where an appeal is brought on the ground that the conviction is against the weight of the evidence, or that the sentence is excessive, and it appears to the Chief Justice that the evidence is sufficient to support the conviction and that there is no material in the circumstances of the case which could raise a reasonable doubt whether the conviction was right or lead him to the opinion that the sentence ought to be reduced, the appeal may, without being set down for hearing, be summarily rejected by an order of the Chief Justice certifying that he has perused the record and is satisfied that the appeal has been lodged without any sufficient ground of complaint.

(3) Whenever an appeal is summarily rejected notice of such rejection shall forthwith be given to the Principal Legal Adviser and to the appellant or his advocate.

Fixing of appeal and presence of appellant.

215. (1) If the Supreme Court does not dismiss the appeal summarily, the appeal shall be set down for hearing by the Registrar on a date to be fixed by him.

(2) The appellant has no right to be present at the hearing of an appeal to the Supreme Court outside the Territory.

Order of Registrar to be served on respondent.

216. The order of the Registrar fixing the date of the appeal together with a copy of the notice and memorandum of appeal shall be served upon the respondent and, where the respondent is a public prosecutor, upon the Principal Legal Adviser, at the expense of the appellant not later than twenty-one clear days before the day fixed for the hearing.

Powers of the Supreme Court.

217. (1) After hearing the appellant or his advocate, if he appears, and the Principal Legal Adviser, if he appears, the Supreme Court may, if it considers that there is not sufficient ground for interfering, dismiss the appeal, or may –

(a) in an appeal from a conviction –

(i) reverse the finding and sentence and acquit or discharge the accused, or order him to be tried by a court of competent jurisdiction, or commit him for trial;

(ii) alter the finding, maintaining the sentence, or, with or without altering the finding, reduce or increase the sentence to any sentence which could have been inflicted by the Magistrate's Court; or

(iii) with or without such reduction or increase and with or without altering the finding, alter the nature of the sentence;

(b) in an appeal from any other order, alter or reverse such order, and in either case may make any amendment or any consequential or incidental order as to costs or otherwise that may appear just and proper.

(2) On any appeal the Supreme Court may exercise the same powers in relation to suspended sentences as are conferred on the Court of Appeal by section 247.

Order of Supreme Court to be certified to lower court.

218. (1) When a case is decided on appeal by the Supreme Court, it shall certify its judgment or order to the court by which the conviction, sentence or order appealed against was recorded or passed.

(2) The court to which the Supreme Court certifies its judgment or order shall thereupon make such orders as are conformable to the judgment or order of the Supreme Court, and, if necessary, the record shall be amended in accordance therewith.

Admission to bail or suspension of sentence pending appeal.

219. (1) After entering of an appeal by a person entitled to appeal, the Supreme Court, or the Magistrate's Court which convicted or sentenced such person, may order that he be released on bail with or without conditions, or if such person is not released on bail, shall at the request of such person, order that the execution of the sentence or order appealed against shall be suspended pending the hearing of the appeal.

(2) An application for bail under this section may be heard in Chambers. In the Supreme Court such application shall be by motion served on the Principal Legal Adviser. In the Magistrate's Court such application may be made without formal process on sufficient notice to the person who conducted the prosecution.

(3) Either party to a decision of the Magistrate's Court under this section may appeal to the Supreme Court.

(4) If the appeal is ultimately dismissed and the original sentence confirmed or some other sentence of imprisonment substituted therefor, the time during which the appellant has been released on bail or during which the sentence has been suspended shall be excluded in computing the term of imprisonment to which he is finally sentenced.

Further evidence.

220. (1) In dealing with an appeal from the Magistrate's Court the Supreme Court, if it thinks additional evidence is necessary, shall record its reasons and may either take such evidence itself or direct it to be taken by the Magistrate's Court.

(2) When the additional evidence is taken by the Magistrate's Court, such court shall certify such evidence to the Supreme Court, which shall thereupon proceed to dispose of the appeal.

(3) Unless the Supreme Court otherwise directs, the accused or his advocate shall be present when the additional evidence is taken.

(4) Evidence taken in pursuance of this section shall be taken as if it were evidence taken at a trial before the Magistrate's Court.

Reservation of points of law.

221. It shall be lawful for the Magistrate irrespective of any appeal or whether a case is appealable or not to reserve for the consideration of the Supreme Court any point of law arising during any proceeding in the court or on which the said Magistrate may entertain a doubt as to the correctness of his decision. The question of law so reserved shall be stated in the form of a case prepared and signed by the Magistrate himself, and such case shall be transmitted to the Registrar:

Provided that nothing herein contained shall exempt the Magistrate from giving his own judgment on such questions.

Cases reserved, how dealt with.

222. Whenever a case shall have been so reserved and stated by the Magistrate, the execution of the judgment shall be stayed until the decision of the Supreme Court has been delivered. The Magistrate may order that any person under detention be released on bail, with or without conditions, pending the consideration by the Supreme Court of any point reserved.

Cases may be sent back for amendment.

223. The Supreme Court shall have power if it thinks fit, to return the case for amendment and thereupon the same shall be amended accordingly and judgment shall be delivered after it shall have been so amended.

Judgment of appellate court, how enforced.

224. After the decision of the Supreme Court, the Magistrate shall cause the judgment of the Supreme Court to be enforced as if it were a judgment of his own court and as if the same had not been appealed against.

Cost of appeal, how recovered.

225. When the Supreme Court has allowed costs of appeal, such costs when taxed by the Registrar, shall be recovered by execution in the Magistrate's Court.

Abatement of appeals.

226. Every appeal from the Magistrate's Court (except an appeal from a sentence of fine) shall finally abate on the death of the appellant.

Appeals to Court of Appeal.

227. (1) Any party to an appeal from the Magistrate's Court may appeal against the decision of the Supreme Court in its appellate jurisdiction to the Court of Appeal on a matter of law (not including severity of sentence) but not on a matter of fact or mixed fact and law.

For the purposes of this section the expression "decision of the Supreme Court in its appellate jurisdiction" shall include a decision of that Court made in revision or on a case stated.

(2) On any such appeal, the Court of Appeal may, if it thinks that the judgment of the Magistrate's Court or of the first appellate court should be set aside or varied on the ground of a wrong decision on any question of law, make any order which the Magistrate's Court or the first appellate court could have made, or may remit the case, together with its judgment or order thereon, to the first appellate court or to the Magistrate's Court for determination, whether or not by way of re-hearing, with such directions as the Court of Appeal may think necessary:

Provided that in the case of an appeal against conviction, if the Court of Appeal dismisses the appeal and confirms the conviction appealed against it shall not (save as in subsection (3) provided) increase, reduce or alter the nature of the sentence imposed in respect of that conviction, whether by the Magistrate's Court or by the first appellate court, unless the Court of Appeal thinks that such sentence was an unlawful one or was passed in consequence of an error of law, in which case it may impose such sentence in substitution therefor as it thinks proper and as could have been imposed by the court of trial for the offence of which the appellant has been convicted.

(3) If it appears to the Court of Appeal that a party to an appeal, though not properly convicted on some count of the information, has been properly convicted on some other count of the information, the Court may, in respect of the count of the information on which the Court considers that the appellant has been properly convicted, either affirm the sentence passed by the Magistrate's Court or by the first appellate court, or pass such other sentence (whether more or less severe) in substitution therefor as it thinks proper and as could have been passed by the court of trial.

(4) Where a party to an appeal has been convicted of an offence and the Magistrate's Court or the first appellate court could on the information have found him guilty of some other offence and, on the finding of the Magistrate's Court or of the first appellate court, it appears to the Court of Appeal that the court must have been satisfied of facts which proved him guilty of that other offence, the Court of Appeal may, instead of allowing or dismissing the appeal, substitute for the conviction entered by the Magistrate's Court or by the first appellate court a conviction of guilty of that other offence, and pass such sentence in substitution for the sentence passed by the Magistrate's Court or by

the first appellate court as could have been passed by the court of trial for that other offence, not being a sentence of greater severity.

(5) On any appeal brought under this section, the Court of Appeal may, despite circumstances where it may be of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has in fact occurred.

Admission to bail pending appeal.

