

Criminal Procedure Act 1980-1981

COOK ISLANDS

CRIMINAL PROCEDURE ACT 1980-81

ANALYSIS

Title

1. Short Title and commencement
2. Interpretation
3. Application

PART I PROCEDURE FOR PROSECUTION OF OFFENCES

Arrest

4. Arrest without warrant
5. Power to enter premises without warrant to arrest offended or prevent offence
6. Warrant to arrest defendant
7. Power to enter premises to arrest with warrant
8. Withdrawal of warrant
9. Duty of persons arresting

Information

10. Commencement of proceedings
11. Any person may lay an information
12. Time for laying information
13. Information to be in prescribed form
14. Prior consent to prosecution
15. Information to be for one offence only
16. Information to contain sufficient particulars
17. Further particulars
18. Objections to information
19. Information to be filled in nearest office of Court
20. Information for perjury or fraud
21. Information for treason
22. Issue of summons to defendant
23. Issue of summons or warrant for attendance of witness
24. Withdrawal of warrant for attendance of witness

25. Mode of service of documents on defendant
26. Who may serve documents on defendant
27. Mode of service of documents on person other than defendant
28. Who may serve documents on person other than defendant
29. Mode of service in particular cases
30. Proof of service
31. Translation of documents into Maori language

Taking of Evidence

32. Evidence of person about to leave the Cook Islands
33. Statement of person dangerously ill
34. Provision for person in custody to be present at taking of statement
35. Evidence of witness out of Court

Place of Hearing

36. Place of hearing of information
37. Changing place of hearing
38. Powers of Court as to custody or bail of defendant
39. Attendance of witnesses at substituted Court
40. Powers of substituted Court to compel attendance
41. Witnesses' expenses where information removed at instance of the Crown

General Provisions as to Trial

42. Two or more information to be tried together
43. Two or more defendants may be tried together
44. Parties to offences
45. Accessories after the fact, and receivers
46. Withdrawal of information by informant
47. Amendment of information
48. Attempt proved when offence charged
49. Offence proved when attempt charged
50. Part of charge proved
51. Special provisions in case of treason
52. Who may conduct proceedings against defendant
53. Presence and appearance of defendant
54. Bench warrant
55. Powers of Court when informant does not appear
56. Trial of defendant in his absence
57. Powers of Court when neither party appears
58. Dismissal for want of prosecution not a bar to other proceedings
59. Court to proceed when both parties appear

Pleading

60. Plea of guilty by notice to Registrar
61. Pleas on defendant being charged
62. Plea on behalf of corporation
63. Special pleas
64. Evidence of former trial
65. Pleas of previous acquittal or conviction
66. Charge of previous conviction
67. Second accusation
68. Withdrawal of plea of guilty

Conduct of Trial

69. Admission
70. Evidence
71. Caution to defendant when undefended
72. Question to defendant when undefended
73. Evidence to be on oath
74. Addresses
75. Adverse comment
76. Power to clear Court and forbid report of proceeding
77. Witness refusing to give evidence may be imprisoned
78. Witnesses may be excluded
79. Adjournment
80. Power to adjourn for inquiries after conviction
81. When defendant may be remanded in custody
82. Stay of proceedings

Bail

83. Bail
84. Young defendants
85. Warrant for detention
86. Defendant remanded in custody may request bail
87. Release of defendant granted bail
88. Variation of conditions of bail
89. Form of bail bond and notice
90. Arrest of absconding defendant
91. Arrest of defendant failing to report to Police as required
92. Arrest of defendant failing to attend hearing
93. Estreat of bail bond
94. Defendant in custody may be brought before Court
95. Defendant may be admitted to bail in certain cases

Search

- 96. Search warrants
- 97. Disposal of things seized

Protection from Responsibility

- 98. Protection from responsibility

Preliminary Proceedings

- 99. Preliminary proceedings
- 100. Deposition of witness after defendant committed for trial

General Provisions

- 101. Adjourning trial for witnesses
- 102. Retrial of offence tried by a Justice or Justices
- 103. Retrial of offence tried by Judge
- 104. Practice on retrials
- 105. Removal of trial on question of law arising
- 106. Reservation by Justice of question of law for determination by Judge
- 107. Record of proceedings

PART II SENTENCE AND ENFORCEMENT OF PENALTIES

- 108. Discretion of Court as to lesser penalties
- 109. Motion in arrest of judgment. Sentence
- 110. Drawing up of conviction
- 111. Power to discharge defendant after committal for trial
- 112. Power to discharge defendant without conviction or sentence
- 113. Court may order convicted person to come up for sentence if called upon
- 114. Cumulative sentences
- 115. Correction of erroneous sentences
- 116. Execution of warrant of commitment
- 117. Enforcement of penalties
- 118. Enforcement of Court orders

Sentence of Death

- 119. Form of sentence in capital cases
- 120. Sentence of death not to be passed on person under 18 years of age or pregnant woman

PART III KEEPING THE PEACE

121. Application for order for bond to keep the peace
122. Application to be treated as information
123. Making of order for bond
124. Making of order for bond where person charged with offence
125. Refusal to enter into bond
126. Person imprisoned in default of finding sureties may be released
127. Order calling up bond

PART IV APPEALS

128. Arrest of appellant who has absconded or is about to abscond while on bail
129. Surrender of appellant released on bail and discharge of surety
130. Presentation of case by party in custody
131. Appeal against conviction or sentence or both
132. Custody of defendant after determination of appeal
133. Resumption of probation after determination of appeal
134. Estreat of bail bond where appeal against decision
135. No Court fees payable on appeal by appellant sentenced to imprisonment

PART V MISCELLANEOUS PROVISIONS

136. Acts not generally to be done on Sunday
137. Proceedings not to be questioned for want of form
138. Consent of Attorney-General to proceedings in certain cases for offences on ships or

aircraft

139. Civil remedy not suspended
140. Regulations
141. Repeals

Schedules

1980-81, No. 28

An Act to make provision for the procedure to be followed in criminal proceedings in the High Court of Cook Islands.

(5 June 1981)

BE IT ENACTED by the Legislative Assembly of the Cook Islands in Session assembled, and by the authority of the same, as follows:

1. Short Title and commencement- (1) This Act may be cited as the Criminal Procedure Act 1980-81.

(2) This Act shall come into force on the date of the commencement of the Constitution Amendment (No. 9) Act 1980-81.

2. Interpretation- (1) In this Act, unless the context otherwise requires,-

"Act" means an Act of the Parliament of the Cook Islands; and includes an Act or Ordinance of the Legislative Assembly of the Cook Islands and an Ordinance of the Legislative Council of the Cook Islands;

"Constable" includes any member of the Police;

"Constitution" means the Constitution of the Cook Islands;

"Cook Islander" means a person belonging to the part of the Polynesian race indigenous to the Cook Islands; and includes any person descended from a Cook Islander;

"Decision" includes any judgment, decree, order, writ, declaration, conviction, sentence, opinion or other determination;

"Court of Appeal" means the Court of Appeal of the Cook Islands;

"Defendant" means any person charged with an offence; and includes, where appropriate, a defendant's counsel; and "defence" has a corresponding meaning;

"Enactment" has the same meaning as in the Constitution;

"High Court" or "Court" means the High Court of the Cook Islands;

"Informant" means the person by whom an information is laid; and includes, in respect of any charge where an information has not been laid, the person responsible for bringing the charge; and also includes, where appropriate, an informant's counsel or the prosecutor in respect of the charge;

"Judge" means a Judge of the High Court;

"Justice" means Justice of the Peace for the Cook Islands appointed under the provisions of the Constitution;

"Offence" means any act or omission for which under any enactment any person can be punished other than solely by means of a civil proceeding;

"Prison" means a prison as defined in the Prisons Act 1967: and includes a police gaol;

"Prosecutor", in relation to any criminal proceedings, means-

(a) The Attorney-General or the Solicitor-General, as the case may be; and includes any legal officer or counsel or constable conducting the prosecution under the general or special instructions of the Attorney-General;

(b) In a prosecution under the Income Tax Act 1972, the Collector of Inland Revenue; and includes any person conducting the prosecution under the authority of the Collector of Inland Revenue; and also includes the counsel for that person;

(c) In a prosecution under the Public Moneys Act 1969, any person conducting the prosecution under the authority of the Minister of Finance; and includes the counsel for that person;

(d) In a private or local body prosecution, the informant; and includes his counsel;-

and "prosecution" has a corresponding meaning;

"Registrar" means the Registrar of the Court; and includes any Deputy Registrar;

"Representative", in relation to a corporation, means a person duly appointed by the corporation to represent it for the purpose of doing any act or thing which the representative of a corporation is by this Act authorised to do;

A reference to a numbered form is a reference to a form so numbered in the First Schedule to this Act.

(2) A statement in writing, which need not be under seal, but which purports to be signed by any person having, or being one of the persons having, the management of the affairs of a corporation, to the effect that the person named in the statement has been appointed as the representative of the corporation for the purposes of this Act, shall be admissible without further proof as prima facie evidence that that person has been so appointed.

3. Application - This Act shall apply to all proceedings in the Court where a person is proceeded against for an offence:

Provided that as to any matter of criminal procedure for which no special provision has been made by this Act or by any other law for the time being in force in the Cook Islands, the law as to criminal procedure for the time being in force in New Zealand shall be applied so far as it does not conflict or be inconsistent with this Act or any other law for the time being in force in the Cook Islands.

(2) Nothing in this Act shall be construed to limit or affect in any way any provision of any other enactment conferring on the Court any power to pass a sentence or impose a punishment prescribed by any Act, or otherwise to deal with any offender.

PART I PROCEDURE FOR PROSECUTION OF OFFENCES

Arrest

4. Arrest without warrant - (1) No one shall be arrested without a warrant except pursuant to the provisions of this Act or of some other enactment expressly giving power to arrest without a warrant.

(2) Any person may arrest without a warrant any person whom he finds committing any offence punishable by death or by imprisonment for life or for three years or more.

(3) Any constable, and all persons whom he calls to his assistance, may arrest and take into custody without a warrant-

(a) Any person whom he finds committing, or whom he has good cause to suspect of having committed, any offence punishable by death or imprisonment for life or for three months or more; or

(b) Any person who within his view commits or commences to commit an offence against any of the provisions of the Transport Act 1966 and who either-

(i) Fails to give his name and address on demand; or

(ii) after being warned by him to desist, persists in committing that offence; or

(c) Any person whom he finds committing, or whom he has good cause to suspect of having committed, a breach of the peace, or whom he finds in any public place, and has good cause to think is drunk, and whom he has good cause to believe might cause harm to others or come to harm himself as a result of the said breach of the peace or drunkenness.

(4) The foregoing provisions of this section shall be read subject to the express provisions of any enactment imposing any limitation, restriction or condition on the exercise of any power to arrest without a warrant conferred on any constable by that enactment in respect of any specified offence or class of offences.

(5) Where under any enactment other than this Act any person, not being a constable, has power to arrest any other person without a warrant, any constable may exercise that power in the same cases and in the same manner as that person.

(6) Nothing in this section shall limit or affect any of the provisions of Part III of the Crimes Act 1969 (which relates to matters of justification or excuse).

5. Power to enter premises without warrant to arrest offender or prevent offence -

Where any constable is authorised by this Act or by any other enactment to arrest any person without a warrant, that constable, and all persons whom he calls to his assistance, may enter on any premises, without a warrant and by force if necessary, to-

(a) Arrest that person if the constable-

(i) Has found that person committing any offence punishable by death or imprisonment for life or for three months or more and is freshly pursuing that person; or

(ii) Has good cause to suspect that that person has committed any such offence on those premises; or

(b) Prevent the commission of any offence that would be likely to cause immediate and serious injury to any person or property, if he has good cause to suspect that any such offence is about to be committed.

(2) If, in any case to which this section applies, the constable is not in uniform and any person in actual occupation of the premises requires him to produce evidence of his authority, he shall, before entering or proceeding further on the premises, produce his badge or other evidence that he is a constable.

(3) Nothing in this section shall affect in any way the power of any constable to enter any premises pursuant to a warrant.

6. Warrant to arrest defendant - (1) When an information has been laid and whether or not a summons has been issued or served,-

- (a) A Judge may, if he thinks fit, issue a warrant, which shall be in form 1, to arrest the defendant and bring him before the Court; or
- (b) A Justice or the Registrar or a Deputy Registrar (not being a constable) may issue a warrant, which shall be in form 2, to arrest the defendant and bring him before the Court if the defendant is liable on conviction to death or to imprisonment and if, in the opinion of the Justice or the Registrar or Deputy Registrar-
 - (i) A warrant is necessary to compel the attendance of the defendant; or
 - (ii) A warrant is desirable, having regard to the gravity of the alleged offence and the circumstances of the case.

(2) Every warrant to arrest a defendant shall be directed either to any constable by name or generally to every constable, and any such warrant may be executed by any constable.

7. Power to enter premises to arrest defendant with warrant - (1) For the purposes of executing any warrant referred to in section 6 of this Act, the constable executing it may at any time enter onto any premises, by force if necessary, if he has good cause to suspect that the defendant is on those premises.

(2) If, in any case to which this section applies, the constable is not in uniform and any person in actual occupation of the premises requires him to produce evidence that he is a constable, he shall, before entering or proceeding further on the premises, produce his badge or other evidence that he is a constable.

8. Withdrawal of warrant - Any warrant to arrest a defendant may be withdrawn by the person who issued it at any time before it is executed.

9. Duty of persons arresting - (1) It is the duty of every one arresting any other person to inform promptly the person arrested of the grounds of his arrest, and of any charge against him and to allow him to consult a legal practitioner of his own choice without delay.

(2) It is the duty of every one who arrests any other person pursuant to any process or warrant-

(a) If he has the process or warrant in his possession at the time of the arrest, to produce it if required by that person to do so:

(b) If he does not have the process or warrant in his possession at the time of the arrest, to show it to the arrested person as soon as practicable after the arrest, if that person so requires.

(3) Where under any enactment any person other than a constable has, by virtue of his office, a power of arrest without a warrant he shall, whenever he arrests any other person pursuant to that power,-

(a) If he has evidence of his appointment to that office in his possession at the time of the arrest, produce it if required by that person to do so;

(b) If he does not have evidence of his appointment in his possession at the time of the arrest, show it to the arrested person as soon as practicable after the arrest, if that person so requires.

(4) A failure to fulfil any of the duties mentioned in the foregoing provisions of this section shall not of itself deprive the person arresting, or his assistants, of protection from criminal responsibility or civil proceeding, but shall be relevant to any inquiry whether the arrest might not have been affected, or the process or warrant executed, by reasonable means in a less violent manner.

(5) Every person who is arrested on a charge of any offence shall be brought before the Court, as soon as possible, and in any case no later than 48 hours after the time of his arrest, to be dealt with according to law.

(6) Every person arrested in the Cook Islands for an offence against the Customs Act 1913 pursuant to section 243 of the Customs Act 1913 shall be brought before a Judge, who shall exercise the powers conferred by that section on a Magistrate.

(7) Nothing in this section shall limit or affect the express provisions of any enactment whereby-

(a) The burden of proving the absence of reasonable or probable cause, or the absence of justification, for any arrest is on any person:

(b) Any person having, by virtue of his office, a power of arrest without a warrant is entitled, in any specified circumstances, to exercise that power without the production of evidence of his appointment to that office, or is required, in exercising the power, to comply with any specified conditions or restrictions in addition to or instead of producing evidence of his appointment.

Information

10. Commencement of proceedings - (1) Except where a person has been arrested without a warrant, all proceedings brought under this Act shall be commenced by the laying of an information in writing.

(2) Where a person has been arrested without a warrant and no information has been laid, particulars of the charge against him shall be set out in a charge sheet.

(3) The provisions of this Act shall apply with respect to every entry in a charge sheet as if that entry were an information.

11. Any person may lay an information - (1) Subject to subsection (2) of this section, and except where expressly otherwise so provided by any enactment, any person who has reasonable cause to suspect that an offence has been committed may lay an information for that offence.

(2) Every prosecution for an offence against the Customs Act 1913 shall be commenced by an information laid by a Collector of Customs.

12. Time for laying information - Except where some other period of limitation is provided by any enactment, every information for an offence the maximum punishment for which does not exceed 3 months' imprisonment or a fine of \$50 or both such imprisonment and such fine

shall be laid within 12 months from the time when the matter of the information arose.

13. Information to be in prescribed form - Every information shall in form 3 and shall be substantiated on oath before the Registrar or a Justice.

14. Prior consent to prosecution - Where any person is charged with an offence in respect of which the leave or consent or certificate of a Judge or of the Attorney-General or of any other person to the taking of the prosecution is required, the leave or consent or certificate may be endorsed on the information or set out in a memorandum, and the endorsement or memorandum shall be acceptable by the Court as proof that the leave or consent or certificate has been given.

15. Information to be for one offence only - (1) Except where it is otherwise provided by any enactment, every information shall be for one offence only:

Provided that an information may charge in the alternative several different matters, acts, or omissions, if these are stated in the alternative in the enactment under which the charge is brought.

(2) The defendant may, at any time during the hearing of any information which is framed in the alternative, apply to the Court to amend or divide the information on the grounds that it is so framed as to embarrass him in his defence.

(3) The Court may, if satisfied that the defendant will be so embarrassed in his defence, either direct the informant to elect between the alternatives charged in the information, in which case the information shall thereupon be amended accordingly and the hearing shall proceed as if the information had been originally framed in the amended form, or direct that the information be divided into two or more charges, in which case the hearing shall proceed as if an information had been laid for each charge.

(4) Where on any information framed in the alternative the defendant is convicted, the Court may, and shall, if so requested by the defendant, limit the conviction to one of the alternative charges.

16. Information to contain sufficient particulars - (1) Every information shall contain such particulars as will fairly inform the defendant of the substance of the offence with which he is charged.

(2) The particulars of the nature of the alleged offence shall, so far as is possible, use the words of the enactment creating the offence, and may refer to any portion of that enactment, and, in estimating the sufficiency of any such information, the Court shall have regard to such words or reference.

(3) The particulars shall include the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed.

(4) Except as hereinbefore provided, no information shall be held to be defective for want of form or substance.

17. Further particulars - The Court may, before ruling upon the sufficiency of any

information, and at any time if satisfied that it is necessary for a fair trial, order that further particulars in writing be furnished by the informant or prosecutor.

18. Objections to information - (1) No objection to an information shall be taken by way of demurrer, but, if an information does not state in substance an offence, the prosecutor or the defendant may move the Court to amend it, or the defendant may move the Court to quash it or in arrest of judgment, as provided in this section.

(2) If the motion is made before the defendant pleads, the Court shall in its discretion either quash the information or amend it.

(3) If the defect in the information appears to the Court during the trial, the Court may, if it thinks fit, amend it, or may in its discretion quash the information or leave the objection to be taken in arrest of judgment.

19. Information to be filed in nearest office of Court - (1) As soon as practicable after an information is laid, it shall be filed by the informant in the office of the Court which is nearest by the most practicable route to the place where the offence was alleged to have been committed or where the informant believes that the defendant may be found:

Provided that, if all the parties to the proceedings agree, the information may be filed in another office of the Court:

Provided also that failure to comply with the provisions of this section shall not be deemed to invalidate any proceedings.

(2) Notwithstanding anything in subsection (1) of this section, where two or more informations to which this Act applies are laid against the same defendant, it shall be a sufficient compliance with the provisions of this section if the informations are filed in an office of the Court in which any one of the informations could be filed or has already been filed.

(3) Nothing in this section shall apply in any case where there is a statutory provision to the contrary.

20. Information for perjury or fraud - (1) No information charging perjury, the making of a false oath or of a false statement, or the fabrication of evidence, or procuring the commission of any of those offences, shall be deemed insufficient on the ground that it does not state the nature or the authority of the tribunal before which the oath or statement was taken or made, or the subject of the inquiry, or the words used, or the evidence fabricated, or that it does not expressly negative the truth of the words used; but the Court may order that the prosecutor shall furnish further particulars in writing of what is relied on in support of the charge.

(2) No information charging any false pretence, or any fraud, or any attempt or conspiracy by fraudulent means, shall be deemed insufficient because it does not set out in detail in what the false pretence, or the fraud, or the fraudulent means consisted; but the Court may order that the prosecutor shall furnish further particulars in writing of those matters, or any of them.

21. Information for treason - (1) Every information for treason must state overt acts, an no

evidence shall be admitted of any overt acts, and no evidence shall be admitted of any overt act not stated unless it is otherwise relevant as tending to prove some overt act stated.

(2) The power of the Court to amend an information shall not extend to authorise the Court to add to the overt acts stated in the information.

22. Issue of summons to defendant - When an information has been laid any Justice or the Registrar or any Deputy Registrar (not being a constable) may issue a summons to the defendant, in form 4.

23. Issue of summons or warrant for attendance of witness - (1) Either the informant or the defendant may at any time obtain from any Justice or the Registrar a summons in form 5 calling on any person to appear as a witness at the hearing.

(2) Any summons issued under subsection (1) of this section may require the person summoned to bring with him and produce at the hearing such books, deeds, papers, writings, and photographs as may be mentioned in the summons.

(3) if any Judge is satisfied that any person whose evidence at the hearing is required by either the informant or the defendant will not attend to give evidence without being compelled to do so, then whether or not a summons has been issued or served, he may, if he thinks fit, issue a warrant in form 6 for the attendance of that person at the hearing.

(4) Every person commits an offence who, having been served with a summons under this section calling upon him to appear as a witness at the hearing, refuses or neglects, without sufficient cause, to appear or to produce any books, deeds, papers, writings, or photographs required by the summons to be produced, and is liable on conviction to a fine not exceeding \$40:

Provided that any person so summoned who refuses or neglects to appear shall be deemed to have done so with just excuse if he establishes to the satisfaction of the Court that there was not tendered to him at the time of the service of the summons or at some other reasonable time before the hearing such sum (if any) in respect of his expenses as may be prescribed, and if not prescribed as may be reasonable, and that either,-

(a) He was without the means to meet the cost of travel to the hearing; or

(b) He had reasonable grounds for believing that if he incurred the said cost he would not recover it on the day of the hearing from the party summoning him.

(5) Nothing in this section shall limit or affect any power of the Court to commit for contempt of Court.

24. Withdrawal of warrant for attendance of witness - Any warrant for the appearance of a person required as a witness may, by leave of a Judge or the Justice or Registrar who issued it, be withdrawn at any time before it is executed.

25. Mode of service of documents on defendant - Every summons to a defendant and every other document which is required to be served on a defendant shall be served on him by being delivered to him personally or by being brought to his notice if he refuses to accept it.

26. Who may serve documents on defendant - Every summons to a defendant and every other document which is required to be served on a defendant may be served by a constable, an officer of the Court, or any other person or member of a class of persons authorised by a Judge or the Registrar, either generally or in respect of a particular case or class of case.

27. Mode of service of documents on person other than defendant - Every summons calling on any person to appear as a witness, and every other document which is required to be served on any person other than the defendant, shall be served on that person in accordance with the provisions of section 25 of this Act, as if references in that section to the defendant were references to the person required to be served.

28. Who may serve documents on person other than defendant - Every summons calling on any person to appear as a witness, and every other document which is required to be served on any person other than the defendant, may be served by a constable, or an officer of the Court, by a party or his solicitor, or by any person authorised by a party or his solicitor to serve the summons or other document.

29. Mode of service in particular cases - (1) Notwithstanding anything in section 25 or section 27 of this Act, service of any document may be effected in accordance with the provisions of this section in any case to which those provisions apply.

(2) Where any person on whom any document is required to be served is living or serving on board any vessel (including any vessel belonging to any of Her Majesty's naval forces), it shall be sufficient service to deliver the document to the person on board who at the time of service is apparently in charge of the vessel.

(3) Where any such person is in any barracks, camp, or station while serving as a member of any of Her Majesty's naval or military or air forces, it shall be sufficient service to deliver the document at the barracks, camp, or station to the adjutant or to the officer for the time being in command of the unit or detachment to which the person to be served belongs.

(4) Where any such person is an inmate of any prison, it shall be sufficient service to deliver the document to the Superintendent or other officer apparently in charge of the prison.

30. Proof of service- (1) The service of any document may be proved by affidavit made by the person who served the document, showing the fact and the time and mode of service, or by that person on oath at the hearing or, where service is effected by an officer of the Court or a constable, by an endorsement on the copy of the document showing the fact and the time and mode of service. Any such endorsement shall be signed by the person who served the document.

(2) Every person who wilfully endorses any false statement of the fact, time, or mode of service on a copy of any document commits an offence, and is liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding \$400 or to both.

31. Translation of documents into Maori language - Where a document is served on any person who is a Cook Islander, the provisions of rule 325 of the Code of Civil Procedure of the High Court Act 1972 relating to translations of documents served on Maoris in civil proceedings shall apply.

Taking of Evidence

32. Evidence of person about to leave the Cook Islands - (1) A Judge or Justice may, on the application of the informant or the prosecutor or the defendant before the hearing of any information, make an order for the taking, before any Judge or Justice of the evidence of any person, if the Judge or Justice is satisfied that that person intends to depart from the Cook Islands before the hearing and that it is desirable or expedient in the interests of justice that his evidence should be so taken.

(2) Evidence given in accordance with this section and with any rules or regulations made under this Act may be tendered at the hearing as if it were given in the course thereof; and judicial notice shall be taken of the signature of any examining Judge or Justice to any deposition made pursuant to an order under this section.

(3) Where the Court hearing the charge against the defendant considers that, in the light of information put before it which was not known to the Judge or Justice who made the order, the order should not have been made, the Court may refuse to allow the evidence to be so tendered.

(4) Nothing in this section shall limit or affect any power of the Court to compel the personal attendance of any witness at the hearing.

33. Statement of person dangerously ill - (1) Where it appears to the satisfaction of a Judge or Justice that any person is able and willing to give material information relating to any offence or relating to any person accused of any offence, and, in the opinion of a medical officer, is dangerously ill, the Judge or Justice may take in writing, or direct the Registrar to take in writing, a statement on oath or affirmation of that person.

(2) The Judge, Justice, or Registrar who takes the statement shall thereupon sign it and shall add the day and place when and where it was taken and the names of the persons (if any) present at the taking of the statement.

(3) If the statement relates to an offence with which a person has already been charged, the statement shall be forwarded forthwith to the Registrar of the High Court, where it shall be recorded and preserved for such use as may be required of it.

(4) Any statement taken under this section may afterwards without further proof be read in evidence for or against the defendant, on the hearing of any information for any offence to which the statement relates, if-

(a) It is proved by such evidence as the Court of hearing considers sufficient (whether legally admissible or not) that the person who made the statement is dead or that there is no reasonable possibility that he will ever be able to travel or give evidence; and

(b) The statement purports to be signed by the Judge, Justice, or Registrar before whom it is purported to have been taken; and

(c) It is proved to the satisfaction of the Court of hearing that reasonable notice of the intention to take the statement was served upon the party other than the party on whose behalf the statement is proposed to be read, and that that other party or his counsel or solicitor had,

or would have had if he had chosen to be present, full opportunity of cross-examining the person who made the statement.

34. Provision for a person in custody to be present at taking of statement - Where a person who is in custody as served or has received a notice of an intention to take a statement as provide in section 33 of this Act, any Judge or Justice may by an order in writing direct the superintendent of the prison in which that person is detained to convey him to the place mentioned in the notice for the purpose of being present at the taking of the statement, and the superintendent shall convey him accordingly.

35. Evidence of witness out of Court - (1) Notwithstanding anything in this Act, a judge or Justice, on the application of the defendant or the informant, before or at the hearing, may make an order for the taking, before any other Judge or any Justice or any officer of the Court or other person or persons, at any place either within or outside the Cook Islands, of the evidence of the defendant or the informant or any witness for the defence or the prosecution, if the Judge or Justice is satisfied that it is desirable or expedient in the interests of justice that the evidence of the defendant, the informant, or the witness should be so taken.

(2) Evidence given in accordance with this section and with any rules or regulations made under this Act may be tendered at the hearing as if it were given in the course thereof; and judicial notice shall be taken of the signature of any Judge, Justice, officer, or other person to any deposition taken by him pursuant to an order under this section.

(3) Where the Court hearing the charge against the defendant considers that, in the light of information put before it which was not known to the Judge or Justice who made the order, an application under this section has been made for the purpose of delay or for any other improper purpose, or that there is undue delay in the taking of such evidence, the Court may hear and determine the charge without waiting for the evidence to be so taken or tendered at the hearing, or may refuse to allow the evidence to be so tendered.

(4) Nothing in this section shall limit or affect any power of the Court to compel the personal attendance of the defendant or of any witness at the hearing.

Place of Hearing

36. Place of hearing of information - Subject to section 37 of this Act, every charge shall be heard and determined in the Court in the island in which the information is filed.

37. Changing place of hearing - (1) where any person is charged with any offence and is to appear at any sitting of the Court (hereinafter referred to as the Court of hearing), and it appears to a Judge that it is expedient for the ends of justice that the defendant should be tried for that offence at some sitting of the Court other than the Court or sitting for trial at which he is to appear, or at which he would in the ordinary course of law be tried, the Judge, either of his own motion, or on application made by or on behalf of the prosecutor or the defendant, may by order, either before or at the time of hearing, direct that the defendant shall be tried at such sitting of the Court (hereinafter referred to as the substituted Court) as he thinks fit, held either within the island in which the information is filed or in some other island.

(2) Any application for an order as aforesaid may be made to a Judge when sitting in Court or in Chambers; and it shall not be necessary for the defendant to be brought or appear in person before the Judge, either upon the making or the determination of the application, or to plead in the Court of hearing.

(3) The Judge may make any such order subject to such conditions concerning bail and the payment of the costs of the prosecutor and witnesses, and of the removal of the defendant, and concerning the publication of any report or account of the proceedings in connection with the making of the order, and concerning any other matter or thing whatsoever, as the Judge in his discretion thinks fit.

(4) After any such order has been made, the Court of hearing shall take no further steps against the defendant in connection with the information, and all further proceedings shall be in the substituted Court.

(5) When such an order is made, the Registrar of the Court of hearing shall forthwith transmit to the Registrar of the substituted Court the information and any bail bond, depositions, examinations, or other documents relating to the alleged offence.

(6) On the making of an order under subsection (1) of this section, the Registrar shall forthwith give notice of the order to the superintendent of any prison in which the person charged is then held.

38. Powers of Court as to custody or bail of defendant- Where an order is made for the trial of any defendant at a substituted Court, the Judge of the Court of hearing may grant the defendant bail or commit him to a prison pending his trial.