228. The Chief Justice may, in his discretion, in any case in which an appeal from a decision of the Supreme Court in its appellate jurisdiction to the Court of Appeal is filed, grant bail, with or without conditions, pending the hearing of such appeal.

Power of Supreme Court to call for records.

229. The Supreme Court may call for and examine the record of any criminal proceedings before the Magistrate's Court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of the Magistrate's Court.

Powers of Supreme Court on revision.

230. (1) In the case of any proceedings in the Magistrate's Court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the Supreme Court may –

(a) in the case of an order of acquittal, reverse such order and direct that further inquiry be made or direct that the accused be retried;

(b) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 217, 219 and 220 and may enhance the sentence;

(c) in the case of any other order, alter or reverse such order.

(2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence.

(3) Where the sentence dealt with under this section has been passed by the Magistrate's Court, the Supreme Court shall not inflict a greater punishment for the offence, which in the opinion of the Supreme Court the accused has committed, than might have been inflicted by the court which imposed the sentence.

(4) Nothing in this section shall be deemed to authorise the Supreme Court to convert a finding of acquittal into one of conviction.

(5) Where an appeal lies from any finding, sentence or order and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

Discretion of court as to hearing parties.

231. No party has any right to be heard either personally or by advocate before the Supreme Court when exercising its powers of revision:

Provided that such court may, if it thinks fit, when exercising such powers, hear any party either personally or by advocate, and that nothing in this section shall be deemed to affect section 230(2).

Order on revision to be certified to lower court.

232. When a case is revised by the Supreme Court it shall certify its decision or order to the court by which the sentence or order so revised was recorded or passed, and the court to which the decision or order is so certified shall thereupon make such orders as are conformable to the decision so certified, and if necessary the record shall be amended in accordance therewith.

Case stated by Magistrate's Court.

233. After the hearing and determination by the Magistrate's Court of any summons, charge, information or complaint, either party to the proceedings before the said Magistrate's Court may, if dissatisfied with the said determination as being erroneous in point of law, or as being in excess of jurisdiction, apply in writing within thirty days after the said determination to the said Magistrate's Court to state and sign a case setting forth the facts and the grounds of such determination for the opinion thereon of the Supreme Court, and such party (**the applicant**) shall –

(a) within fourteen days after receiving the case transmit the same to the Supreme Court; and

(b) within thirty days after receiving the case serve a copy of the case so stated and signed on the other party to the proceedings in which the determination was given (**the respondent**):

Provided always that no application shall be made under this section by a prosecutor other than a public prosecutor without the previous consent in writing of the Principal Legal Adviser.

Recognizance to be taken and fees paid.

234. (1) If the Magistrate's Court so orders, the applicant shall, at the time of making an application pursuant to section 233 –

(a) enter before the Clerk to the Magistrate's Court into a recognizance, with or without sureties, and in such sum as the Magistrate's Court considers proper, having regard to the means of the applicant, conditioned to prosecute the appeal without delay, and

(b) pay the Clerk of the Magistrate's Court his fees for and in respect of the case and recognizances, and any other prescribed fees to which such clerk shall be entitled, which fees shall be in accordance with Schedule 4.

(2) The Magistrate's Court may grant bail to the applicant, without or without conditions, pending the determination of the application.

(3) If the applicant is ultimately sentenced to imprisonment, the time during which he is so released shall be excluded in computing the term for which he is sentenced.

(4) Nothing in this section shall apply to an application for a case stated by or under the direction of the Principal Legal Adviser.

Refusal of frivolous application.

235. If the Magistrate's Court be of opinion that the application is merely frivolous, but not otherwise, it may refuse to state a case, and shall, on the request of the applicant, sign and deliver to him a certificate of such refusal:

Provided that the Magistrate's Court shall not refuse to state a case when the application for that purpose is made to him by or under the direction of the Principal Legal Adviser, who may require a case to be stated with reference to proceedings to which he was not a party.

Procedure on refusal to state a case.

236. When the Magistrate's Court has refused to state a case it shall be lawful for the applicant to apply to the Supreme Court within two months of such refusal, upon an affidavit of the facts, for a rule calling upon the Magistrate's Court and also upon the respondent to show cause why such case should not be stated, and the Supreme Court may make the same absolute or discharge it, with or without payment of costs, as to the court shall seem fit, and the Magistrate's Court, upon being served with such rule absolute, shall state a case accordingly, upon the applicant entering into a recognizance in accordance with section 234.

Hearing and determination by the Supreme Court.

237. The Supreme Court shall (subject to the provisions of section 238) hear and determine the question or questions of law arising on the case stated, and shall thereupon reverse, affirm or amend the determination in respect of which the case has been stated, or remit the matter to the Magistrate's Court with the opinion of the Supreme Court thereon, or may make such order as to costs, as to

the court may seem fit, and all such orders shall be final and conclusive on all parties:

Provided always that no Magistrate who shall state and deliver a case in pursuance of this Part or *bona fide* refuse to state one shall be liable to any costs in respect or by reason of such appeal against his determination or refusal.

Cases may be sent back for amendment or rehearing.

238. The Supreme Court shall have power, if it thinks fit –

(a) to cause the case to be sent back for amendment or restatement, and thereupon the same shall be amended or restated accordingly, and judgment shall be delivered after it has been so amended or restated;

(b) to remit the case to the Magistrate's Court for rehearing and determination with such directions as it may deem necessary.

Restriction on proceeding both by case stated and by appeal.

239. No person who has appealed under section 209 shall be entitled to have a case stated, and no person who has applied to have a case stated shall be entitled to appeal under section 209.

Contents of case stated.

240. A case stated by the Magistrate's Court shall set out –

(a) the charge, summons, information or complaint;

(b) the facts found by the Magistrate's Court to be admitted or proved;

(c) any submission of law made by or on behalf of the complainant during the trial or inquiry;

(d) any submission of law made by or on behalf of the accused during the trial or inquiry;

(e) the finding and, in case of conviction, the sentence of the Magistrate's Court;

(f) any question or questions of law which the Magistrate's Court or any of the parties may desire to be submitted for the opinion of the Supreme Court;

(g) any question of law which the Principal Legal Adviser may require to be submitted for the opinion of the Supreme Court.

Supreme Court may enlarge time.

241. The Supreme Court may, if it deems fit, enlarge any period of time prescribed by sections 233, 234 or 236.

PART XV

APPEALS FROM THE SUPREME COURT

Appeals from the Supreme Court to the Court of Appeal.

242. (1) Any person convicted on a trial held by the Supreme Court may appeal to the Court of Appeal –

(a) against his conviction –

(i) on any ground of appeal whenever the penalty awarded shall exceed six months' imprisonment or £5,000;

(ii) on any ground of appeal which involves a question of law alone;

(iii) with the leave of such Court of Appeal or upon a certificate of the Chief Justice that it is a fit case for appeal, on any ground of appeal which involves a question of fact alone, or a question of mixed law and fact or on any other ground which appears to the Court to be a sufficient ground of appeal;

(b) against the sentence passed on his conviction, with the leave of such Court of Appeal, unless the sentence is one fixed by law.

(2) Any person who has been dealt with by the Supreme Court under section 170 may appeal to the Court of Appeal as set out in subsection (1)(a) and (b) as if he had been both convicted and sentenced by the Supreme Court, whether the Supreme Court used its powers of revision or not.

(3) Irrespectively of any appeal and whether a case be appealable or not, the Chief Justice may reserve for the consideration of the Court of Appeal any question of law decided by him in the course of any trial. The question or questions so reserved shall be stated in the form of a case prepared and signed by the Chief Justice himself, and such case shall be transmitted by him at the earliest convenient opportunity to such Court of Appeal:

Provided that nothing herein contained shall exempt the Chief Justice from giving his own judgment on any such questions.

(4) The Chief Justice may in his discretion, in any case in which an appeal to the Court of Appeal is filed or in any case in which a question of law has to be reserved for the decision of such Court of Appeal, grant bail, with or without conditions, pending the hearing of such appeal or the decision of the case reserved.

(5) An application for bail under this section shall be by motion, supported by affidavit, served on the Principal Legal Adviser, and may be heard in Chambers.

Grounds for allowing appeal under section 242.

243. (1) Except as provided by this Code, the Court of Appeal shall allow an appeal against conviction if they think –

(a) that the decision of the court should be set aside on the ground that under all circumstances of the case it is unsafe or unsatisfactory;

(b) that such decision should be set aside on the ground of a wrong decision of any question of law; or

(c) that there was material irregularity in the course of the trial, and in any other case shall dismiss the appeal:

Provided that the Court may, despite being of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if they consider that no miscarriage of justice has actually occurred.

(2) In the case of an appeal against conviction the Court shall, if they allow the appeal, quash the conviction.

(3) Where the Court of Appeal allows an appeal against conviction they may order the appellant to be tried by a court of competent jurisdiction.

(4) The Court of Appeal may, on ordering a retrial, make such orders as appear to them to be necessary or expedient –

(a) for the custody or admission to bail, with or without conditions, of the person ordered to be retried pending his retrial;

(b) for the retention pending the retrial of any property or money forfeited, restored or paid by virtue of the original conviction or any order made on that conviction.

Power to substitute Conviction of alternative offence.

244. (1) This section applies on an appeal against conviction where the appellant has been convicted of an offence and the court could on the

information have found him guilty of some other offence, and on the finding of the court it appears to the Court of Appeal that the court must have been satisfied of facts which proved him guilty of the other offence.

(2) The Court may, instead of allowing or dismissing the appeal, substitute for the finding of the court a finding of guilty of the other offence, and pass such sentence in substitution for the sentence passed at the trial as may be authorised by law for the other offence, not being a sentence of greater severity.

Sentence when appeal allowed on part of information.

245. (1) This section applies where, on an appeal against conviction on an information containing two or more counts, the Court of Appeal allow the appeal in respect of part of the information.

(2) Except as provided by subsection (3), the Court may in respect of any count on which the appellant remains convicted pass such sentence, in substitution for any sentence passed thereon at the trial as they think proper and is authorised by law for the offence of which he remains convicted on that count.

(3) The Court shall not under this section pass any sentence such that the appellant's sentence on the information as a whole will, in consequence of the appeal, be of greater severity than the sentence (taken as a whole) which was passed at the trial for all offences which he was convicted on the information.

Substitution of finding of insanity or unfitness to plead.

246. Where, on an appeal against conviction, the Court of Appeal are of the opinion –

(a) that the proper decision would have been one of not guilty by reason of insanity; or

(b) that the case is not one where there should have been an acquittal, but that there should have been a finding that the accused was of unsound mind and consequently incapable of making his defence,

the Court shall act in the manner specified for a court of trial under section 102 or 106, as the case may be.

Supplementary provisions as to appeals against sentence.

247. (1) On an appeal against sentence the Court of Appeal, if they consider that the appellant should be sentenced differently for an offence for which he was dealt with by the court below, may –

(a) quash any sentence or order which is the subject of the appeal; and

(b) in place of it pass such sentence or make such order as they think appropriate for the case and as the court below had power to pass or make when dealing with him for the offence,

but the Court shall so exercise their powers under this subsection that, taking the case as a whole, the appellant is not more severely dealt with on appeal than he was dealt with by the court below.

(2) The power of the Court of Appeal under subsection (1) to pass a sentence which the court below had power to pass for an offence shall, despite the court below making no order under section 178(1) in respect of a suspended sentence previously passed on the appellant for another offence, include power to deal with him in respect of that suspended sentence where the court below dealt with him in accordance with section 178(1)(d).

Appeal against decision of not guilty by reason of insanity.

248. A person in whose case there is a decision of not guilty by reason of insanity may appeal to the Court of Appeal against the decision –

(a) on any ground of appeal which involves a question of law alone; and

(b) with the leave of the Court of Appeal, on any ground which involves a question of fact alone, or a question of mixed law and fact, or on any other ground which appears to the Court of Appeal to be a sufficient ground of appeal,

but if the Chief Justice grants a certificate that the case is fit for appeal on a ground which involves a question of fact, or a question of mixed law and fact, an appeal lies under this section without the leave of the Court of Appeal.

Disposal of appeal under section 248.

249. (1) Subject to the provisions of this section, the Court of Appeal shall allow an appeal under section 248 if they are of the opinion –

(a) that the decision should be set aside on the ground that under all the circumstances of the case it is unsafe or unsatisfactory;

(b) that the decision should be set aside on the ground of a wrong decision of any question of law; or

(c) that there was a material irregularity in the course of the trial and in any other case shall dismiss the appeal.

(2) The Court of Appeal may, despite being of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss an appeal under section 248 if no miscarriage of justice has actually occurred.

(3) Where apart from this subsection –

(a) an appeal under section 248 would fall to be allowed; and

(b) none of the grounds for allowing it relates to the question of the insanity of the accused,

the Court of Appeal may dismiss the appeal if they are of the opinion that, but for the insanity of the accused, the proper decision would have been that he was guilty of an offence other than the offence charged.

(4) Where an appeal under section 248 is allowed, the following provisions apply –

(a) if the ground, or one of the grounds, for allowing the appeal is that the finding as to the insanity of the accused ought not to stand and the Court of Appeal are of the opinion that the proper finding would have been that he was guilty of an offence (whether the offence charged or any other offence of which the court could have found him guilty) the Court –

(i) shall substitute for the finding of not guilty by reason of insanity a finding of guilty of that offence; and

(ii) shall have the like powers of punishing or otherwise dealing with the appellant, and other powers, as the court of trial would have had if it had come to the substituted finding; and

(b) in any other case the Court of Appeal shall substitute for the finding an acquittal.

(5) Where, on an appeal under section 248, the Court of Appeal are of opinion that the case is not one where there should have been an acquittal but there should have been a finding that the accused was of unsound mind and consequently incapable of making his defence, the Court shall act in the manner specified for a court of trial under section 102.

Right of appeal against finding of unfitness to plead.

250. (1) Where there has been a finding under section 102 that a person is of unsound mind and consequently incapable of making his defence, the person may appeal to the Court of Appeal against the finding.

(2) An appeal under this section may be –

(a) on any ground of appeal which involves a question of law alone; and

(b) with the leave of the Court of Appeal, on any ground which involves a question of fact alone, or a question of mixed law and fact, or on any other ground which appears to the Court of Appeal to be a sufficient ground of appeal;

but if the Chief Justice grants a certificate that the case is fit for appeal on a ground which involves a question of fact, or a question of mixed law and fact, an appeal lies under this section without the leave of the Court of Appeal.

Disposal of appeal under section 250.

251. (1) The Court of Appeal shall allow an appeal under section 250 if they are of opinion –

(a) that the finding should be set aside on the ground that under all the circumstances of the case it is unsafe or unsatisfactory;

(b) that the finding should be set aside on the ground of a wrong decision of any question of law; or

(c) that there was a material irregularity in the course of the determination of the question of fitness to be tried,

and in any other case (except one to which subsection (2) below applies) shall dismiss the appeal; but they may, despite being of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if they consider that no miscarriage of justice has actually occurred.

(2) An appeal under section 250 may, in a case where the question of fitness to be tried was determined later than on arraignment, be allowed by the Court of Appeal (despite the finding being properly made) if the Court are of opinion that the case is one in which the accused should have been acquitted before the question of fitness to be tried was considered, and, if an appeal is allowed under this subsection, the Court of Appeal shall, in addition to quashing the finding, direct an acquittal to be recorded (but not a finding of not guilty by reason of insanity).

Supplementary powers of Court of Appeal.

252. The Court of Appeal shall have the same powers, *mutatis mutandis*, as to awarding costs, hearing further evidence and admission to bail as the Supreme Court has on an appeal from the Magistrate's Court under sections 217, 220 and 228.

References to the Court of Appeal by the Commissioner.

253. (1) The Commissioner on an application made to him by a person convicted on a trial held by the Supreme Court or without such application, may if he thinks fit, at any time
either –

(a) refer the whole case to the Court of Appeal and the case shall then be treated for all purposes as an appeal to that Court by the person convicted; or

(b) if he desires the assistance of the Court of Appeal on any point arising in the case, refer that point to the Court of Appeal for their opinion thereon, and that Court shall consider the point so referred and furnish the Commissioner with their opinion thereon accordingly.