39. Attendance of witnesses at substituted Court- Where any witness has been summoned to give evidence at the trial, the Registrar of the Court of hearing may give notice in writing to that witness of the change in the place of trial; and service of that notice on the witness shall have the same effect as if it were a summons to give evidence at the substituted Court.

40. Powers of substituted Court to compel attendance-(1) For the purposes of the trial before the substituted Court, any Judge may issue any process for apprehending the person to be tried, in the same manner as if the information were originally presented at the substituted Court.

(2) Any Judge shall also have in respect of the person charged the same powers as the Judge of the Court of hearing has under section 38 of this Act, and the provisions of that section shall apply accordingly, with all necessary modifications.

41. Witnesses' expenses where information removed at instance of the Crown- Where on the application of the prosecutor an order is made for the trial of any person at a substituted Court any Judge may issue a certificate, upon the production of which there may be paid, out of money appropriated by Parliament for the payment of witnesses, such sum as the Minister of Justice may approve to enable that person to defray the expenses of the attendance of his witnesses.

General Provisions as to Trial

42. Two or more informations may be tried together- (1) Any number of informations for any offences against a defendant may be tried together:

Provided that no information charging murder shall be tried with any other information.

(2) If the Court thinks it is desirable or expedient in the interests of justice to do so, it may order that the defendant shall be tried upon any one or more of such informations separately.

(3) Any such order may be made either before or in the course of the trial, and if it is made in the course of the trial the Court shall be discharged from giving a verdict on the informations on which the trial is not to proceed.

(4) The informations which are not then tried shall be proceeded upon in all respects as if they had been presented separately.

(5) If one sentence is passed upon any verdict of guilty on more than one information, the sentence shall be good if any of those informations would have justified the sentence.

43. Two or more defendants may be tried together- Any number of defendants may be tried together:

Provided that the Court may, at any time, order separate trials if it is satisfied that the interests of justice so requires.

44. Parties to offences- Everyone who is a party to any offence may be convicted either upon an information charging him with having committed that offence, where the nature of the offence will admit of such a course, or upon an information alleging how he became a party to it.

45. Accessories after the fact, and receivers- (1) Everyone charge with being an accessory after the fact to any offence, or with receiving property knowing it to have been dishonestly obtained, may be charged, whether the principal offender or other party to the offence or the person by whom the property was so obtained has or has not been charged or convicted, or is or is not amenable to justice; and the accessory may be charged either alone, as for a substantive offence, or jointly with the principal or other offender or person by whom the property was dishonestly obtained.

(2) Where any property has been dishonestly obtained, any number of receivers at different times of that property, or of any part or parts thereof, may be charged with substantive offences, and may be tried together, whether the person by whom the property was so obtained is or is not charged with them, or is or is not in custody or amenable to justice.

46. Withdrawal of information by informant- (1) Any information may by leave of the Court be withdrawn by the informant at any time before the defendant has been convicted or the information has been dismissed or, in any case where the defendant has pleaded guilty, before he has been sentenced or otherwise dealt with.

(2) On the withdrawal of an information the Court may award to the defendant such costs as it thinks reasonable, and any costs awarded may be recovered as if the costs were awarded on

a conviction.

(3) The withdrawal of an information shall not operate as a bar to any further or other proceedings against the defendant in respect of the same offence.

47. Amendment of information- (1) Subject to the succeeding provisions of this section, where the defendant appears to answer a charge, the Court may amend the information in any way at any time during the trial.

(2) Without limiting the generality of the powers conferred by subsection (1) of this section, the Court may amend an information by substituting one offence for another.

(3) Where, under the foregoing provisions of this section any charge is amended or substituted during the trial, the following provisions shall apply:

(a) Before the trial is continued, the charge as amended or substituted shall be stated to the defendant and he shall be asked how he pleads;

(b) The trial shall proceed as if the defendant had originally been charged with the amended or substituted offence, and any evidence already given shall be deemed to have been given in and for the purposes of the trial of the charge as amended or substituted, but either party shall have the right to recall and examine or cross-examine or re-examine any witness whose evidence has already been given in respect of the offence originally charged.

(4) The Court may, at the request of the defendant, adjourn the trial if it is of the opinion that he would be embarrassed in his defence by reason of an amendment or substitution made under this section.

48. Attempt proved when offence charged- Where the commission of the offence charged is not proved, but the evidence establishes an attempt to commit the offence, the defendant may be convicted of the attempt.

49. Offence proved when attempt charged- (1) Where an attempt to commit an offence is charged, but the evidence established the commission of the full offence, the defendant may be convicted of the attempt.

(2) After a conviction for that attempt, the defendant shall not be liable to be tried again for the offence which he was charged with attempting to commit.

50. Part of charge proved- (1) Every information shall be divisible; and, if the commission of the offence charged, whether as described in the enactment creating the offence or as charged in the information, necessarily includes the commission of any other offence, the defendant may be convicted of any offence so included which is proved, although the whole offence charged is not proved; or he may be convicted of an attempt to commit any offence so included.

(2) On an information charging murder, if the evidence proves manslaughter but does not prove murder, the Court may find the accused not guilty of murder but guilty of manslaughter, but shall not on that information, except in accordance with section 198 of the Crimes Act 1969 (relating to infanticide), find the defendant guilty of any other offence.

(3) On an information charging rape the accused shall not be found guilty of any offence other than rape or an attempt to commit rape.

51. Special provisions in case of treason- (1) Where anyone is charged with treason, or for being accessory after the fact to treason, the following documents shall be delivered to him after the information has been filed, and at least ten days before his trial, that is to say:

- (a) A copy of the information:
- (b) A list of the witnesses to be produced on the trial to prove the information:
- (c) A copy of the panel of the jurors who are to try him.

(2) The list of the witnesses and the copy of the panel of jurors shall mention the names, occupations, and places of abode of the said witnesses and jurors.

(3) The documents aforesaid shall all be given to the accused at the same time and in the presence of two witnesses.

52. Who may conduct proceedings against defendant- At the hearing of any charge, the informant shall appear and conduct the proceedings against the defendant personally or by any person entitled to practise in the Cook Islands as a barrister or solicitor and not otherwise;

Provided that-

- (a) With the leave of the Court (which may at any time be withdrawn) the informant may appear by any other agent; and
- (b) Where an information has been laid by a constable, any other constable may appear and conduct the proceedings against the defendant; and
- (c) Where an information has been laid by an officer of a Department of State, or local body, or by a corporation, any officer of that Department or local body or any representative of that corporation may appear and conduct the proceedings against the defendant; and
- (d) In the case of any information, the proceedings may be conducted against the defendant by the Attorney-General, or the Solicitor-General, or by an officer subordinate to either of them, acting under and in accordance with his general or special instructions.

53. Presence and appearance of defendant- (1) Every defendant shall be entitled to be present in Court during the whole of his trial, unless he misconducts himself by so interrupting the trial as to render its continuance in his presence impracticable.

(2) In any proceedings, the Court may permit the defendant to be out of the Court during the whole or any part of the proceedings on such terms as it thinks proper.

(3) Every defendant may defend the proceedings personally or be represented by any person entitled to practise as a barrister or solicitor in the Cook Islands or with the leave of the Court (which may at any time be withdrawn) by any other agent.

54. Bench warrant- (1) Where anyone against whom an information has been laid, or who has been committed for sentence, does not attend to plead to the charge therein or, as the case may require, to be sentenced, the Court before which he would have been tried or by which he would have been sentenced may issue a warrant for his arrest, whether or not he is under bond to attend.

(2) If, when anyone against whom an information has been laid is arrested pursuant to a warrant issued under subsection (1) of this section, that Court is not in session for the trial of criminal cases, he shall be brought before a Justice, who may remand him in custody to attend before the Court at its next sittings or may grant him bail:

Provided that if the defendant has failed without reasonable excuse to attend according to his bond he shall not be bailable as of right.

(3) Where any defendant who has been committed for sentence is arrested pursuant to a warrant issued under subsection (1) of this section, he shall be brought before the Court at the most convenient place.

55. Powers of Court when informant does not appear- Where at the trial of any charge the defendant but not the informant appears, the following provisions shall apply:

(a) If the defendant is in custody or has been released on bail and the informant has not had adequate notice of the trial, the Court shall adjourn the trial to such time and place and on such conditions as it thinks fit to enable the informant to appear:

(b) In any other case, the Court may dismiss the information for want of prosecution or adjourn the trial to such time and place and on such conditions as the Court thinks fit:

(c) On dismissing an information for want of prosecution pursuant to this section, the Court may award to the defendant such costs as it thinks reasonable, and any costs awarded may be [recovered as](#) if the costs were awarded on a conviction.

56. Trial of defendant in his absence- Where at the trial of any charge for an offence punishable by fine only the defendant has been duly summoned to appear before the Court but fails to appear in accordance with the summons, the Court may try him and sentence him for that offence in his absence.

57. Powers of Court when neither party appears- Where at the trial of any charge neither the informant nor the defendant appears, the Court may dismiss the information for want of prosecution or adjourn the trial to such time and place and on such conditions as the Court thinks fit.

58. Dismissal for want of prosecution not a bar to other proceedings- The dismissal of an information for want of prosecution pursuant to section 55 or section 57 of this Act shall not operate as a bar to any further or other proceedings in the same matter.

59. Court to proceed when both parties appear- Where at the trial or any charge of the trial of any charge both the informant and the defendant appear, the Court may proceed with the trial:

Provided that, if the defendant is not personally present, the Court may, if it thinks fit, adjourn the trial to such time and place and on such conditions as it thinks fit to enable him to be present, or, if he is liable on conviction to a sentence of imprisonment, may issue a warrant in form 7 to arrest him and bring him before the Court.

Pleading

60. Plea of guilty by notice to Registrar- (1) Any person charged with an offence in respect of which he is not liable on conviction to a sentence of imprisonment may in writing addressed to the Registrar give notice that he pleads guilty, and the Court shall then have the same power to deal with him as if he had appeared before it and pleaded guilty:

Provided that nothing in this section shall operate to prevent the issue of a warrant to arrest the defendant.

(2) As soon as practicable after receiving any such notice from the defendant, the Registrar shall give notice thereof to the informant.

61. Pleas on defendant being charged- (1) Before any charge is gone into, the defendant shall be called by name and the charge shall be read to him and when the Court is satisfied he understands it he shall be asked how he pleads.

(2) He may plead either guilty or not guilty or such special pleas as are hereinafter provided for.

(3) If the defendant wilfully refuses to plead or will not answer directly, the Court may enter a plea of not guilty.

(4) If he pleads guilty, and the Court is satisfied he understands the nature and consequences of his plea, the Court may convict him or deal with him in any other manner authorised by law.

(5) If a plea of guilty is not entered, the trial shall be conducted as hereinafter provided.

62. Plea on behalf of corporation- (1) Where an information is presented against a corporation in respect of any offence, the corporation may enter a plea in writing by its representative.

(2) If the corporation either does not appear by a representative or, though it does so appear, fails to enter any plea as aforesaid, the Court shall order a plea of not guilty to be entered, and the trial shall proceed as if the corporation had duly entered a plea of not guilty.

(3) A representative of a corporation appointed to represent it for the purposes of this section shall not, by virtue only of being so appointed, be qualified to act on behalf of the corporation before the Court for any other purpose.

63. Special pleas - (1) The following special pleas, and no others, may be pleaded according to the provisions hereinafter contained - that is to say, plea of previous acquittal, a plea of previous conviction, and a plea of pardon.

(2) All other grounds of defence may be relied on under the plea of not guilty.

(3) The pleas of previous acquittal, or previous conviction, and pardon may be pleaded together, and if pleaded shall be disposed of by the Court, without the jury, before the defendant is called on to plead further; and, if every such plea is disposed of against the defendant he shall be allowed to plead not guilty.

(4) In any plea of previous acquittal or previous conviction it shall be sufficient for the defendant to state that he has been lawfully acquitted or convicted, as the case may be, of the offence or offences to which that plea is pleaded.

64. Evidence of former trial - On the trial of an issue on a plea of previous acquittal or conviction, a copy of the entry in the Criminal Record Book, a copy of the information, and a copy of any notes made by the Judge or Justice presiding at the former trial, certified by the Registrar, shall be admissible in evidence to prove or disprove the identity of the charge.

65. Pleas of previous acquittal or conviction - On the trial of an issue on a plea of previous acquittal or conviction pursuant to subsection (3) of section 63 of this Act,-

(a) If it appears to the Court that the matter on which the defendant was formerly charged is the same in whole or in part as that on which he has been charged in the information now before the Court, and that the defendant might, on the former trial, if all proper amendments had been made that might then have been made, have been convicted of all the offences of which he may be convicted on that information, the Court shall give judgment that he be discharged from that information:

(b) If it appears to the Court that the defendant might on the former trial have been convicted of any offence of which he might be convicted on that information, but that he may be convicted on that information of some offence of which he could not have been convicted on the former trial, the Court shall direct that he shall not be convicted on that information of any offence of which he might have been convicted on the former trial, but that he shall plead as to any other offence charged.

66. Charge of previous conviction - (1) Where any charge contains an allegation that the defendant has been previously convicted, the following provisions shall apply:

(a) He shall not be required to plead to that allegation unless he pleads guilty to the rest of that charge;

(b) If he pleads not guilty to the rest of that charge, the allegation shall not be mentioned to the jury when he is given in charge to them;

(c) If he pleads guilty to or is convicted on any charge, then, before he is called upon to say why sentence should not be passed upon him, he shall be asked whether or not he has been previously convicted as alleged, and if he says that he has not, or does not say that he has been so convicted, the jury shall be charged to inquire into the matter, as in other cases.

(2) Notwithstanding anything in subsection (1) of this section, where at the trial of the defendant evidence of his good character is given on the part of the defendant, the prosecutor,

in answer to that evidence, may prove the previous conviction.

67. Second accusation - (1) Where an information charges substantially the same offence as that with which the defendant was formerly charged, but adds a statement of intention or circumstances of aggravation tending if proved to increase the punishment, the previous acquittal or conviction shall be a bar to the information.

(2) A previous acquittal or conviction on an information charging murder or manslaughter or infanticide shall be a bar to a second information for the same homicide charging it as any one of those offences.

(3) If on the trial of an issue on a plea of previous acquittal or conviction to an information charging murder or manslaughter or infanticide, it appears that the former trial was for an offence against the person alleged now to have been killed, and that the death of that person is now alleged to have been caused by the offence previously charged, but that the death happened after the trial on which the defendant was acquitted or convicted, as the case may be, then, if it appears that on the former trial the defendant might if convicted have been sentenced to imprisonment for 3 years or upwards, the Court shall direct that the defendant be discharged from the information before it. If it does not so appear, the Court shall direct that he plead.

68. Withdrawal of plea of guilty - A plea of guilty may, by leave of the Court, be withdrawn at any time before the defendant has been sentenced or otherwise dealt with.

Conduct of Trial

69. Admissions - The defence may during the trial admit any fact alleged against the defendant so as to dispense with proof thereof.

70. Evidence - (1) The Court shall first hear such evidence as the prosecution may adduce, and then shall hear such evidence as the defence may adduce.

(2) The Court may hear evidence adduced by the prosecution in rebuttal of evidence adduced by the defence, if, in the opinion of the Judge or Justice or Justices the defence evidence which it is sought to rebut contained fresh matter which the prosecution could not reasonably have foreseen, provided that the evidence in rebuttal or any part of it shall not be merely confirmatory of the prosecution case.