(2) A reference to the Court of Appeal may be made under this section irrespective of any appeal or whether the case is appealable or not.

(3) Nothing in this section shall affect the prerogative of mercy.

PART XVI

SUPPLEMENTARY PROVISIONS

Error or omission in charge or other proceedings.

254. Subject to the provisions contained in Parts XIV and XV, no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the summons, warrant, charge, proclamation, order, judgment or other proceedings before or during the trial or in any inquiry or other proceedings under this Code, unless such error, omission, irregularity or misdirection has in fact occasioned a failure of justice:

Provided that in determining whether any error, omission or irregularity has occasioned a failure of justice the court shall have regard to the question whether the objection could and should have been raised at an earlier stage in the proceedings.

Distress, arrest, etc., not illegal nor distrainer a trespass for defect or want of form in proceedings.

255. No distress, arrest or search made under this Code or the Police and Criminal Evidence Ordinance 2019 shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any defect or

want of form in the summons, warrant of arrest, search warrant, conviction, warrant of distress or other proceedings relating thereto.

Power to issue directions of the nature of *habeas corpus.*

256. (1) The Supreme Court may whenever it thinks fit direct –

(a) that any person within the limits of the Territory be brought up before the court to be dealt with according to law;

(b) that any person illegally or improperly detained in public or private custody within such limits be set at liberty;

(c) that any prisoner detained in any prison situate within such limits be brought before the court to be there examined as a witness in any matter pending or to be inquired into in such court;

(d) that any prisoner within such limits be removed from one custody to another for the purpose of trial; and

(e) that the body of a defendant within such limits be brought in on a return of *cepi corpus* to a writ of attachment.

(2) The Chief Justice may make rules to regulate the procedure in cases under this section.

Power of the Supreme Court to issue writs.

257. (1) The Supreme Court may in exercise of its criminal jurisdiction issue any writ which may be issued by the High Court of Justice in England and Wales.

(2) The Chief Justice may make rules to regulate the procedure in cases under this section.

Persons before whom affidavits may be sworn.

258. (1) Affidavits and affirmations to be used before any court may be sworn and affirmed before a judicial officer, upon payment of any required fee set out in Schedule 4.

(2) The fees referred to in subsection (1) shall not be payable by any person acting for or on behalf of the Principal Legal Adviser.

Shorthand notes or tape recording of proceedings.

259. Shorthand notes or a tape recording may be taken of the proceedings at the trial of any person before any court, and a transcript of such notes or recording shall be made if the court so directs, and such transcript shall for all purposes be deemed to be the official record of the proceedings at such trial:

Provided that, if any such transcript appears to be defective, the Chief Justice or the President of the Court of Appeal may, in his discretion, direct that the record or notes made by the Magistrate or the Chief Justice, as the case may be, shall be treated as the official record for the purposes of any appeal or revision.

Copies of proceedings.

260. If any person affected by any judgment or order passed in any proceedings under this Code desires to have a copy of the judgment or order or any deposition or other part of the record, he shall on applying for such copy be furnished therewith provided he pays any required fee set out in Schedule 4, unless the court for some special reason thinks fit to furnish it free of cost.

Forms.

261. Such forms as the Supreme Court may from time to time approve, with such variation as the circumstances of each case may require, may be used for the respective purposes therein mentioned, and if used shall be sufficient. In the absence of directions to the contrary by the Supreme Court, the forms printed in Schedule 3 shall be used in the Magistrate's Court.

Expenses of witnesses, etc.

262. (1) Subject to any enactment, any court may order payment on the part of the Government of the reasonable expenses of any complainant or witness attending before such court for the purposes of any inquiry, trial, or other proceedings under this Code.

(2) The fees in Schedule 4 shall be levied in proceedings in the Magistrate's Court.

(3) The fees referred to in subsection (2) shall not be payable by any person acting for or on behalf of the Principal Legal Adviser.

Regulations.

263. The Commissioner may by regulations amend Schedules 3 and 4.

PART XVII

FIXED PENALTY OFFENCES AND PROCEDURE

Definitions.

264. In this Part –

(a) **fixed penalty offence** and **fixed penalty notice** have the meanings assigned to those terms by sections 265 and 266 respectively;

(b) **suspended enforcement period** has the meaning assigned to that term by section 266(3)(a);

(c) references to a notice requesting a hearing in respect of an offence are references to a notice indicating that the person giving the notice wishes to contest liability for the offence or seeks a determination by a court with respect to the appropriate punishment for the offence; and

(d) references to an offence include an alleged offence.

Fixed penalty offences.

265. Any offence specified in column 1 of Schedule 5 (the general nature of that offence being indicated in column 2) is a fixed penalty offence.

Fixed penalty notices.

266. (1) In this Part **fixed penalty notice** means a notice offering the opportunity of the discharge of any liability to be convicted of the offence to which the notice relates by payment of a fixed penalty in accordance with this Part.

(2) A fixed penalty notice must give such particulars of the circumstances alleged to constitute the offence to which it relates as are necessary for giving reasonable information about the alleged offence.

(3) A fixed penalty notice must –

(a) state the period (referred to in this Part as the **suspended enforcement period**) within which, by virtue of section 275, proceedings cannot be brought against any person for the offence to which the notice relates, being the period of 21 days following the date of the notice or such longer period (if any) as may be specified in the notice;

(b) state the amount of the fixed penalty;

(c) state that the fixed penalty may be paid to the clerk to the Magistrate's Court; and

(d) specify the manner in which the person to whom the notice is given may request a hearing of the offence to which the notice relates.

(4) A fixed penalty notice should be substantially in the form shown in Schedule 6.

Amount of fixed penalty.

267. The fixed penalty for any of the offences specified in Schedule 5 is £50.

Notices to be given on the spot.

268. Where, on any occasion, a Police officer in uniform finds a person who he has reason to believe is committing or has on that occasion committed a fixed penalty offence, he may give that person a fixed penalty notice in respect of that offence.

Effect of fixed penalty notice.

269. (1) Where a fixed penalty notice has been given to a person (in this section referred to as the **recipient**) under section 268, no proceedings may be brought against him for the offence to which it relates unless, before the end of the suspended enforcement period, he has given notice, in the manner specified in the fixed penalty notice, requesting a hearing in respect of that offence.

(2) Where, by the end of the suspended enforcement period –

(a) the recipient has not given notice, in the manner specified in the fixed penalty notice, requesting a hearing in respect of the offence to which the fixed penalty notice relates; and

(b) the fixed penalty has not been paid in accordance with this Part,

a sum of £75 may be registered under section 272 for enforcement against the recipient as a fine.

Payment of penalty.

270. Payment of a fixed penalty must be made to the clerk to the Magistrate's Court and may be so made either in person at the office of the clerk during the normal working hours of that office or at such other times as the clerk by notice exhibited at that office may appoint for that purpose or in such other manner as the Commissioner's Representative may authorise by notice exhibited at his office.

Registration certificates.

271. (1) This section and section 272 apply where, by virtue of section 269(2), a sum of £75 may be registered under section 272 for enforcement against any person as a fine.

In this section and in section 272 –

(a) that sum is referred to as a **sum payable in default**; and

(b) the person against whom that sum may be so registered is referred to as the **defaulter**.

(2) The Police officer for the time being in command of the Police officers of the Territory (in this section referred to as the **Senior Police Officer**) may, in respect of any sum payable in default, issue a certificate (in this section and in section 272 referred to as a **registration certificate**) stating that the sum of £75 is registerable under section 272 for enforcement against the defaulter as a fine.

(3) Where the Senior Police Officer issues a registration certificate under this section, he must cause it to be sent to the clerk of the Magistrate's Court.

(4) A registration certificate issued under this section in respect of any sum payable in default must –

(a) give particulars of the offence to which the fixed penalty notice relates; and

(b) state the name and last known address of the defaulter and the amount of the sum payable in default.

Registration of sums payable in default.

272. (1) Where the clerk to the Magistrate's Court receives a registration certificate issued under section 271 in respect of a sum of £75 payable in default, he must register that sum for enforcement as a fine by entering it in the register of the Court.