71. Caution to defendant when undefended - Where any defendant [who is](#) not defended by counsel or agent pleads not guilty, the Court shall cause to be given to him, before the evidence for the prosecution is heard, the following directive:

"When the evidence against you has been heard, you will be asked whether you wish to give evidence yourself or to call witnesses. You are not obliged to give or call evidence, and, if you do not, that fact will not be allowed to be the subject of any comment; but if you do, the evidence given may be used against you."

72. Question to defendant when undefended - Where any defendant is not defended by

counsel or agent, then, on the completion of the examination of the witnesses on the part of the prosecution, the following question, or words to the like effect, shall be addressed to him by or under the direction of the Court, that is to say:

"Do you wish to give or call evidence?"

73. Evidence to be on oath - Subject to the provisions of Part VII of the Cook islands Act 1915, every witness at the trial of any charge shall be examined on oath.

74. Addresses - (1) Upon the trial of a defendant, the prosecutor may open his case before calling his witnesses; and, at the end of the case for the prosecution, the defendant or his counsel or agent (if any) may open his case before giving or calling evidence.

(2) In a trial with a jury when all the evidence (including any evidence given on cross-examination, re-examination or in rebuttal) is concluded, the prosecutor may make a closing address to the Court; and after that closing address (if any), the defendant or his counsel or agent (if any) may make a closing address to the Court, to which there shall not be any right of reply:

Provided that, where the defendant is not represented by counsel or agent, the prosecutor shall not have any right to make a closing address except with leave of the Court.

(3) In a trial without a jury, except with leave of the Court, neither the prosecutor nor the defendant may sum up or address the Court upon the evidence:

Provided that, if the defendant calls no evidence, he may address the Court at the end of the prosecutor's case:

Provided further that nothing in this section shall affect the right of the prosecutor and of the defendant to address the Court on matters of law.

75. Adverse comment - (1) Where the defendant refrains from giving evidence as a witness, no comment adverse to the defendant shall be made thereon.

(2) Where the defendant refrains from calling his wife or her husband, as the case may be, as a witness, no comment adverse to the defendant shall be made thereon.

76. Power to clear Court and forbid report of proceedings - (1) Where on any trial the Court is of opinion that the interests of justice or of public morality or of the reputation of any victim of any alleged sexual offence or offence of extortion require that all or any persons should be excluded from the Court for the whole or any part of the proceedings, the Court may direct that those persons be excluded accordingly:

Provided that the power conferred by this subsection shall not be exercised for the purpose of excluding the prosecutor or the defendant, or his agent, or any barrister or solicitor, or any accredited news media reporter.

(2) In any case in which the Court may give any direction under subsection (1) of this section, and whether or not it gives such a direction, the Court may make an order forbidding the

publication of any report or account of the whole or any part of the evidence adduced; and the breach of any order made under this subsection, or any evasion or attempted evasion of it, may be dealt with as contempt of Court.

(3) Nothing in subsection (2) of this section shall limit the powers of the Court under section 25 of the Criminal Justice Act 1967 to prohibit the publication of any name.

(4) Without limiting or affecting the power of the Court to commit for contempt of Court, every person commits an offence and is liable to a fine not exceeding \$100 who disobeys any order made pursuant to subsection (1) of this section of this Act or who acts in contravention of subsection (2) of this section.

77. Witness refusing to give evidence may be imprisoned - (1) Any person present in Court at the hearing of any charge, whether he has been summoned to give evidence or not, may be required to give evidence.

(2) If any person without offering any just excuse refuses to give evidence when required, or refuses to be sworn, or having been sworn refuses to answer such questions concerning the charge as are then put to him, the Court may order that, unless he sooner consents to give evidence or to be sworn or to answer the questions put to him, as the case may be, he be detained in custody for any period, not exceeding 7 days, and may issue a warrant in form 8 for his arrest and detention in accordance with the order.

(3) If the person so detained, on being brought up at the adjourned hearing, again refuses to give evidence or to be sworn or, having been sworn to answer the questions put to him, the Court, if it thinks fit, may again direct the witness to be detained in custody for the like period, and so again from time to time until he consents to give evidence or to be sworn or to answer as aforesaid.

(4) Nothing in this section shall limit or affect any power of the Court to commit for contempt of Court.

78. Witnesses may be excluded - (1) The Court may, if it thinks fit, of its own motion or at the request of any party at any time during the hearing, order all or any witnesses other than a witness who has given or is giving his evidence to leave the Courtroom and to remain out of hearing but within call until required to give evidence.

(2) A witness who has given evidence shall not leave the Courtroom unless with permission of the Court.

(3) Any witness who acts in contravention of subsection (2) hereof commits an offence and shall be liable on conviction to a fine not exceeding \$100.

(4) The Court may, at any time during the hearing, require the parties to state what witnesses they intend to call and may, if it thinks fit, refuse to allow any witness whose name was not so stated to give evidence.

79. Adjournment - (1) From the time after the trial has commenced the trial shall proceed continuously, subject to the power of the Court to adjourn it.

(2) If at any time and place appointed for the hearing of any charge, the Court, by reason of its constitution or otherwise, has no jurisdiction to hear the charge, the Court may adjourn the hearing to a time and place then appointed.

(3) Upon every such adjournment the Court may, if it thinks fit, direct that during the adjournment the jury shall be kept together, and that proper provision be made for preventing the jury from holding communication with anyone on the subject of the trial, but if no such direction is given the jury shall be permitted to separate.

80. Power to adjourn for injuries after conviction- (1) Any Court may from time to time adjourn the hearing after the defendant has been convicted and before he has been sentenced or otherwise dealt with, for the purpose of enabling inquiries to be made or of determining the most suitable method of dealing with his case.

(2) Where any hearing is adjourned for the purposes of this section, any Judge or Justice or Justices, having jurisdiction to deal with offences of the same kind, whether or not he is the Judge, or, as the case may be, is or are the Justice or Justices before whom the charge was heard, may, after inquiry into the circumstances of the offence, sentence or otherwise deal with the defendant for the offence to which the adjournment relates.

81. When defendant may be remanded in custody- Whenever-

(a) A defendant who has been arrested or otherwise detained is produced or brought before the Court and the hearing is adjourned; or

(b) Any hearing is adjourned and the defendant is liable on conviction to a sentence of death or imprisonment;-

the Court may allow the defendant to go at large or may, subject to the provisions of sections 83 and 84 of this Act, remand him in custody for the period of the adjournment.

82. Stay of proceedings- The Attorney-General may, at any time after any person has been committed to the Court for trial or for trial or for sentence, or after an information has been laid against any person for any offence, and before judgment is given, direct that an entry be made in the Criminal Record Book that the proceedings are stayed by his direction, and on that entry being made the proceedings shall be stayed accordingly.

Bail

83. Bail - (1) Everyone is bailable as of right who is charged with any offence that is not punishable by death or imprisonment.

(2) Everyone is bailable as of right who is charged with any offence for which the maximum punishment is less than 2 years' imprisonment.

(3) Everyone is bailable as of right who is charged with any offence against any of the following provisions of the [Crimes Act 1969](#), namely:

(a) Section 122 (false statements or declarations);

- (b) Section 171 (duty to provide the necessaries of life);
- (c) Section 172 (duty of parent or guardian to provide necessaries);
- (d) Section 173 (duty of employers to provide necessaries);
- (e) Section 174 (abandoning child under six);
- (f) Section 205 (female procuring her own miscarriage);
- (g) Section 210 (injuring by unlawful act);
- (h) Section 224 (setting traps, etc.);
- (i) Section 272 (acknowledging instrument in false name);
- (j) Section 285 (taking reward for recovery of stolen goods);
- (k) Section 303 (imitating authorised marks);
- (l) Section 304 (imitating customary marks);

(4) Notwithstanding anything in the foregoing provisions of this section, no one is bailable as of right who is charged with any offence punishable by imprisonment, if he has been previously convicted of any offence punishable by death or imprisonment.

(5) Everyone who is charged with any offence and is not bailable as of right is bailable at the discretion of the Court:

Provided that where the offence is one against section 75 of the Crimes Act 1969 (which relates to treason) or against section 80 of the said Act (which relates to communicating secrets), the defendant shall not be granted bail except by order of the High Commissioner or a Judge.

84. Young defendants - Notwithstanding anything in this Act, where any Court remands for the period of any adjournment any defendant who appears to the Court to be under the age of 21 years, the Court shall release him on bail or otherwise subject to such conditions as it thinks fit, or, if the defendant appears to be under the age of 18 years, may remand him in the custody of a Probation Officer or of any reputable adult person:

Provided that the Court may in any case in which such a defendant would not be bailable as of right, other than by this section, direct that he be detained in a prison if in the opinion of the Court no other course is desirable, having regard to all the circumstances.

85. Warrant for detention - (1) Where a defendant who is remanded in custody is not granted bail, the Court shall issue a warrant in form 9 for his detention in custody for the period of the adjournment.

(2) Where a defendant who is remanded in custody is granted bail, then, if he is not released immediately, the Court shall issue a warrant in form 9 for his detention in custody for the period of the adjournment and shall certify on the back of the warrant the consent of the Court to the defendant's being bailed, the number of sureties (if any) to be required, the sum or sums fixed, and the conditions (if any) imposed.

86. Defendant remanded in custody may request bail - (1) Where a defendant who has

been remanded in custody did not make application for bail at the time he was remanded, he shall, if he so requests, be brought before a Court to apply for bail.

(2) Where bail is granted under this section, the particulars required to be certified by subsection (2) of section 85 of this Act shall be certified by the Court granting bail, in writing, and forwarded to the superintendent of the penal institution in which the defendant is detained pursuant to the remand warrant.

87. Release of defendant granted bail - (1) Whenever a defendant is granted bail (whether as of right or not) the Court granting bail may impose as a condition of his release that the defendant report to the Police at such times and places as the Court thinks fit.

(2) Where a defendant who has been remanded in custody is granted bail, he shall, if he is in custody only under the warrant issued in pursuance of the remand, be released from custody upon entering, with or without surety or sureties at the discretion of the Court, into a bail bond in such sum or sums as the Court fixes, subject to the condition that he attend personally at the time and place to which the hearing is adjourned and at every time and place to which during the course of the proceedings the hearing may be from time to time adjourned, and subject to the condition authorised by subsection (1) of this section where such a condition is imposed.

88. Variation of conditions of bail - (1) Where the defendant is granted bail, the Court may, on the application of the defendant, make an order varying the terms on which bail has been granted or any conditions of any bail-bond entered into or to be entered into or revoking any such conditions.

(2) Where a bail-bond has been entered into in any case where sureties are required, it shall continue in force and the order under subsection (1) of this section shall not take effect until the sureties to the bail-bond have consented in writing to the order or a new bail-bond is entered into complying with the provisions of the order.

89. Form of bail-bond and notice - (1) A bond to be taken under section 87 of this Act shall be in form 10 and may be entered into by any of the parties to it before the Registrar or before the superintendent of the prison in which the defendant is detained.

(2) The Registrar or superintendent before whom any bail-bond is entered into shall give a notice in form 11 to each of the persons entering into it before him.

(3) When all the parties to the bond have entered into it, then, if a warrant has been issued under subsection (2) of section 12 of this Act, either a warrant of deliverance in form 13 shall be issued by the Registrar and sent to the superintendent of the prison in which the defendant is detained, the Judge or Justice or Justices granting bail shall endorse on the remand warrant a certificate that all the parties to the bond have entered into it and that the defendant is accordingly entitled to be released.

90. Arrest of absconding defendant - (1) Where a defendant has been released on bail, the Registrar, if satisfied on the oath of the informant or of any surety, or on the oath of some person on behalf of the informant or of any surety, that the defendant has absconded or is about to abscond for the purpose of evading justice, may issue a warrant in form 13 to arrest the defendant and bring him before the Court.

(2) Where any defendant has been arrested pursuant to a warrant issued under subsection (1) of this section, the Court, on being satisfied that the defendant had absconded or was about to abscond, may remand the defendant in custody (whether or not the defendant is bailable as of right) and thereupon, notwithstanding anything in this Act, the defendant shall be bailable only at the discretion of the Court.

91. Arrest of defendant failing to report to Police as required - Where a defendant who has been released on bail subject to the condition that he report to the Police at such times and places as the Court orders fails at any time to comply with that condition, the Registrar may issue a warrant in form 14 to arrest the defendant and bring him before the Court.

92. Arrest of defendant failing to attend hearing - Where a defendant who has been released on bail does not attend personally at the time and place specified in the bond, or as the case may be, does not attend personally at any time and place to which during the course of the proceedings the hearing has been adjourned the Court or Registrar may issue a warrant in form 7 to arrest the defendant and bring him before the Court.

93. Estreat of bail-bond - (1) Where a Justice certifies on the back of a bail-bond the non-performance of a condition of that bail-bond, the Registrar shall fix a time and place to consider the estreat of the bond, and shall, not less than 7 days before the time fixed, cause to be served on the defendant if he can be found and upon the surety or sureties (if any) notice that, unless at the time and place fixed some person bound by it proves to the satisfaction of the Court that it ought not to be estreated, the bond will be estreated.

(2) If at the time and place fixed by the Registrar under subsection (1) of this section no sufficient cause to the contrary is shown, the Court presided over by a Judge or Justice on proof of the non-performance of a condition of the bail-bond (of which the certificate of the Registrar shall be sufficient prima facie evidence), may make an order in form 15 to estreat the bond to such an amount as it thinks fit as to any person bound thereby upon whom notice is proved to have been served in accordance with subsection (1) of this section:

Provided that, if the Court is satisfied that the defendant cannot be found, the Court may estreat the bond as against the defendant, notwithstanding that notice has not been served on him.

(3) Any penalty payable in accordance with subsection (2) of this section shall be recoverable as if it were a fine.

94. Defendant in custody may be brought before Court - Any defendant who has been remanded in custody on any charge and has not been released on bail may be brought before the Court at any time to be dealt with on that charge, notwithstanding that the period for which he was remanded in custody has not expired.

95. Defendant may be admitted to bail by constable in certain cases - (1) Where any person who is charged with an offence punishable by not more than 3 months' imprisonment, and who has been arrested without warrant and brought into the custody of a constable in charge of a police station or watch house, cannot practicably be brought immediately before the Court, that constable may, if he deems it prudent to do so, take the bail bond of that person.

(2) Any such bail bond may be either with or without sureties as the constable thinks fit, and shall be in such sum or sums as he thinks sufficient and be subject to the condition that at a time and place to be specified in the bond, not later than 7 days from the date of the bond, the person bailed attend personally before the Court.

(3) Every such bail bond shall have the same effect as if it had been taken before a Judge or Justice or the Registrar.

Search

96. Search warrants - (1) Whether or not an information has been laid, a Judge or Justice or the Registrar, if he is satisfied on the oath of any person that there is reasonable ground for believing that there is in any building, aircraft, ship, vehicle, box, receptacle, premises, or place-

(a) Any thing upon or in respect of which any offence punishable by imprisonment has been or is suspected of having been committed; or

(b) Any thing which there is reasonable ground to believe will be evidence as to the commission of any such offence; or

(c) Any thing which there is reasonable ground to believe is intended to be used for the purpose of committing any such offence-

may issue a search warrant in form 16.

(2) Every search warrant shall be directed either to any constable by name or generally to every constable, and any such warrant may be executed by any constable.

(3) Every search warrant shall authorise any constable at any time or times within one month from the date thereof to act in one or more of the following ways:

(a) To enter and search the building, aircraft, ship, vehicle, premises, or place referred to therein, with such assistants as may be necessary, and if necessary, to use force for making entry, whether by breaking open doors or windows or otherwise;

(b) To break open and search any box or receptacle therein or thereon, by force if necessary;

(c) To seize anything referred to in subsection (1) of this section.

(4) Every search warrant shall be executed by day, unless the warrant expressly authorises the execution thereof by night.

(5) It is the duty of every one executing any search warrant to have with him and to produce it if required to do so.

97. Disposal of things seized - (1) Where any constable seizes anything under section 96 of this Act, it shall be retained under the custody of a constable, except while it is being used in evidence or is in the custody of the Court, until it is disposed of under this section.

(2) In any proceedings for an offence relating to the thing seized, the Court may order, either at the trial or on a subsequent application, that the thing be-

- (a) Delivered to the person appearing to the Court to be entitled to it; or
- (b) Forfeited, defaced, or destroyed (in the case of counterfeit coin, or forged bank notes, or instruments or things for making such coins, notes, or instruments); or
- (c) Otherwise disposed of in such manner as the Court thinks fit.

(3) Any constable may at any time, unless an order has been made under subsection (2) of this section, return the thing to the person from whom it was seized or apply to a Justice for an order as to its disposal, and on any such application the Justice may make any order that a Court may make under subsection (2) of this section.

(4) If, upon the expiry of a period of 3 months after the date of seizure, proceedings have not been brought for an offence relating to the thing seized and the thing is still in the custody of a constable, any person claiming to be entitled to the thing may apply to a Justice for an order that it be delivered to him; and on any such application the Justice may adjourn the same on such terms as he thinks fit for proceedings to be brought, or make any order that a Court may make under subsection (2) of this section.

(5) Where any person is convicted in any proceedings for an offence relating to any thing to which this section applies, and any order is made under this section, the operation of the order shall be suspended until the expiration of the time for appeal or, where an application for leave to appeal or a notice of appeal is filed, until the refusal of the application or the determination of the appeal; and on the determination of an appeal, the Court determining the appeal may annul or vary the order made under this section.

Protection from Responsibility

98. Protection from responsibility - (1) Every person who, in accordance with the provisions of this Act or of any other enactment, arrests any person, whether with or without a warrant, or executes any search warrant, or assists a constable to arrest any person on being called upon by the constable so to do, shall be free from criminal responsibility and shall not be liable to any civil proceeding:

Provided that, in the case of a person called upon by a constable to assist in the arrest of any person whom the constable believes or suspects to have committed an offence, the provisions of this section shall not apply if the person called upon to assist knows that there is no good cause for the belief or suspicion.

(2) In the case of every person to whom this section applies, the protection from criminal responsibility and civil proceeding shall extend and apply to the use by him of such force as may be necessary to overcome any force used in resisting arrest, search, or execution, unless the arrest, search, or execution could have been made by reasonable means in a less violent manner:

Provided that, except in the case of a constable or person called upon by a constable to assist him, this section shall not apply where the force used is intended or likely to cause death or grievous bodily harm.

Preliminary Proceedings

99. Preliminary proceedings - (1) Where a trial of any person is to be heard by a Judge sitting with or without a jury pursuant to the provisions of either section 14 or section 16 or section 17 of the Judicature Act 1980-81 the following procedure shall apply:

(a) There shall be tendered to the Court and to the defendant or his counsel or solicitor written statements of each witness to be called by the prosecutor at the trial setting out the evidence to be adduced thereat by that witness:

Provided that where no written statement has been obtained from a witness, the prosecutor shall tender in lieu thereof a summary in writing of that evidence to be adduced by that witness at the trial and state the reasons why no written statement has been obtained;

(b) The written statement tendered under this section shall be-

(i) Signed by the person who made it; and

(ii) Contain a declaration made pursuant to section 653 of the Cook Islands Act 1915 by that person to the effect that it is true to the best of his knowledge and belief;

(c) Each written statement tendered under this subsection shall-

(i) If the statement is made by a person under the age of 21 years, give his age; and

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

(iii) If it refers to any other document as an exhibit, 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 given to inspect the document or a copy thereof;

(d) Where a witness is a Cook Islander, the written statement tendered under this section shall be in both the English and Maori languages:

Provided that a defendant who is a Cook Islander may require all statements to be written in both the aforesaid languages;

(e) The written statements shall be tendered to the parties as required by this section not later than 28 days before the date fixed for trial;

(f) Where the defendant is represented by counsel or a solicitor-

(i) He, if he so desires, may, not later than 14 days before the date of trial, notify the Registrar that he requires the written statements to be considered by a Justice for the purpose of a hearing in accordance with the provisions of paragraph (h) of this subsection;

(ii) If no such notification is given as herein provided, the defendant shall be deemed to have consented to his committal for trial and the defendant shall be so committed;

(g) Where the defendant is not represented by counsel or a solicitor, he shall, not later than 14 days before the date of the trial, be brought before a Justice, who shall conduct a hearing in accordance with the provisions of paragraph (h), of this subsection;

(h) At the hearing pursuant to paragraphs (f) and (g) of this subsection at which the prosecutor is present, the Justice shall consider all written statements tendered for the purpose of the trial, hear any submissions either party wishes to make, and then decide whether the defendant should be committed for trial;

(i) If the Justice decides that the defendant should be committed for trial, he shall by record on the information direct accordingly, and the defendant shall be so committed;

(j) If the Justice decides the defendant should not be committed for trial, he shall forthwith discharge the defendant;

(k) A discharge of the defendant under this subsection shall not operate as a bar to any other proceedings in the same matter.

(2) In any criminal proceedings a written statement by any person tendered pursuant to paragraph (a) of subsection (1) of this section shall, if the defendant consents, be admissible as evidence to the like extent as oral evidence to the like effect by that person.

[Amended Act 1991/7]

100. Deposition of witness after defendant committed for trial - (1) Where, after a defendant as been committed for trial pursuant to section 99 of this Act, a Justice, on the application of the informant or the defendant, is satisfied that any person who was not examined as a witness under that section is able to give evidence, and that it is in the interests of justice that the evidence be taken, then, whether or not the trial has commenced in the Court, the Justice or, where the trial has commenced in the Court, the Judge may make an order that the evidence of that person shall be taken at a time and place fixed by the Justice or Judge, as the case may be.

(2) In every such case, the Justice or Judge, as the case may be, may modify any times specified in the said section 99 in such manner as he thinks fit and give any directions in relation to the taking of the evidence as he thinks necessary.

(3) Subject to subsection (2) of this section, the provisions of the said section 99, as far as they are applicable and with the necessary modifications, shall apply with respect to the taking of evidence under this section and to the evidence so taken as if it were taken pursuant to the said section 99.

General Provisions

101. Adjourning trial for witnesses - (1). If the Court is of opinion that the defendant is taken by surprise, in a manner likely to be prejudicial to his defence, by the production on behalf of the prosecutor of a witness,-

(a) Who has not made any written statement, and of the intention to produce whom the defendant has not had sufficient notice; or

(b) Who has made a written statement, but whose written statement has not been made available to the defendant in sufficient time,-

the Court may, on the application of the defendant, either adjourn the further hearing of the

case or, where the case requires, discharge the jurors from giving a verdict, and postpone the trial.

(2) If the Court is of opinion that any witness who is not called for the prosecution ought to be so called, it may require the prosecutor to call him, and, if the witness is not in attendance, make an order that his attendance shall be procured; and the Court may, if it thinks proper, adjourn the further hearing of the case to some other time until that witness attends.

(3) If in such case the Court is sitting with a jury and is of opinion that it would be conducive to the ends of justice to do so, it may, on the application of the defendant discharge the jury and postpone the trial.

102. Retrial of offence tried by a Justice or Justices - (1) Where any person has been tried by a Justice or Justices for any offence and has been acquitted or convicted or had an order made against him by the Court as so constituted, either the prosecutor or the defendant may apply in writing to a Judge for a retrial.

(2) Any such application shall be made within 14 days of the acquittal or the conviction or the making of the order, or within such further period as the Judge may allow if he is satisfied that the application could not reasonably have been made sooner.

(3) Any such application shall state the grounds thereof, and whether a complete retrial is sought, and if not what limited retrial is sought.

(4) As soon as reasonably possible after the making of any such application, the applicant shall serve a copy thereof on the opposite party.

(5) On the hearing of any such application, the Judge may in his discretion refuse a retrial or order a retrial (whether by the Court as constituted for the original trial or otherwise), and in either case either as a complete retrial or as a retrial with specified limitations and on such terms as the Judge thinks fit.

103. Retrials of offence tried by Judge - (1) Where any person has been tried by a Judge (whether sitting with or without a jury) for any offence, and has been convicted by that Court, the defendant may apply in writing to the Judge who presided at the trial for a retrial:

Provided that if, since the date of the trial, that Judge has ceased to hold that office or died or left the Cook Islands or become for any other reason unavailable to deal with the application, the application may be dealt with by any Judge.

(2) Any such application shall be made within 21 days after the date of the conviction.

(3) Any such application shall state the grounds thereof, and whether a complete retrial is sought, and, if not, what limited retrial is sought.

(4) As soon as reasonably possible after the making of any such application, the defendant shall serve a copy thereof on the prosecutor.

(5) On the hearing of any such application, the Judge may in his discretion refuse a retrial or grant a retrial (whether by the Court as constituted for the trial or otherwise), and in either

case as a complete retrial or as a retrial with specified limitations and on such terms as he thinks fit.

104. Practice on retrials - On any order for a retrial being made under section 102 or 103 of this Act, the following provisions shall apply:

- (a) If the defendant was on conviction sentenced to a term of imprisonment which has not expired, and the retrial cannot be held immediately, the Court ordering the retrial shall, subject to the provisions of this Act relating to bail, remand the defendant in custody until the date fixed for the retrial;
- (b) In other respects the acquittal, conviction, sentence, or order made on the original trial shall cease to have effect;
- (c) The Court of retrial shall have the same powers and follow the same procedure as if it were the Court of trial;
- (d) If the applicant does not appear at the time and place appointed for the retrial, the Court of retrial may in its discretion, without holding a retrial, order that the original acquittal, conviction, sentence, or order be confirmed.

105. Removal of trial on question of law arising - (1) If a question of law arises on a trial before the Court presided over by a Justice or Justices of any person for any offence, the Court, whether on the application of the prosecutor or the defendant or of its own motion, may refuse to continue the trial and may adjourn it for retrial before a Judge.

(2) Thereupon the information or charge on which the trial before the Court was based shall remain valid; but every other step taken, document filed, or direction or determination given in that trial shall be void, unless ordered by the Justice or Justices to remain valid.

(3) The retrial of that person for that offence shall thereupon commence and proceed before a Judge as if no steps, other than those saved in accordance with subsection (2) of this section, had been taken.

106. Reservation by Justice of question of law for determination by Judge - A Justice sitting alone or Justices sitting together may reserve for determination by a Judge any question of law which arises on the trial of any person for any offence, or in any of the proceedings preliminary, subsequent, or incidental thereto, and may give any decision subject to the determination by the Judge of that question; and the Judge shall have power to consider and determine that question.

(2) Either the prosecutor or the defendant may during the trial apply to the Justice or Justices presiding at the trial to reserve any such question, and the said Justice or Justices, if he or they refuse so to do, shall nevertheless take a note of the application.

(3) If the result of the trial is acquittal, the defendant shall be discharged, subject to being again arrested if the Judge orders a new trial.

(4) If the result of the trial is conviction, the said Justice or Justices may in his or their discretion postpone sentence, or respite the execution of the sentence until the question reserved has been determined, and in either case shall in his or their discretion either remand

the defendant in custody or grant him bail on such terms and subject to such conditions as the Justice or Justices think fit.

(5) If the Justice or Justices decide to reserve a question under this section, he or they shall state a case for the determination of a Judge.

(6) Where the Justice or Justices decide to reserve a question under this section on an application so to do made under subsection (2) of this section, the applicant shall, within 21 days after being notified of that decision, or within such further time as the said Justice or Justices may in his or their discretion allow, submit a draft of the case stated, through the Registrar, to the said Justice or Justices, and deliver or post a copy of the draft to the other party or to his solicitor.

107. Record of proceedings - (1) The Registrar shall keep a Criminal Record Book in form 17.

(2) In the Criminal Record Book there shall be entered the name of the Judge or Justice or Justices presiding over the Court and a memorandum of the substance of all proceedings at every trial and of the result of every trial. Every such memorandum shall be signed by the said Judge or Justice or Justices, and shall be deemed a record of that trial.

(3) Any entry in the Criminal Record Book or a copy thereof or extract therefrom, sealed with the Seal of the Court and purporting to be signed and certified by the Registrar as a true copy or correct extract, shall at all times without further proof be admitted in all Courts and places whatsoever as evidence of the contents thereof and of the regularity of the proceedings.

(4) Any such copy or extract or so much thereof as is material, may be referred to in any proceeding by way of appeal.

(5) Any such copy or extract may be given to any person who, in the opinion of the Registrar, has a genuine and proper interest in obtaining the same. In any case of doubt or difficulty, the Registrar may refer the matter to a Judge, whose decision shall be final.

(6) Any erroneous or defective entry in the Criminal Record Book may at any time be amended by the Judge or Justice or justices who presided at the trial or, if that Judge or Justice, Justices, or any of them, are not available, by any Judge.

(7) The Judge or Justice or Justices presiding at the trial shall take notes of all proceedings before the Court.

PART II SENTENCE AND ENFORCEMENT OF PENALTIES

108. Discretion of Court as to lesser penalties - (1) Except where of otherwise expressly provided, every one liable to imprisonment for any term for any offence may be sentenced to imprisonment for any shorter term, and every one liable to a fine of any amount may be sentenced to pay a fine not exceeding \$1,000 or any smaller fine prescribed by any enactment.

(2) Where under any enactment a Court may sentence any person to imprisonment, or to

imprisonment or to a fine, that Court may sentence that person to pay a fine in addition to or instead of sentencing him to imprisonment, unless there is express provision to the contrary in that, enactment:

Provided that,-

(a) No person shall be sentenced to pay a fine exceeding in amount any maximum fine prescribed by the enactment; and

(b) Where no maximum fine is prescribed by the enactment, no person shall be sentenced by a Justice or Justices to pay a fine exceeding the fine which may be imposed by that Justice or those Justices pursuant to the Judicature Act 1980-81.

(3) Where a corporation is convicted of an offence punishable only by imprisonment, the corporation may be sentenced to pay a fine:

Provided that no corporation shall be sentenced by a Justice or Justices to pay a fine exceeding the fine which may be imposed by that Justice or those Justices pursuant to the Judicature Act 1980-81.

(4) In fixing the amount of any fine to be imposed on any offender, the Court shall take into consideration, among other things, the means of the offender so far as they appear or are known to the Court.

109. Motion in arrest of judgment, sentence - (1) If the jury or the Court, as the case may be, in the defendant guilty, or if the defendant pleads guilty, it shall be the duty of the Registrar to ask him whether he has anything to say why sentence should not be passed upon him according to law; but the omission so to ask shall have no effect on the validity of the proceedings.

(2) The accused may, at any time before sentence, move in arrest of judgment on the ground that the information does not (after any amendment has been made therein that the Court is willing and has power to make) state any offence.

(3) The Court may in its discretion hear and determine the matter during the same sitting.

(4) If the Court decides in favour of the defendant, it shall dismiss the information.