(2) On registering any sum under this section for enforcement as a fine, the clerk to the Magistrate's Court must give the defaulter a notice of registration –

(a) specifying the amount of that sum; and

(b) giving the information with respect to the offence included in the registration certificate by virtue of section 271(4)(a).

(3) On the registration of any sum in the Magistrate's Court by virtue of this section, any provision of law referring (in whatever terms) to a fine imposed or other sum adjudged to be paid on conviction by that Court shall have effect in the case in question as if the sum so registered were a fine imposed by that Court on the conviction of the defaulter on the date of registration.

Invalidation of fixed penalty notices or subsequent proceedings.

273. (1) This section applies where –

(a) a person who has received notice of the registration of a sum under section 272 for enforcement against him as a fine makes a statutory declaration to the effect mentioned in subsection (2); and

(b) that declaration is, within 21 days of the date on which that person received notice of the registration, served on the clerk to the Magistrate's Court.

(2) The statutory declaration must state –

(a) that the person making it was not the person to whom the fixed penalty notice was given; or

(b) that he gave notice requesting a hearing in respect of the alleged offence as permitted by the fixed penalty notice before the end of the suspended enforcement period.

(3) In any case within subsection (2)(a) the relevant fixed penalty notice, the registration and any proceedings taken before the declaration was served for enforcing payment of the sum registered shall be void.

(4) In any case within subsection (2)(b) –

(a) the registration and any proceedings taken before the declaration was served for enforcing payment of the sum registered shall be void; and

(b) the case shall be treated after the declaration is served as if the person making it had given notice requesting a hearing of the alleged offence as stated in the declaration.

(5) References in this section to the relevant fixed penalty notice are references to the fixed penalty notice relating to the fixed penalty concerned.

Provisions supplementary to section 272.

274. (1) In any case within section 273(2)(b), section 39 (limitation of time) shall have effect if, for the reference to the time when the matter of the charge or complaint arose, there were substituted a reference to the date of the statutory declaration made for the purposes of section 273(1).

(2) Where, on the application of a person who has received notice of the registration of a sum under section 272 for enforcement against him as a fine, it appears to the Magistrate's Court that it was not reasonable to expect him to serve, within 21 days of the date on which he received the notice, a statutory declaration to the effect mentioned in section 273(2), the Court may accept service of such a declaration by that person after that period has expired.

(3) A statutory declaration accepted under subsection (2) shall be taken to have been served as required by section 273(1).

(4) For the purposes of section 273(1), a statutory declaration shall be taken to be duly served on the clerk to the Magistrate's Court if it is delivered to him in person or is left at his office.

(5) In section 273 and this section references to proceedings for enforcing payment of the sum registered are references to any process issued or other proceedings taken for or in connection with enforcing payment of that sum.

(6) For the purposes of section 273 and this section, a person shall be taken to receive notice of the registration of a sum under section 272 against him as a fine when he receives notice either of the registration as such or of any proceedings for enforcing payment of the sum registered.

(7) Nothing in the provisions of section 273 or this section is to be read as prejudicing any rights a person may have, apart from those provisions, by virtue of the invalidity of any action purportedly taken in pursuance of this Part which is in fact not authorised by this Part in the circumstances of the case, and, accordingly, references in those provisions to the registration of any sum or to any other action taken under or by virtue of any provision of this Part are not to be read as implying that the registration or action was validly made or taken in accordance with that provision.

(8) For the avoidance of doubt, nothing in this Part XVII obliges an officer to issue a fixed penalty notice when he decides that the alleged offender should be prosecuted for the alleged offence.

General restriction on proceedings.

275. (1) Proceedings shall not be brought against any person for the offence to which a fixed penalty notice relates until the end of the suspended enforcement period.

(2) Proceedings shall not be brought against any person for the offence to which a fixed penalty notice relates if the fixed penalty is paid in accordance with this Part before the end of the suspended enforcement period.

Certificates concerning payment.

276. In any proceedings a certificate signed by the clerk to the Magistrate's Court that the payment of a fixed penalty was or was not received by a date specified in the certificate shall be conclusive of that matter, and a certificate purporting to be so signed shall be received in evidence as such without proof of signature unless credible evidence to the contrary is adduced.

SCHEDULE 1 (Sections 83(1) and 92)

FORM OF CHARGE

In the Magistrate's Court of the British Indian Ocean Territory

The Queen v……
is/are charged as follows –

Statement of Offence

Particulars of Offence

Date……..

..……..

Complainant

FORM OF INFORMATION

IN THE SUPREME COURT OF
THE BRITISH INDIAN OCEAN TERRITORY

The…….. day of……. 20…… the Court is informed by the Principal Legal Adviser on behalf of our Lady The Queen that A.B. is charged with the following offence (or offences)—

Statement of offence

Particulars of offence

Principal Legal Adviser

SCHEDULE 2 (Section 83(3))

FORMS OF STATING OFFENCES

Note: All charges and informations must begin as in the form in Schedule 1. The following forms relate only to the statement of offence and particulars of offence.

1—MURDER

STATEMENT OF OFFENCE

Murder, contrary to section 179 of the Penal Code.

PARTICULARS OF OFFENCE

A.B., on the……. day of……. 20....., in the Island of ……., murdered J.S.

2—ACCESSORY AFTER THE FACT TO MURDER

STATEMENT OF OFFENCE

Accessory after the fact to murder, contrary to section 194 of the Penal Code.

PARTICULARS OF OFFENCE

A.B., knowing or believing that one, H.C., on the…….. day of ……..20...., in the Island of……. murdered C.C. on the……. day of……. 20..., in the Island of…… and on other days thereafter, without lawful authority or reasonable excuse received and assisted the said H.C. in order to enable him to escape punishment.

3—MANSLAUGHTER

STATEMENT OF OFFENCE

Manslaughter, contrary to section 180 of the Penal Code.

PARTICULARS OF OFFENCE

A.B., on the…….. day of ……..20..., in the Island of……. unlawfully killed J.S.

4—RAPE

STATEMENT OF OFFENCE

Rape, contrary to section 119 of the Penal Code.

PARTICULARS OF OFFENCE

A.B., on the … day of … 20…, in the Island of … intentionally penetrated the vagina [or "anus" or "mouth"] of E.F. who did not consent to the penetration, the said A.B. not reasonably believing that E.F. consented.

5—SEXUAL ASSAULT

STATEMENT OF OFFENCE

Sexual Assault, contrary to section 121 of the Penal Code.

PARTICULARS OF OFFENCE

A.B., on the… day of … 20…, in the Island of … intentionally touched C.D., the circumstances being that the touching was sexual, C.D. did not consent to the touching, and the said A.B. did not reasonably believe that C.D. consented to the touching.

6—WOUNDING

First Count

STATEMENT OF OFFENCE

Wounding with intent, contrary to section 204 of the Penal Code.

PARTICULARS OF OFFENCE

A.B., on the……. day of ……. 20..., in the Island of……. wounded C.D., with intent to maim, disfigure or do him some grievous harm [or to resist the lawful arrest of him the said A.B.].

Second Count

STATEMENT OF OFFENCE

Wounding, contrary to section 209 of the Penal Code.

PARTICULARS OF OFFENCE

A.B.. on the……. day of ……. 20..., in the Island of…….. unlawfully wounded C.D.

7—COMMON ASSAULT

STATEMENT OF OFFENCE

Assault, contrary to section 219 of the Penal code.

PARTICULARS OF OFFENCE

A.B., on the…….day of ……. 20…., in the Island of……..…..

unlawfully assaulted C.D.

8—ASSAULT OCCASIONING ACTUAL BODILY HARM

STATEMENT OF OFFENCE

Assault occasioning actual bodily harm, contrary to section 220 of the Penal Code.

PARTICULARS OF OFFENCE

A.B., on the……. day of……. 20..., in the Island of…….……. ,

assaulted C.D., thereby occasioning him actual bodily harm.

9—IDLE AND DISORDERLY PERSONS

STATEMENT OF OFFENCE

Being an idle and disorderly person, contrary to section 166 of the Penal Code.