(5) If no such motion is made, or if the Court decides against the defendant on any such motion, the Court may, during the sitting of the Court, sentence the defendant or deal with him in any other manner authorised by law.

(6) If the defendant is not so sentenced or dealt with during the sitting, the Court may, in its discretion, remand him in custody or discharge him from custody without his entering into a bail bond or on his entering into a bail bond, with or without sureties as it thinks fit, to appear for sentence at some future sitting of the Court. In any such case, any Judge or, as the case may require, any Justice or any 3 Justices, may at a subsequent sitting, sentence the defendant or deal with him in any other manner authorised by law.

110. Drawing u of conviction - (1) on the conviction of any person of any offence before the

High Court, a minute or memorandum of the conviction shall thereupon be drawn up and preserved as a record of the Court, and a formal conviction under the seal of the Court may be drawn up at any time afterwards when it becomes necessary.

(2) In the meantime the conviction and sentence may be carried into execution, and shall have the same force and effect in every respect as if the conviction had been formally drawn up under the seal of the Court.

111. Power to discharge defendant after committal for trial - Where any person is committed for trial under section 99 of this Act,-

(a) The Judge may in his discretion, after a perusal of the written statements tendered for the trial, direct that the defendant shall not be arraigned on the information laid and direct that the defendant shall be discharged;

(b) The Judge may in his discretion, at any stage of the trial, whether before or after his verdict, direct that the defendant be discharged.

(2) A discharge under this section shall be deemed to be an acquittal.

(3) The provisions of subsection (3) of section 112 of this Act shall extend and apply to a discharge under this section.

(4) Nothing in this section shall affect the power of the Court to convict and discharge any person.

112. Power to discharge defendant without conviction or sentence - (1) The Court, after inquiry into the circumstances of the case, may in its discretion discharge the defendant without convicting him, unless by any enactment applicable to the offence a minimum penalty is expressly provided for.

(2) A discharge under this section shall be deemed to be an acquittal.

(3) Where the Court discharges any person under this section, it may, if it is satisfied that the charge is proved against him, make an order for the payment of costs, damages, or compensation, or for the restitution of any property, that it could have made under any enactment applicable to the offence with which he is charged if it had convicted and sentenced him, and the provisions of any such enactment shall apply accordingly.

(4) Nothing in this section shall affect the power of the Court to convict and discharge any person.

113. Court may order convicted person to come up for sentence if called upon - (1) The Court, on convicting a defendant of an offence, may, having regard to the circumstances, including the nature of the offence and the character of the defendant, instead of passing sentence, order the defendant to appear for sentence if called upon to do so, on such conditions as it thinks fit.

(2) The making of an order under this section shall not limit or affect the power of the Court, under any enactment applicable to the offence, to make any order for the payment of costs,

damages, or compensation, or for the restitution of any property, notwithstanding that the defendant is not sentenced on conviction, and the provisions of every such enactment shall apply accordingly.

(3) Any person in respect of whom an order is made under this section may be called upon to appear for sentence within any period specified by the Court in the order, being a period not exceeding 3 years from the date of the conviction, or if no period is so specified, within one year from the date of the conviction.

(4) Where any person is brought up for sentence under this section, the Court may, after inquiry into the circumstances of the case and the conduct of the defendant since the order was made, sentence or otherwise deal with the defendant for the offence in respect of which the order was made.

114. Cumulative sentences - (1) In imposing any sentence of imprisonment, the Court may direct that the sentence shall commence on the expiry of any other sentence or sentences of imprisonment specified in the direction, whether then imposed by the Court or then being undergone or to be undergone by the offender, including any sentence or sentences in respect of which any such direction is or has been given.

(2) Where a term of imprisonment is imposed in respect of the non-payment of any sum adjudged or ordered to be paid on any conviction or by any order, whether as a fine or for costs or otherwise, or where a warrant of commitment is issued in respect of the non-payment of any such sum, the Court or, as the case may require, Justice issuing the warrant, may direct that the imprisonment shall commence on the expiry of any sentence or sentences of imprisonment specified in the direction, whether then imposed by the Court or then being undergone or to be undergone by the offender, including any sentence or sentences in respect of which any such direction is or has been given.

(3) Save as provided by this section, every sentence of imprisonment shall take effect on the day on which the sentence is pronounced.

115. Correction of erroneous sentences - (1) If any sentence is one that could not by law be passed, or if the Judge or Justice or Justices, as the case may be, do not pass a sentence that is required by law to be passed, either party may apply to the Judge or, in the case of proceedings before a Justice or Justices, any Judge, to pass a proper sentence.

(2) If the Judge who passed the sentence is not available, an application under this section may be made to any other Judge.

(3) If the Judge considers that the sentence is one that could not by law be passed, or that a sentence required by law to be passed has not been passed, he may pass such sentence as ought to have been passed.

(4) If the Judge to whom an application is made under this section passes a new sentence, the time for appeal against conviction or sentence or both shall run from the date of the new sentence.

(5) In this section, the term "sentence" includes an order, and references to the passing of a sentence include references to the making of an order.

116. Execution of warrant of commitment - (1) Every warrant of commitment (whether issued under this Part of this Act or otherwise) shall be directed either to any constable or bailiff by name or generally to every constable and bailiff and any such warrant may be executed by any constable or bailiff.

(2) For the purpose of executing any warrant of commitment, the constable or bailiff executing it may at any time enter any premises, by force if necessary, if he has reasonable cause to believe that the person named in the warrant is on those premises:

Provided that, if the constable or bailiff executing the warrant is not in uniform, and any person in actual occupation of the premises requires him to produce evidence of his authority, he shall, before entering on the premises, produce the warrant or his badge or other evidence that he is a constable or bailiff as the case may be.

(3) The constable or bailiff by whom any warrant of commitment is executed shall convey the person therein named or described to the prison named in the warrant or to some other prison and there deliver him, together with the warrant; to the superintendent, who shall give the constable or bailiff, as the case may be, a receipt in the prescribed form for that person.

117. Enforcement of penalties - (1) In this section, unless the context of otherwise requires, references to the sum adjudged to be paid by a defendant on a conviction shall be deemed to include any sum of money adjudged or ordered to be paid on any conviction entered or by any order made in any criminal proceedings, whether as a fine or for costs, damages, compensation, restitution, or otherwise.

(2) Every sum adjudged to be paid by a defendant on a conviction shall constitute a judgment debt due by him to the Government of the Cook Islands, and payment thereof shall be enforceable and recoverable accordingly by civil process of execution in the same manner in all respects as if the Government had obtained judgment therefor in civil proceedings.

(3) Where the Court on a conviction adjudges a defendant to pay a sum of money, it may do all or any of the following things:

(a) Allow time for payment, in which case the Court may impose a period of imprisonment determined in accordance with the provisions of subsection (8) of this section in default of payment of the sum adjudged to be Paid by the expiry of that time;

(b) Direct payment to be made by instalments, in which case if default is made in the payment of any one instalment the same proceedings may be taken as if default had been made in the payment of all the instalments then remaining unpaid;

(c) Direct payment to be made to such person or persons and in such place or places as the Court may specify.

(4) Where the Court on a conviction adjudges a defendant to pay a sum of money and the Court allows time for payment or directs payment to be made by instalments, the Court may order that he be placed under the supervision of a Probation Officer or such other person as it appoints until the sum of money is paid.

(5) If the Court which adjudges any sum to be paid by a defendant on a conviction is of the opinion-

- (a) That the defendant has sufficient means to pay the sum adjudged to be paid forthwith; or
- (b) That the defendant has no fixed place of residence; or
- (c) That for any other reason, having reference to the gravity of the offence, the character of the defendant, or other special circumstances, execution should issue without delay,-

the Court may impose on the defendant a period of imprisonment determine in accordance with the provisions of subsection (8) of this section as if default had been made in payment of the sum adjudged to be paid, and may direct that a warrant of commitment be issued forthwith.

(6) Every direction or sentence of the Court under subsection (3) or subsection (4) or subsection (5) of this section, shall be entered in the Criminal Record Book and shall be signed by the presiding Judge or Justice or Justices.

(7) Where any sum of money adjudged to be paid by a defendant on a conviction is not paid within 28 days thereafter, or within such time as may have been allowed by the Court for payment thereof, or in any case where subsection (5) of this section applies, a Judge or Justice may issue a warrant of commitment for such period of imprisonment as the Court has determined on conviction, or, if no period has been determined, in accordance with the provisions of subsection (8) of this section, unless the sum adjudged to be paid and the fee for the issue of the warrant are sooner paid.

(8) The period of imprisonment imposed under this section shall be such period as in the opinion of the Judge or Justice fixing the period, will satisfy the justice of the case, not exceeding in any case a period of one day for each 50 cents or part thereof of the amount due (including the fee for the issue of the warrant) at the time of the issue of the warrant of commitment, or a period of 180 days, or the maximum period (if any) prescribed in respect of the offence on which the conviction is founded, whichever is the least.

(9) When a defendant has been committed to prison under this section and has served a term of imprisonment determined in accordance with subsection (8) of this section, no proceedings or further proceedings shall thereafter be taken by way of civil process under this section for the enforcement or recovery of the sum adjudged to be paid.

118. Enforcement of Court Orders - (1) Where the Court, on a conviction orders a person to do some act other than the paying of money that in the opinion of the Court will satisfy the justice of the case, it may at the same time order that, if the defendant neglects or refuses to do that act, he shall be imprisoned for such period as, in the opinion of the Court, will satisfy the justice of the case, not exceeding the maximum period (if any) prescribed in the enactment on which the order is founded, or, where no such maximum is prescribed, a period of 180 days.

(2) If the defendant neglects or refuses to do that act, a warrant of commitment may be issued by a Judge, or Justice, and shall require that the defendant be imprisoned for such period as

the Court has fixed at the time of the hearing or such shorter period as the Judge or Justice issuing the warrant thinks reasonable.

Sentence of Death

119. Form of sentence in capital cases - (1) Where any person is sentenced to death the form of the sentence shall be that he shall suffer death in the manner prescribed by law.

(2) No variation in the form in which the sentence is pronounced shall affect the validity of the sentence.

(3) A sentence of death shall be carried out by hanging.

(4) The provisions set out in the Second Schedule to this Act shall apply to the carrying out of the sentence.

120. Sentence of death not to be passed on person under 18 years of age or on pregnant woman - (1) Where any person convicted of an offence punishable with death was under the age of 18 years at the time of the commission of the offence, or if the person convicted is a woman and is pregnant, the sentence to be passed on him or her shall be a sentence of imprisonment for life, instead of a sentence of death.

(2) Where any person convicted of an offence punishable with death alleges that he or she was under the age of 18 years at the time of the commission of the offence, or if a woman that she is pregnant, or if the Court before which that person is so convicted thinks fit, the question of the age or pregnancy of that person shall, before sentence is passed, be determined by that Court.

(3) The question of the age or pregnancy of that person shall be determined by the Court sitting with the jurors with whom the Court sat on the trial of that person for the offence of which he or she was convicted:

Provided that if any juror dies or is discharged by the Court as being through illness incapable of continuing to act or for any other cause, the inquiry as to the age or pregnancy of that person shall be held or continue without that juror.

(4) The question of the age or pregnancy of that person shall be determined by the Court on such evidence as may be put before it, either on the part of that person or on the part of the prosecutor.

(5) The Court shall find that that person was under the age of 18 years at the time of the commission of the offence, or if a woman that she is pregnant, only if it is affirmatively so proved to the satisfaction of the Court.

(6) Where, on proceedings, under this section, the Court finds that that person was not under the age of 18 years at the time of the commission of the offence, or, if a woman, that she is not pregnant, that person may appeal as of right to the Court of Appeal against that finding, and that Court, if it is satisfied for any reason that the finding should be set aside, shall squash the sentence of death and instead pass on that person a sentence of imprisonment for life.

PART III KEEPING THE PEACE

121. Application for order for bond to keep the peace - Any person may apply to a Court presided over by a Judge or Justice for an order requiring any other person to enter into a bond, either with or without sureties, for keeping the peace, on any of the following grounds:

- (a) That the applicant has cause to fear that the defendant-
 - (i) Will do the applicant or his wife or child or any member of his household bodily harm; or
 - (ii) Will destroy or damage the applicant's house; or
 - (iii) Will procure any other person to do any such injury as aforesaid; or
- (b) That the defendant has to or in the presence of the applicant, for the purpose of annoyance and provocation or to the common annoyance of members of the public-
 - (i) Used provoking or insulting language; or
 - (ii) Exhibited any offensive writing or object; or
 - (iii) Done any offensive act; or
- (c) That the defendant has threatened to do, or to procure some other person to do, any act which if done would constitute an offence under either of the following provisions of the Crimes Act 1969-
 - (i) Section 317 (which relates to the offence of arson);
 - (ii) Section 321 (which relates to the offence of wilful damage).

122. Application to be treated as information - An application under section 121 of this Act shall be made by motion, and shall be received by the Court and be proceeded with in all respects as if it is an information laid by the applicant against the defendant for an offence and as if the ground of the application is the alleged offence; and the provisions of Part I of this Act shall apply to the hearing of such application, insofar as they are consistent with this section, section 121, and sections 123 to 127 of this Act.

123. Making of order for bond - (1) If on the hearing of any such application the Court considers that there is good ground to do so, it may order the defendant to enter, with or without a surety or sureties, as the Court thinks fit, into a bond in such sum or sums as the Court thinks sufficient, subject to the condition that the defendant keep the peace towards the applicant and refrain from doing the act feared, or from repeating the conduct complained of, or from doing the act threatened, as the case may be, for such time, not exceeding one year from the date of the bond, as is fixed by the order.

(2) No order shall be made under this section, unless,-

- (a) In the case of an application upon the ground or grounds provided in paragraph (a) of section 121 of this Act, the Court is satisfied that the applicant has just cause for his fear; or
- (b) In the case of an application upon the ground or grounds provided in paragraph (b) of that section, the Court is of opinion that the conduct complained of is likely to be repeated and may tend to provoke a breach of the peace; or

(c) In the case of an application upon the ground or grounds provided in paragraph (c) of that section, the Court is satisfied that there is just cause for fear that the defendant will, if not prevented, carry the threats into execution.

(3) A bond under this section shall be in form 18, and may be entered into by any of the parties to it before any Justice or the Registrar, and it shall not be necessary for all the parties to the bond to be present at the same time or at the same place, and more than one form of bond may be signed. The person before whom any bond is entered into shall give to each of the persons entering into it before him a notice in form 19.

(4) In any case where a surety or sureties are required, the Court may at any time, if it is satisfied that the defendant is unable to obtain the surety or sureties, order that the surety or any or all of the sureties be dispensed with.

124. Making of order for bond where person charged with offence - Where any person is charged before a Court presided over by a Judge or a Justice or Justices with an offence, and the evidence establishes one of the grounds which would justify the making of an order for a bond for keeping the peace, then, whether or not the defendant is convicted of the offence and whether or not any penalty is imposed on him in respect of the offence, the Court may make such an order as if an application therefor had been made under section 121 of this Act.

125. Refusal to enter into bond - If a defendant refuses to enter into a bond for keeping the peace when ordered so to do or fails to obtain a surety or sureties as required by the order, the Court (except where the Court is presided over by a Justice or Justices) may order that he be committed to a prison for any period not exceeding 2 months:

Provided that a defendant who has failed to obtain the required surety or sureties shall not be ordered to be committed to a prison if he satisfies the Court that he has taken reasonable steps to obtain the surety or sureties:

Provided further that a defendant who has been committed to a prison shall be immediately released if his committal was based on refusal to enter into a bond and he enters into the bond; or if his committal was based on failure to obtain a surety or sureties and he obtains the required surety or sureties, or before the expiry of the period of his detention satisfies a Court presided over by a Justice that he had taken reasonable steps to obtain the surety or sureties.

126. Person imprisoned in default of finding sureties may be released - If the person for whose protection a Court as required the defendant to find a surety or sureties of the peace dies, or for some other reason that person no longer requires protection, and the defendant is then in a prison in default of finding the surety or sureties, a Court presided over by a Justice may, if it thinks fit, order that the defendant be released from custody without finding the surety or sureties.

127. Order calling up bond - (1) Any person who has obtained an order requiring any other person to enter into bond for keeping the peace may apply to a Court presided over by a Justice for an order calling up the bond on the ground that that other person has failed to keep the condition of the bond.

(2) On the filing of the application, the Registrar shall fix a time and place for the hearing of

the application, and shall, not less than 7 days before the time fixed, cause to be served on every person bound by the bond a notice of the time and place so fixed.

(3) If on the hearing of any application made under this section it is proved to the satisfaction of the Court that the condition of the bond has not been kept, the Court may make an order in form 20 to call up the bond to such an amount as it thinks fit as to any person bound thereby on whom notice is proved to have been served in accordance with this section. Any penalty payable in accordance with this subsection shall be recoverable as if it were a fine.

PART IV APPEALS

Provisions Relating to All Appeals

128. Arrest of appellant who has absconded or is about to abscond while on bail - Where an appellant is released on bail pending appeal and a justice, if satisfied on the oath of the respondent or of any surety or on the oath of some person on behalf of the respondent or any surety, that the appellant has absconded or is about to abscond for the purpose of evading justice, may issue a warrant in form 14 to arrest him and bring him before a Judge or Justice. When the appellant is arrested pursuant to the warrant, any Judge or Justice on being satisfied that the appellant had absconded or was about to abscond, may commit him to a prison until the hearing of his appeal.

129. Surrender of appellant released on bail and discharge of surety - An appellant who as been release from custody on bail pending the hearing of the appeal may surrender himself and apply to any Justice for the discharge of his bail bond, and the Justice may thereupon issue a warrant in form 21 for the arrest of the appellant and for his committal to a prison for the unexpired term of the sentence originally imposed.

(2) Any surety for an appellant released as aforesaid may apply to any Justice to be discharged from his obligation under the bail bond, and the Justice may thereupon issue a warrant in form 25 for the arrest of the appellant, if he has not surrendered himself, and for his committal to a prison for the unexpired term of the sentence originally imposed.

(3) On the arrest of an appellant under the foregoing provisions of this section, his sureties shall be discharged from their obligations under the bail bond.

130. Presentation of case by party in custody - (1) Any party to an appeal who is in custody shall be entitled to present his case and his argument in writing instead of by oral argument if he so desires. Any case or argument so presented shall be considered by the Court hearing his appeal.

(2) On the hearing of any appeal against a conviction and the sentence passed on the conviction or against the conviction only, the appellant, if he is in custody, whether or not he is represented by counsel, shall be entitled to be present, and the superintendent of the prison in which the appellant is detained shall, without further authority than this subsection, cause him to be taken to the Court for the hearing.

(3) On the hearing of any appeal against sentence only or of any appeal by way of case stated

on a question of law only, any party to the appeal who is in custody, whether or not he is represented by counsel, shall not be entitled to be present except with the-leave of the Court, which may be given on the application in writing of that party.

(4) Where the leave of the Court is given for a party to an appeal who is in custody to be present at the hearing of the appeal, the Registrar of that Court shall notify the superintendent of the prison in which that party is detained, and the superintendent shall, without further authority than this subsection and that notification, cause him to be taken to the Court for the hearing.

(5) Any party to an appeal who is taken to the Court pursuant to subsection (2) or (4) of this section shall, unless his release is ordered by the Court, and except while he is in the custody of the Court, remain in the custody of the escorting officer until returned to the prison in which he is to be detained.

131. Appeal against conviction or sentence or both - (1) On any appeal against conviction (whether or not the appeal is against the sentence also), the Court hearing the appeal may confirm the conviction or set it aside or may quash the conviction and substitute a conviction for any other offence which the Court thinks is justified upon its finding of the facts, and may pass such sentence in respect of such substituted conviction as it thinks fit.

(2) On any appeal against sentence (whether or not the appeal is against the conviction also), the Court hearing the appeal may confirm the sentence or may, if it thinks that a different sentence should have been passed, either quash the sentence passed and pass such other sentence warranted in law (whether more or less severe) in substitution therefor as the Court thinks ought to have been passed, or vary, within the limits warranted in law, the sentence or any part of it or any condition imposed on it; and in any other case the Court shall dismiss the appeal.

132. Custody of defendant after determination of appeal - (1) Where the determination of the Court hearing any appeal has been given, or where an appeal has been dismissed for non-prosecution, any person who is liable under that determination or, as the case may be, under the decision appealed from to serve a sentence of imprisonment and who is not in custody may be arrested without warrant by any constable or any officer of a prison.

(2) Where the Court in giving any such determination quashes a sentence of imprisonment imposed by the Court whose decision is appealed against and does not impose another sentence of imprisonment, the Registrar of the Court at the place where the determination is given shall send to the superintendent of the prison in which the appellant is detained or from which he was released on bail a certificate setting out the result of the appeal, and, if the appellant is in the custody of the superintendent and is not in custody for any other matter, he shall be released.

(3) Where the Court in giving any such determination varies a sentence of imprisonment imposed by the Court whose decision is appealed against or amends the conviction in respect of which a sentence of imprisonment was imposed by that Court, the Registrar of the Court at the place where the determination is given shall send to the superintendent a certificate as aforesaid, and the warrant issued in execution of the sentence of the Court whose decision is appealed against shall have effect as if it were amended in accordance with the certificate.

(4) Where a Judge or Justice has certified that an appeal has not been prosecuted, the Registrar of the certifying Court shall send that certificate to the superintendent of the prison in which the appellant is detained. Where an appeal has been dismissed for non-prosecution, the Registrar of the Court dismissing the appeal shall send a certificate to that effect to the said superintendent.

133. Resumption of probation on determination of appeal - Where under any determination in respect of which either party appeals the defendant has been released on probation, and-

(a) When the appeal is determined neither the decision to release the defendant on probation nor the conviction on which it was made is set aside; or

(b) The appeal is not prosecuted or is dismissed for non-prosecution-

The term of probation as specified under the determination or as varied by the Court hearing the appeal, as the case may be, shall be resumed as from the day the appeal is determined or, as the case may be, the Judge or Justice having jurisdiction under any enactment conferring power to release a defendant on probation certifies that it has not been prosecuted or the Registrar of the Court dismissing the appeal certifies that it has been dismissed for non-prosecution.

134. Estreat of bail bond where appeal against decision - (1) Where an appellant who has entered into a bail bond fails to attend personally at the Court hearing his appeal in accordance with the condition of his bond, the Registrar of that Court shall certify upon the back of the bond the non-performance of the condition, and shall return the bond to the Registrar of the Court whose decision was appealed against, and the provisions of section 93 of this Act shall apply as if the certificate of the Registrar were the certificate of a Justice given under that section.

(2) If any order to estreat the bond to any amount is made, the order may include an order for the payment out of that amount of such sum as he has been directed to be paid to any party by the original conviction or by the order of the Court hearing the appeal.

(3) No Judge or Justice who states a case on appeal shall be liable to costs by reason of the appeal against his decision.

(4) If the Court hearing the appeal is of opinion that an appeal includes any frivolous or vexatious matter, it may, if it thinks fit, irrespective of the result of the appeal, allow the respondent the whole or any part of his costs in disputing the frivolous or vexatious matter.

135. No Court fees payable on appeal by appellant sentenced to imprisonment - Where an appellant has been sentenced to imprisonment under the conviction to which his appeal relates, no Court fees shall be payable in respect of the appeal.

PART V MISCELLANEOUS PROVISIONS

136. Acts not generally to be done on Sunday - (1) Except as provided in subsection (2) of

this section, no warrant shall be issued or executed, no summons or other document shall be issued or served, and no other act shall be done in respect of any matter to which this Act applies, on a Sunday.

(2) The following acts may be done and proceedings taken as effectually on a Sunday as on any other day, namely:

(a) A warrant to arrest any person charged with any offence may be issued and may be executed;

(b) A warrant to arrest, or for the appearance of, any person required to give evidence may be issued and may be executed;

(c) A search warrant may be issued and may be executed;

(d) Any information may be laid or any step taken if it is necessary to enable the issue of any warrant referred to in paragraph (a) or paragraph (b) or paragraph (c) of this subsection;

(e) A warrant of commitment (except for non-payment of a sum of money) may be executed;

(f) Any arrest authorised to be made without warrant may be made, and any person authorised to be taken into custody without warrant may be taken into custody;

(g) Any person may be granted bail or released on bail;

(h) Any statement may be taken under the provisions of section 33 of this Act (being a statement by a person dangerously ill);

(i) The verdict of a jury may be taken and other proceedings of the Court may be held.

(3) Every person commits an offence and is liable to a fine not exceeding \$20 who does any act in contravention of subsection (1) of this section:

Provided that no act done on a Sunday in breach of the provisions of that subsection shall be invalidated solely on the ground that it was done on a Sunday.

137. Proceedings not to be questioned for want of form - No information, complaint, summons, conviction, sentence, order, bond, warrant, or other document, and no process or proceedings, shall be quashed, set aside, or held invalid by reason only of any defect, irregularity, omission, or want of form unless the Court is satisfied that there has been a miscarriage of justice.

138. Consent of Attorney-General to proceedings in certain cases for offences on ships or aircraft - (1) Proceedings for the trial and punishment of any person who-

(a) Whether or not he is a person ordinarily resident in the Cook Islands, is charged with having committed beyond the Cook Islands an offence on board or by means of any ship or aircraft which is not a Cook Islands ship or a Cook Islands aircraft; or an offence to which subsection (3) of section 7 of the [Crimes Act 1969](#) applies; or

(b) Whether or not he is a person ordinarily resident in the Cook Islands, is charged with having committed anywhere within the Cook Islands or in the space above the Cook Islands an offence on board or by means of any ship or aircraft which belongs to the Government of any country other than the Cook Islands or is held by any person on behalf or for the benefit

of that Government, whether or not the ship or aircraft is for the time being used as a ship or aircraft of any of the armed forces of that country-

shall not, by virtue only of the provisions of this Act, or of the [Crimes Act 1969](#), be instituted in the Court, except with the consent of the Attorney-General and on his certificate, that it is expedient that the proceedings should be instituted, and, where the proceedings would be instituted only by virtue of the jurisdiction conferred by paragraph (c) of subsection (1) of section 7 of the [Crimes Act 1969](#), the Attorney-General shall not give his consent, unless he is satisfied that the Government of the country to which the ship or aircraft belongs has consented to the institution of the proceedings:

Provided that a person charged with any such offence may be arrested, or a warrant for his arrest may be issued and executed, and he may be remanded in custody or on bail, notwithstanding that the consent of the Attorney-General to the institution of a prosecution for the offence has not been obtained; but no further or other proceedings shall be taken until that consent has been obtained.

(2) Nothing in this section shall apply with respect to any offence against the Shipping Ordinance 1963.

139. Civil remedy not suspended - No civil remedy for any act or omission shall be suspended by reason that such act or omission amounts to an offence.

140. Regulations - (1) The High Commissioner may, from time to time, by Order in Executive Council, make all such regulations as may be necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.

(2) Without limiting the general power to make regulations conferred by subsection (1) of this section, regulations may be made under this section-

- (a) Prescribing forms to be used in respect of any proceedings to which this Act applies;
- (b) Prescribing the solicitors' fees payable by parties in proceedings to which this Act applies;
- (c) Prescribing the fees, travelling allowances, and expenses payable to interpreters and to persons giving evidence in proceedings to which this Act applies;
- (d) Prescribing the costs and charges payable by parties in proceedings to which this Act applies;
- (e) Prescribing the procedure for the taking of the evidence of witnesses under sections 32, 33, and 34 of this Act, including provisions for requiring the attendance of witnesses, the answering of questions, and the production of documents;
- (f) Providing for any other matter in respect of which regulations are contemplated under this Act.

141. Repeals - The enactments specified in the Fourth Schedule to this Act are hereby repealed.

SCHEDULES

FIRST SCHEDULE

FORMS

Form 1

WARRANT TO ARREST DEFENDANT (WHERE ISSUED BY A JUDGE)

Section 6 (1) (a), Criminal Procedure Act 1980-81

To every constable:
(Or To /Full name/, constable:)

On the..... day of 19...., an information was laid that /Full name/, of /Address, occupation/ (hereinafter called the defendant), at on /Here set out the alleged offence/.

I am of opinion that there are grounds for the issue of a warrant. AND I DIRECT YOU to arrest the defendant and bring him before the High Court as soon as possible to answer to the information.

Dated at this day of 19

.....
Judge

Form 2

WARRANT TO ARREST DEFENDANT (WHERE ISSUED BY A JUSTICE OF THE PEACE OR REGISTRAR)

Section 6 (1) (b), Criminal Procedure Act 1980-81

To every constable:
(Or To /Full name/, constable:)

On the day of an information was laid that /Full name/, of /Address, occupation/ (hereinafter called the defendant), at on..... /Here set out the alleged offence/ being an offence for which the defendant is liable on conviction to a sentence of death or imprisonment.

I am of opinion that a warrant is necessary to compel the attendance of the defendant.

(Or Having regard to the gravity of the alleged offence and the circumstances of the case I am of opinion that a warrant should be issued): AND I DIRECT YOU to arrest the defendant and bring him before the High Court as soon as possible to answer to the information

Dated at this day of 19

Justice of the Peace

(or Registrar) (or Deputy Registrar

(not being a constable)).

Form 3

INFORMATION

Section 13, Criminal Procedure Act 1980-81

I, /Full name/, of /Address, occupation/ say on oath that I have reasonable cause to suspect and do suspect that (*within the space of (12) months last past, namely) on the day of 19 , at /Full name/, of /Address, occupation/,
/Here set out the substance of the offence/. /Here add section and statute applicable./

.....
/Signature of Informant]

Sworn before me at this day of 19

.....
Judge of the High Court

(or Justice of the Peace)

(or Registrar)

(or Deputy Registrar

(not being a constable))

*Delete if inapplicable

Form 4

SUMMONS TO DEFENDANT

Section 22, Criminal Procedure Act 1980-81

To /Full name/, of /Address, occupation/

/Full name/, of /Address, occupation/, has stated on oath that (*he (she) has reasonable cause

to suspect, and does suspect, that) you the said /Full name/ (*within the space of (12) months last past, namely,) on the day of 19 at /Here set out the substance of the offence/ /Here add section and statute applicable/.

You are summoned to appear on day, the of 19....., at a.m. (p.m.), at the High Court at to answer to the information.

Dated at this..... day of 19

.....

Judge

(or Justice of the Peace

(or Registrar) (or Deputy Registrar)

(not being a constable)).

*Delete if inapplicable.

Form 5

SUMMONS TO WITNESS

Section 23 (1), Criminal Procedure Act 1980-81

To /Full name/, of /Address, occupation/

You are summoned at the request of the informant (or defendant) to appear as a witness at the High Court at..... on day the day of 19..... at a.m. (p.m.) and on such other days as may be directed by the Court to give evidence in respect of a charge of /Here state brief particulars of charge/ laid by /Name of informant/ against /Name of defendant/.