PARTICULARS OF OFFENCE

A.B., on the……. day of……. 20..., in the Island of…….……..,

was found drunk and disorderly in a public place.

10— THEFT

STATEMENT OF OFFENCE

Stealing, contrary to section 241 of the Penal Code.

PARTICULARS OF OFFENCE

A.B., on the……. day of……. 20..., in the Island of…….. ,

stole a bag belonging to C.D.

11—HANDLING STOLEN GOODS

STATEMENT OF OFFENCE

Handling stolen goods, contrary to section 264 of the Penal Code.

PARTICULARS OF OFFENCE

A.B., on the……. day of……. 20..., in the Island of…….. ,

dishonestly received certain stolen goods, namely a bag belonging to C.D, knowing or believing the same to have been stolen.

12—ROBBERY

STATEMENT OF OFFENCE

Robbery, contrary to section 242 of the Penal Code.

PARTICULARS OF OFFENCE

A.B., on the……. day of……. 20..., in the Island of…….. ,

robbed C.D., of a watch.

13—BURGLARY

STATEMENT OF OFFENCE

Burglary, contrary to section 243 of the Penal Code.

PARTICULARS OF OFFENCE

A.B., on the……. day of……. 20..., in the Island of…….. ,

having entered as a trespasser a building known as…… stole therein one watch.

14—OBTAINING PROPERTY BY DECEPTION

STATEMENT OF OFFENCE

Obtaining property by deception, contrary to section 250 of the Penal Code.

PARTICULARS OF OFFENCE

A.B., on the……. day of……. 20..., in the Island of…….. ,

dishonestly obtained from S.P. 5 yards of cloth by deception, namely by representing that he, the said A.B., was a servant of J.S. and that he had been sent by the said J.S. to S.P. for the said cloth, and that he the said A.B., was then authorised by the said J.S. to receive the cloth on behalf of the said J.S.

15—BLACKMAIL

STATEMENT OF OFFENCE

Blackmail, contrary to section 263 of the Penal Code.

PARTICULARS OF OFFENCE

A.B., on the……. day of……. 20..., in the Island of……..,

with a view to gain for himself, in a letter dated….. and addressed to C.D. at ……. made an unwarranted demand from C.D. with menaces.

16—CONSPIRACY TO DEFRAUD

STATEMENT OF OFFENCE

Conspiracy to defraud, contrary to section 324 of the Penal Code.

PARTICULARS OF OFFENCE

A.B., and C.D., on the……. day of …….20...,

and on divers days between that day and the……. day of 20…, in the Island of …….

conspired together with intent to defraud such persons as should thereafter be induced to part with money to the said A.B. and C.D., by falsely representing that A.B. and C.D. were then carrying on a genuine and honest business as jewellers at……. in the Island of……... and that they were then willing and prepared to supply certain articles of jewellery to such persons.

17—ARSON

STATEMENT OF OFFENCE

Arson, contrary to section 266(1) and (3) of the Penal Code.

PARTICULARS OF OFFENCE

A.B., on the……. day of……. 20..., in the Island of……..

without lawful excuse destroyed by fire a house belonging to C.D., intending to destroy such property or being reckless as to whether such property would be destroyed.

18—DAMAGING PROPERTY WITH INTENT

STATEMENT OF OFFENCE

Damaging property with intent, contrary to section 266(1) of the Penal Code.

PARTICULARS OF OFFENCE

A.B., on the……. day of……. 20..., in the Island of……..

without lawful excuse, damaged a motor vehicle belonging to C.D, intending to damage such property or being reckless as to whether such property would be damaged.

19—FORGERY

First Count

STATEMENT OF OFFENCE

Forgery, contrary to section 276 of the Penal Code.

PARTICULARS OF OFFENCE

A.B., on the……. day of……. 20..., in the Island of……..

with intent to defraud, forged a cheque purporting to be a cheque drawn by CD.

Second Count

Uttering a false document, contrary to section 280 of the Penal Code.

PARTICULARS OF OFFENCE

A.B., on the……. day of……. 20..., in the Island of……..

knowingly and fraudulently uttered a forged cheque purporting to be a cheque drawn by C.D.

20—PERJURY

STATEMENT OF OFFENCE

Perjury, contrary to section 90 of the Penal Code.

PARTICULARS OF OFFENCE

A.B., on the……. day of……. 20..., in the Island of…….. ,

being a witness upon the trial of a criminal proceeding in the…….. Court of…… at…….. ,

in which C.D. was accused of theft., knowingly gave false testimony that he saw the said C.D. at ……on

the ……day of…… 20....

21—FALSE ACCOUNTING

STATEMENT OF OFFENCE

False accounting, contrary to section 255 of the Penal Code.

PARTICULARS OF OFFENCE

A.B., on the……. day of……. 20..., in the Island of…….. ,

dishonestly and with a view to gain for himself or another or with the intent to cause loss to another falsified a record remitted for accounting purposes, namely a cash book by omitting a material particular, that is to say, the receipt on the said day of £50 from H.S.

22—RIOT

STATEMENT OF OFFENCE

Riot, contrary to section 62 of the Penal Code.

PARTICULARS OF OFFENCE

A.B., C.D. and E.F., and other persons unknown, on the……..day of……. 20...,

in the Island of ……. riotously assembled together.

23—CARRYING OFFENSIVE WEAPON

STATEMENT OF OFFENCE

Carrying an offensive weapon in a public place, contrary to section 71(4) of the Penal Code.

PARTICULARS OF OFFENCE

A.B., on the……. day of……. 20..., in the Island of…….. ,

without lawful authority or reasonable excuse had with him in a public place an offensive weapon, namely a knife.

24—POSSESSION OF A CONTROLLED DRUG

STATEMENT OF OFFENCE

Possession of a controlled drug, contrary to section 6(2) of the Misuse of Drugs Ordinance 1992.

PARTICULARS OF OFFENCE

A.B. on the … day of … 20…, in the Island of … unlawfully had in his possession a controlled drug of Class …, namely …, in contravention of section 6(2) of the Misuse of Drugs Ordinance 1992.

25—UNLICENSED FIREARMS

STATEMENT OF OFFENCE

Keeping an unlicensed firearm, contrary to section 3 of the Firearms Ordinance 1970.

PARTICULARS OF OFFENCE

A.B., on the……. day of……. 20..., in the Island of…….. ,

kept a firearm, namely a pistol, not holding a valid licence in respect thereof.

SCHEDULE 3 (Section 261)

FORMS UNDER THE CRIMINAL PROCEDURE CODE 2019

Form I

SUMMONS TO SHOW CAUSE

(Keeping the Peace and Being of Good Behaviour)

(Section 9 of the Criminal Procedure Code 2019)

To

……..…….of……..……

Whereas it has been made to appear to me by credible information that you are likely to commit a breach of the peace, or disturb the public tranquillity [or injure C.D.], you are hereby required to attend in person before this Court on the……..… day of……..…….. 20 ……..… at……..…o'clock in the noon to show cause why you should not be required to enter into a recognizance, with or without sureties, to keep the peace or be of good behaviour.

Given under my hand and the stamp of the Court this……..… day of ……..… 20……..

(Stamp) *Magistrate*

Copy of order to accompany summons or warrant.

(Section 7 of the Criminal Procedure Code) –

(a) The substance of the information received.

That……..…of……..… has threatened to and is likely to injure……..……..… ;

(b) The amount of the recognizance…….

(c) The term for which it is to be in force.

(d) The number, character and class of sureties, if any, required.

……sureties, each in…….

(Stamp) *Magistrate*

Form II

RECOGNIZANCE TO KEEP THE PEACE OR TO BE OF GOOD BEHAVIOUR

(Section 16 of the Criminal Procedure Code 2019)

WHEREAS I……. have been called upon to enter into a recognizance in the amount of £……..to keep the peace [or to be of good behaviour towards……..] for the period of…… from today's date.

I hereby bind myself in these terms and in the event of making default agree to pay part or all of the said sum, as ordered by the Court.

This ……..day of…….. 20…….

Signature

(where sureties are required, add)

We hereby bind ourselves jointly and severally in the sum of £……..… to answer that the above-named will keep the peace towards ……..during the said term.

First Surety *Second Surety*

Name……
……..

Address……
…….

Occupation……..
…….

Entered into before me this…… day ……..of ……20…. , at…….

(Stamp) *Magistrate*

Form III

WARRANT OF COMMITMENT ON FAILURE TO FIND SECURITY TO KEEP THE PEACE OR BE OF GOOD BEHAVIOUR

(Section 18 of the Criminal Procedure Code 2019)

To……

WHEREAS……..of…… ……appeared before me

on the…… day of…… in obedience to a summons

calling upon him to show cause why he should not enter into a recognizance in the sum of £……to keep the peace [to be of good behaviour towards …….]

AND WHEREAS an order was then made requiring the said…… to enter into such recognizance with (*or* without) sureties for a period of ……and he has failed to comply with the said order:

This is to empower and require you the said…….. to

receive the said…… together with this warrant, and him safely to keep in custody for the said period of……. and unless and until he enters into the said recognizance, in which event you shall forthwith make report of the matter to this Court, and return this your warrant with an indorsement certifying the manner of its execution.

Given under my hand and the stamp of the Court this……..day of……. 20…….

(Stamp) *Magistrate*

Form IV

SUMMONS TO AN ACCUSED PERSON

(Section 63 of the Criminal Procedure Code 2019)

To……. of…….

WHEREAS your presence is necessary to answer to a charge of …….you are hereby required to appear in person before the Magistrate's Court at …….on the……. day of……. at……. o'clock in the ……noon. Herein fail not.

Dated this……. day of……. 20 …

(Stamp) *Chief Justice/Magistrate/ Registrar of the Supreme Court*

Form V

WARRANT OF ARREST

(Sections 71 and 72 of the Criminal Procedure Code 2019)

To all Police Officers.

WHEREAS……. of……. is

charged with the offence of……. you are hereby directed to arrest the said …… and to produce him before the Magistrate's Court at …… in execution of this your warrant and herein fail not.

Dated this……. day of……. 20…..

(Stamp) *Chief Justice/Magistrate/Registrar of the Supreme Court.*

Form VI

SECURITY OR SURETY TAKEN BY A COURT

(Section 29 of the Criminal Procedure Code 2019)

I……. of …….being charged with the offence of……. and being required to appear before the Magistrate's Court at ……on the ….day of ……next DO HEREBY BIND myself to attend the said Court on the date named and to continue so to attend until the trial of my case shall be concluded, and should I fail to do so, I bind myself to forfeit to the Court the security in the sum of £…….

Signature and address

…….day of……. 20...

SURETIES. We jointly and severally declare ourselves and each of us sureties for the appearance of the said …….as above set out, and in case of his making default therein we hereby bind ourselves severally to forfeit to the Court the sum of £…….

First Surety:	*Second Surety:*
Name ……	……...
Address ……	……..
Occupation ……..	……..

Entered into before me this ……day of ……..20……

(Stamp) *Magistrate*

Form VII – BAIL FORM (Section 31(1) of the Criminal Procedure Code 2019)

BRITISH INDIAN OCEAN TERRITORY

BAIL FORM

Date of Decision:

Accused: Offence(s):
Address:
Date of Birth:

DECISION:

☐ You are remanded to appear before the [Magistrate's Court for the British Indian Ocean Territory] [Supreme Court] on at am/pm or on such date, time and place as you may be notified by that Court
☐ You have been GRANTED unconditional / conditional bail
☐ You have been REFUSED bail and remanded in custody / police detention
☐ You have consented to be remanded in your absence until

BAIL GRANTED – CONDITIONS TO BE COMPLIED WITH:	
Pre-release	☐ To provide surety / sureties in the sum of / totalling £ (each) ☐ To provide a security in the sum of £ to be deposited with the Court ☐ To surrender your passport / passport to be retained by Police / Customs / Immigration
Post- release	☐ To live and sleep each night at [or the above address] ☐ To be indoors at your bail address between the hours of and ☐ During the hours of curfew to present yourself at your front door to a Police Officer as requested ☐ Report to the Police Station between and on Mon Tue Wed Thu Fri Sat Sun ☐ Not to go to / enter ☐ Not to contact directly or indirectly ☐ Not to apply for any international travel documents

THESE CONDITIONS ARE IMPOSED TO ENSURE THAT YOU	Other conditions:
☐ Surrender to custody ☐ Do not commit an offence ☐ Do not interfere with witnesses/obstruct justice ☐ For your own protection	

Bail granted

☐ Reasons when opposed by prosecution:
☐ no significant risk of offending on bail
☐ no real prospect of a custodial sentence

BAIL REFUSED – Exception(s) to bail	
☐ Fail to surrender *[because failed to surrender to bail before] [because breached bail conditions before] or [because been convicted and failed to surrender or breached bail conditions before]* ☐ Commit an offence *[because this matter is said to have occurred whilst on bail] [because breached bail conditions before] or [been convicted and breached bail conditions before]* ☐ Interfere with witnesses/obstruct justice *[because breached bail conditions before] or [because been convicted and breached bail conditions before]* ☐ Commit an offence by engaging in conduct causing a person physical or mental injury or to fear physical or mental injury *[because breached bail conditions before]* ☐ Offence alleged to have been committed whilst on bail for another matter ☐ Own protection ☐ Serving prisoner ☐ Impracticable to obtain sufficient information for bail decision ☐ Section 30(6) restriction	
REASON(S) for finding exception(s) ☐ Nature & seriousness of offence and likely sentence if convicted ☐ Previous bail history ☐ Character, antecedents, associations & lack of community ties ☐ Strength of evidence ☐ Sec. 50(6) restriction ☐ Risk of offending and causing mental or physical injury to another ☐ Other reason(s)	**Certificate of full bail argument** ☐ It is hereby certified that the court today heard full argument in support of the grant of bail to the accused **Magistrate/Senior Magistrate/ Chief Justice**

Form VIII

Summons re FORFEITED RECOGNIZANCE

(Section 34 of the Criminal Procedure Code 2019)

To……..

Whereas it has been proved to the satisfaction of the Court that the recognizance entered into by you in the amount of £…. on the……. day of ……has been forfeited by reason of……:

YOU ARE HEREBY required to pay the said amount of £ …… or to appear before this Court on the…….. day of……next at …..o'clock in the ….noon to show cause why the said sum of £…… should not be paid.

Given under my hand and the stamp of the Court this……day of ….…… 20..

(Stamp) *Magistrate*

Form IX

[Intentionally left blank]

Form X

SUMMONS TO A WITNESS

(Section 111 of the Criminal Procedure Code 2019)

To……..

WHEREAS complaint has been made before me that……of ……has committed the offence of……..

You are hereby summoned to appear before the Magistrate's Court at…… on the… day of……next at ….o'clock ……noon to testify what you know concerning the matter of the said complaint, and so on from day to day until the trial be concluded.

Given under my hand and the stamp of the Court, this……day of……20…….

(Stamp) *Magistrate*

Form XI

WARRANT TO COMPEL ATTENDANCE OF A WITNESS

(Section 112 of the Criminal Procedure Code 2019)

To all Police Officers.

WHEREAS complaint has been made that……of ……..

has committed the offence of…….. and it has been made to appear that ……..of……..can give evidence concerning the said offence: and WHEREAS the Court is satisfied on oath that the said…….. will not of his own accord attend as witness on the hearing of the said complaint:

This is to authorise you to arrest the said…….. and bring him before the Magistrate's Court at……on the……day of …….. next to be examined touching the offence complained of.

Given under my hand and the stamp of the Court, this …..day of ……20..

(Stamp) *Magistrate*

Form XII

WARRANT OF COMMITMENT TO PRISON ON FAILURE TO PAY COMPENSATION

(Section 200 of the Criminal Procedure Code 2019)

To……..

WHEREAS on the…….. day of……..20..
one…….. lodged a complaint against …….

AND WHEREAS at the hearing the Court adjudged the said complaint to be frivolous (*or* vexatious) and dismissed the same and made an order that the complainant should pay to the accused the sum of £……. by way of compensation and costs or in default be imprisoned for a period of……

AND WHEREAS the complainant has failed to comply with the said order of the Court:

This is to authorise and require you the said…… to receive the said…… together with this warrant, and keep him in custody for the said period unless the said sum be sooner paid in which event you shall forthwith set him at liberty, returning this warrant with an indorsement certifying the manner of its execution.

Given under my hand and the stamp of the Court this……day of……20..

(Stamp) *Magistrate*

Form XIII

COMMITMENT ON ADJOURNMENT OR REMAND

(Sections 38 and 136 of the Criminal Procedure Code 2019)

To……

WHEREAS…… stands charged with the offence of ……

these presents are to command you to lodge the said……

in the prison at……and him safely there to keep until the…… day of ……next when you shall bring the said …… before this Court at……o'clock in the …. noon.

Given under my hand and the stamp of the Court this …. day of……..…… 20..

(Stamp) *Magistrate*

Further Remands

Date	*Remanded to*	*Signature of Magistrate*
……	……	……
……	……	……

Form XIV

[*Intentionally left blank*]

Form XV

WARRANT OF COMMITMENT

(Section 176 of the Criminal Procedure Code 2019)

To……

WHEREAS ……of…… was on this day convicted before this Court of the offence…… under section …… of the…… and was sentenced to……

You are hereby required to receive the said ……into your custody together with this warrant, and carry the sentence specified above into execution according to law.

Given under my hand and the stamp of the Court this …….day of ……20……

(Stamp) *Chief Justice/Magistrate*

Form XVI

WARRANT TO LEVY A FINE BY DISTRESS AND SALE

(Section 190 of the Criminal Procedure Code 2019)

To……

WHEREAS…… was on the……day of…… 20…….. convicted before me of the offence of…… and sentenced to pay a fine of ……

AND WHEREAS the said…… has not paid the same or any part thereof:

This is to authorise and require you to make distress by seizure of any movable or immovable property belonging to the said ……which may be found within the Territory, ……and, if within ……days of such distress the said sum be not paid, to sell by public auction the property distrained, or so much thereof as shall be sufficient to satisfy the said fine and thereupon return this warrant with an indorsement certifying the manner of its execution.

Given under my hand and the stamp of the Court, this……day of ……20……

(Stamp) *Magistrate*

Form XVII

WARRANT TO BRING UP A WITNESS WHO HAS REFUSED TO ATTEND IN PURSUANCE OF A SUMMONS

(Section 112 of the Criminal Procedure Code 2019)

To all Police Officers.

Whereas by the statement on oath of…… it appears to me, …… Magistrate, that there is reason to believe that …… is a material witness to prove an offence of…… lately committed:

And whereas the said…… having been duly summoned to give evidence touching the same, has neglected to appear in pursuance of the said summons:

This is, therefore, in Her Majesty's Name to command you to bring before me, the said Magistrate, at the court house at ……o'clock in the …..noon on the……day of …… 20……, the body of the said …… so that he may then and there give evidence touching ….....

Given under my hand and the stamp of the court this……day of ……20….

(Stamp) *Magistrate*

Form XVIII

FORM OF COMMITMENT OF WITNESS FOR REFUSING TO GIVE EVIDENCE

(Section 125 of the Criminal Procedure Code 2019)

To all Police Officers and to……

Whereas I have issued a summons under my hand directed to …… of ……requiring his attendance before me …… Magistrate, to give evidence touching……

And whereas the said ……has without sufficient excuse refused to give evidence:

These are therefore in Her Majesty's Name to command you to cause the said…… to be taken and delivered to the said…… together with this precept; and you the said……are hereby required to receive the said…… in prison and there to keep the said ……for the space of……days, and for your so doing this shall be your sufficient warrant.

Given under my hand and the stamp of the Court this……day of…….……20..

(Stamp) *Magistrate*

Form XIX

WARRANT OF COMMITMENT FOR NON PAYMENT OF FINE AND COSTS

(Section 192 of the Criminal Procedure Code 2019)

To…….

and……

WHEREAS on the…… day of……

…… was duly convicted before me ……. Magistrate, of having committed the offence of…… and was sentenced to a fine of £….. and further to pay the sum of £…… for costs, or in default thereof to be imprisoned for a period of……

WHEREAS the said …….. has not paid the said fine and costs.

THESE ARE THEREFORE in Her Majesty's Name to command you the said …… to cause the said……

to be conveyed to the Prison there to deliver him to ……

and you, the said ……. are hereby required to receive …….. in prison and keep him there for the said period, unless the said sum be sooner paid or until delivered from your custody by due course of law and for so doing this shall be your sufficient warrant.

Given under my hand and the stamp of the Court, this …day of ……..…… 20…

(Stamp) *Magistrate*

SCHEDULE 4 (Sections 234, 258 and 262)

FEES

Fees to be paid in the Registry	£ p
For receiving information	5.00
For issuing summons or warrant	5.00
For drawing up bail notice	5.00
For drawing up original conviction	5.00
For copy of same	1.00
For depositing notice of appeal	50.00
For taking recognizance of applicant	5.00
For copy of record, etc., per page or part thereof	1.00
For swearing affidavit	5.00
For filing affidavit	1.00

INTERPRETER'S FEES

Any interpreter other than a salaried public officer for every attendance before the Court shall be entitled to a fee to be fixed by the Chief Justice or Magistrate according to the duration of the attendance or other circumstances connected with the case.

FEES TO BE TAKEN BY MAGISTRATE UNDER SECTIONS 234 and 258

For drawing case and copy –	£ p
When the case does not exceed five folios of 100 words each	100.00
When it exceeds five folios, for each additional folio	20.00
For recognizances to be taken in pursuance of section 234	50.00
For every enlargement of renewal thereof	5.00
For certificate of refusal of Case	5.00

SCHEDULE 5 (Section 265)

Fixed Penalty Offences

Penal Code 1981 Section numbers:	General nature of offence:
76(a)	Threatening violence with intent to cause alarm.
111(c)	Wasting Police time.
113	Disobedience of lawful orders.
166(h)	Being drunk and incapable in a street or public place.
171A(13)	Consuming alcoholic beverage in a public place.
176(1)(e)(ii)	Using public telephone to send message known to be false, for the purpose of causing annoyance, inconvenience or needless anxiety.
176(1)(j)(i)	Graffiti.
176(1)(k)	Littering.
176(1)(m)	Urinating in a public place.
176(1)(f)	Noise nuisance.
The Environmental Protection (Historic Sites and Monuments) Ordinance 2019 Section numbers:	General nature of offence:
3(1)	Damaging, destroying or removing any part of a designated historic site or monument.
4(2)	Contravening a condition attached to a permit.

SCHEDULE 6 (Section 266(4))

Form of Fixed Penalty Notice

FIXED PENALTY NOTICE

Part XVII of the Criminal Procedure Code 2019

[Notice official number]

l. To: (*name of recipient*)

2. Circumstances constituting offence.

It is alleged that you have committed an offence under section (*section number*) of the Penal Code 1986. The circumstances alleged to constitute that offence are as follows:

(*Set out sufficient particulars of the offence alleged, including date and approximate time, to give the recipient reasonable information about what he is alleged to have done*)

3. Options open to recipient of notice.

(a) You have the opportunity to discharge any liability to be convicted of the above offence if you pay the fixed penalty of £50. If you wish to do that, you must pay the fixed penalty to the clerk to the Magistrate's Court within the period indicated in paragraph 4 below (**the suspended enforcement period**).

(b) Alternatively, you may request a hearing by the Court in respect of that offence at which you may contest liability for the offence or seek the Court's determination as to the appropriate penalty. Such a request must be made, in writing, to the clerk to the Magistrate's Court and be lodged with the clerk, during normal working hours, within the suspended enforcement period.

NOTE: No proceedings will be brought against you for the above offence during the suspended enforcement period. Nor will such proceedings be brought thereafter if you have, during that period, paid the fixed penalty. But if, by the end of that period, you have neither paid the fixed penalty nor requested a hearing by the Court, you will automatically be liable, without further proceedings, to pay a sum of £75. This sum will be enforceable against you as a fine.

4. Last day of suspended enforcement period (*insert date*).

(*This may not be less than 21 days from the date of this Notice*.)

……. ….…….

(Date of Notice) (Signature and rank of Police Officer issuing notice)