*You are required to bring with you and produce /Specify what is to be produced/.

Dated at this day of 19

.....

Judge

(or Justice of the Peace)

(or Registrar)

(or Deputy Registrar)

* Delete if inapplicable

Form 6

WARRANT FOR ATTENDANCE OF A WITNESS

Section 23 (3), Criminal Procedure Act 1980-81

To every constable:
(Or to /Full name/ constable:)

I am satisfied that /Full name/, of /Address, occupation/, whose evidence at the hearing is required by the informant (or defendant) in the case of /Title of proceedings/, the charge (being will not attend without being compelled to do so:

AND I DIRECT YOU to arrest the said /Full name of witness/ and bring him to the High Court at on day, the day of 19 at a.m. (p.m.)

Dated at..... this day of 19

.....

Judge

(This warrant may be issued only by a Judge)

Form 7

WARRANT TO ARREST DEFENDANT WHO DOES NOT ATTEND PERSONALLY

Sections 59, 92, Criminal Procedure Act 1980-81

To every constable:

(Or To /Full name/, constable:)

/Full name/, of /Address, occupation/ (hereinafter called the defendant), is charged with

The defendant was released on bail to attend personally this day at a.m. (p.m.) at this Court (or to attend personally at every time and place to which during the course of the proceedings the hearing might be from time to time adjourned, and the hearing was adjourned until this day at a.m. (p.m.) at this Court) and the defendant did not attend personally this day as required by his bond.

(Or The defendant is liable on conviction to a sentence of imprisonment and he was not personally present at the hearing this day and I (we) think fit to issue a warrant to arrest him and bring him before this Court.)

I (WE) DIRECT YOU to arrest the defendant and bring him before this Court as soon as possible.

Dated at this day of 19.....

.....

Judge

(or Justice(s) of the Peace).

Form 8

**WARRANT OF COMMITMENT FOR A WITNESS
REFUSING TO GIVE EVIDENCE**

Section 77 (2), Criminal Procedure Act 1980-81

To every constable (or To/Full name/, constable), and to the Superintendent of the prison at

Full name/, or Address, occupation/ (hereinafter called the witness), a witness in the case of Title of the proceedings/ now being heard before this Court, refuses to give evidence (or refuses to be sworn or having been sworn refuses to answer questions concerning the charge) without offering any just excuse for his refusal:

I (WE) DIRECT YOU, the said constable(s), to arrest the witness and deliver him to the Superintendent of the prison at, and you, the said Superintendent, to receive the witness into your custody and to detain him for days, unless he sooner consents to give evidence (or to be sworn or to answer the questions put to him).

AND I (WE) FURTHER DIRECT YOU, the said Superintendent, to bring the witness to the High Court at on day, the day of 19....., at a.m. (p.m.), or at such earlier time as he consents to give evidence (or to be sworn or to answer the questions put to him).

Dated at this day of 19

.....

Judge

(or Justice(s) of the Peace),

Form 9

WARRANT OF COMMITMENT ON ADJOURNMENT

Section 85 (2), Criminal Procedure Act 1980-81

To every constable (or To /Full name/, constable), and to the Superintendent of the prison at

The hearing of a charge of against /Full name/, of /Address, occupation/ (hereinafter called the defendant) has been adjourned, and the defendant has been remanded in custody for the period of the adjournment.

I (WE) DIRECT YOU, the said constable(s), to deliver the defendant to the prison at and you, the said Superintendent, to receive the defendant into your custody and to detain him until day, the day of 19....., when you are required to bring him to the High Court at at a.m. (p.m.) to answer further to the charge.

Dated at this day of 19

.....

Judge

(or Justice(s) of the Peace).

/Back/

**CERTIFICATE OF CONSENT TO BAIL BY COURT OR JUSTICE
REMANDING PRISONER**

I (WE) hereby certify that I (we) consent to the defendant's being bailed in the sum of with surety (sureties) in the sum of (each) (without surety), subject to the following condition(s):

.....

Judge

(or Justice(s) of the Peace).

Form 10

BAIL BOND FOR THE ATTENDANCE OF THE DEFENDANT

Section 89 (1), Criminal Procedure Act 1980-81

/Full name/, Informant.

/Full name/, Defendant.

/Full name/, of /Address, occupation/ (hereinafter called the defendant) is charged

with and /Full name(s), address(es), and occupation(s)/ has (have) agreed to act as surety (sureties).

I, the defendant, bind myself to attend personally at the High Court at on day, the day of 19....., at a.m. (p.m.) (and to attend personally at every time and place to which the hearing may be from time to time adjourned), to answer further to the charge (and in the meantime to report at the Police Station at).

And I, the defendant, acknowledge myself bound to forfeit to the Crown the sum of \$..... and I (we) the surety (sureties) acknowledge myself (ourselves) bound to forfeit to the Crown the sum of \$..... (each) in the event that the defendant fails to attend or fails to perform any of his other obligations under this bond.

.....

Defendant

.....

Surety (or Sureties).

Taken before me at this day of 19

.....

Judge

(or Justice of the Peace

or Registrar or Superintendent of

the penal Institution in which

the defendant is detained).

Form 11

NOTICE OF BOND

(To be endorsed on bond)

Section 89 (2), Criminal Procedure Act 1980-81

To the above-mentioned defendant and to the above-mentioned surety (sureties):

TAKE NOTICE that if the defendant fails to attend as required by the bail bond set out above or to perform any of his other obligations under that bond, then you, the defendant, will

forfeit the sum of \$ (and you, the surety (sureties), will forfeit the sum of\$......
(each)).

Dated at this day of 19

.....

Judge

(or Justice of the Peace

or Registrar or Superintendent).

Form 12

WARRANT OF DELIVERANCE ON EXECUTION OF A BAIL BOND

Section 89 (3), Criminal Procedure Act 1980-81

To the Superintendent of the prison at

/Full name/, of /Address, occupation/, (hereinafter called the defendant), who was remanded into your custody on (a) charge(s) of was granted bail in the sum of \$..... without sureties (with surety(ies) in the sum of \$..... (each))).

The defendant has now entered into a bail bond with (without) surety(ies) in the required amount(s) and I direct you, if he is detained in your prison awaiting hearing of the said charge(s) and for no other cause to release him forthwith.

Dated at this day of 19

.....

Judge

(or Justice of the Peace

(or Registrar),

(or Deputy Registrar)

Form 13

WARRANT OF ARREST OF DEFENDANT FOR ABSCONDING

Section 90 (1), Criminal Procedure Act 1980-81

To every constable:

(Or To /Full name/, constable:)

/Full name/, of /Address, occupation/ (hereinafter called the defendant), who is charged with was released on bail.

I am satisfied on the oath of /Full name/, of /Address, occupation/, (on behalf of) the informant or a surety that the defendant has absconded (is about to abscond) for the purpose of evading justice.

I DIRECT YOU to arrest the defendant and bring him before a Judge of the High Court or Justice of the Peace as soon as possible.

Dated at this day of 19.....

.....

Judge

(or Justice of the Peace).

Form 14

WARRANT TO ARREST DEFENDANT OR APPELLANT FOR FAILURE TO REPORT

Sections 91, 128, Criminal Procedure Act 1980-81

To every constable:

(Or To /Full name/, constable:)

/Full name/, of /Address, occupation/ (hereinafter called the defendant (appellant), who is charged with (or who has appealed against his conviction (or sentence or conviction and sentence) for the offence of) (or who has been committed for trial or for sentence for) was released on bail, subject to the condition that he report to the police at /Here state places and times/.

I am satisfied that the defendant has failed to comply with the said condition AND I DIRECT YOU to arrest the defendant (appellant) and bring him before a Judge of the High Court or Justice of the Peace as soon as possible.

Dated at this day of 19

.....

Judge

(or Justice of the Peace).

[No Form 15]

Form 16

SEARCH WARRANT

Section 96 (1), Criminal Procedure Act 1980-81

To every constable:

(Or To /Full name/, constable:)

I am satisfied on an application in writing made on oath (or on an application made on oath orally, the grounds for which I have noted in writing) that there is reasonable ground for believing that there is (are) in /Here describe building, aircraft, ship carriage, vehicle, box, receptacle, premises, or place/ the following thing(s) /Here insert description of the things to be searched for/ upon or in respect of which an offence of /State offence, being an offence punishable by imprisonment/ has been or is suspected of having been committed or which there is reasonable ground to believe will be evidence as to the commission of an offence of /State offence, being an offence punishable by imprisonment/) (or which there is reasonable ground to believe is intended to be used for the purpose of committing an offence of /State offence, being an offence punishable by imprisonment/).

This is to authorise you at any time or times within one month from the date of this warrant to enter and search the said with such assistants as may be necessary, and if necessary to use force for making entry, whether by breaking open doors or otherwise, and also to break open the box (receptacle) (or any box or receptacle therein or thereon) by force if necessary; and also to seize any thing upon or in respect of which the offence has been or is suspected of having been committed (or any thing which there is reasonable ground to believe will be evidence as to the commission of the offence) (or any thing which there is reasonable ground to believe is intended to be used for the purpose of committing the offence).

Dated at this day of 19

.....

Judge

(or Justice of the Peace

(or Registrar)

(or Deputy Registrar (not being a constable)).

Form 17

CRIMINAL RECORD BOOK

Section 107 (1), Criminal Procedure Act 1980-81

High Court at		No.
Person charged		Hearing Date <input type="text"/> <input type="text"/> <input type="text"/>
<u>/Set out full name and address of defendant/</u>		Prosecutor:
		Offence <u>/Give brief particulars/</u>
Adjourned or Remand Dates	PLEA	
.....	DECISION	
	Judge Justice(s).	

Form 18

BOND FOR KEEPING THE PEACE

Section 123 (3), Criminal Procedure Act 1980-81

/Full name/, Complainant.

/Full name/, Defendant.

COMPLAINT was made by /Full name of complainant/ against /Full name of defendant/ that /Here set out grounds of complain/.

On an order was made by the High Court at that the defendant enter into a bond as follows to keep the peace:

I, /Full name/, of /Address, occupation/, the defendant, bind myself to per from the following obligations, to keep the peace towards the complainant and to refrain from doing the act feared by the complainant (or from repeating the conduct complained of) (or from doing the act threatened) for the space of from this date.

And I, the defendant, acknowledge myself bound to forfeit to the Crown the sum of \$ (and I (we) /Full name(s), address(es) and occupation(s)/ the surety(ies), acknowledge(s)

myself (ourselves) bound to forfeit to the Crown the sum of \$ (each)) in the event that the defendant fails to perform any of his obligations under this bond.

....., Defendant.

....., Surety (or Sureties).

Taken before me at this day of 19

.....

Judge

(or Justice of the Peace)

(or Registrar),

(or Deputy Registrar)

Form 19

NOTICE OF BOND

(To be endorsed on bond)

Section 123 (3), Criminal Procedure Act 1980-81

To the above-mentioned defendant and to the above-mentioned surety (sureties):

TAKE NOTICE that if the defendant fails to keep the peace or to perform any of his other obligations under that bond, then you, the defendant, will forfeit the sum of \$..... (and you, the surety (sureties), will forfeit the sum of \$..... (each)).

Dated at this day of 19

.....

Judge

(or Justice of the Peace)

(or Registrar)

(or Deputy Registrar)

Form 20

ORDER CALLING UP BOND TO KEEP THE PEACE

Section 127 (3), Criminal Procedure Act 1980-81

I hereby order that the within bond (or the bond /Here describe bond/) be called up to the amount of \$..... in respect o the defendant (and to the amount of \$..... in respect of (each of) the surety(ies) or /Full name/, a surety)).

Dated at this day of 19

.....

Judge.

Form 21

WARRANT FOR ARREST AND COMMITTAL OF BAILED APPELLANT WHERE HE SURRENDERS OR WHERE SURETY APPLIES TO BE DISCHARGED

Section 129, Criminal Procedure Act 1980-81

To every constable (or To /Full name/, constable), and to the Superintendent of the prison at

/Full name/, of /Address, occupation/ (hereinafter called the appellant who was convicted o the offence of and sentenced to having appealed against his conviction (or sentence or conviction and sentence), was released on bail.

He has surrendered himself and applied to me for the discharge of his bail bond.

(Or /Full name/, of /Address, occupation/ (one of the) surety (ies) for the appellant, has applied to me to be discharged from his obligation under the bail bond.)

I DIRECT YOU, the said constable(s), to arrest the appellant and deliver him to the prison at and you, the said Superintendent, to receive the defendant into your custody and to detain him for the unexpired term of the said sentence.

Dated at this day of 19

.....

Justice of the Peace

SECOND SCHEDULE

Section 119 (4)

CARRYING OUT OF SENTENCE OF DEATH

1. Execution of sentence of death- (1) Where sentence of death is pronounced by the High Court, it shall be the duty of the Sheriff to carry out the sentence at a place appointed under this clause.

(2) The sentence shall be carried out within 7 days after that Sheriff has received a notice that the High Commissioner will not interfere with the sentence, and shall not be carried out before he has received such notice.

(3) Notwithstanding that any such notice has been given, the High Commissioner may from time to time direct the postponement of the carrying out of the sentence, including any sentence the carrying out of which has already been postponed under this subclause. Whenever any direction is given under this subclause, the provisions of subclause (2) of this clause shall apply with respect to the carrying out of the postponed sentence.

(4) The sentence shall be carried out within the walls of such prison, or in such other enclosed place, as the Minister of Justice may from time to time appoint in that behalf, either generally in respect of all such sentences or in any particular case.

2. Superintendent to deliver condemned person to Sheriff- Every Superintendent or other person in whose custody any person condemned to death may be shall deliver the condemned person to the Sheriff on his demand. On such delivery the liability of the Superintendent or other person shall cease, and the condemned person shall thenceforth be deemed to be in the legal custody of that Sheriff.

3. Sheriff and other persons to witness execution- There shall be present at the execution the Sheriff whose duty it is to carry out the sentence, the Superintendent of the prison, any prison officers and military and police guard whose attendance the Sheriff may require, a medical officer, any minister of religion who is attending the person to be executed, and such Justices of the Peace and other adult spectators, not exceeding 10 in all, as that Sheriff thinks fit to admit.

4. Medical officer to sign certificate- Every person present at the execution shall remain within the walls of the prison or enclosed place until the sentence has been carried into execution and completed according to law, and until the medical officer has signed and delivered to the Sheriff a certificate in form 1 in the Third Schedule to this Act.

5. Witnesses to sign declaration- The Sheriff, the Superintendent and other prison officers, and such other of the persons present as think fit, shall, before their departure from the prison or other place of execution, sign a declaration in form 2 in the Third Schedule to this Act.

6. Certificate and declaration to be recorded and gazetted- (1) The Sheriff shall forthwith send the certificate and declaration to the Registrar of the High Court. The Registrar shall cause the certificate and declaration to be published in the Cook Islands Gazette, and to be kept in his office as a record of the High Court.

(2) Every one is liable to imprisonment for a term not exceeding 7 years who signs any such certificate or declaration, knowing it to be false or to contain any false statement.

7. Inquest to be held on body- (1) Where any sentence of death is carried into execution it

shall be the duty of the Sheriff forthwith to give notice thereof to a Coroner, who, as soon as may be practicable, shall hold an inquest on the body of the person on whom the sentence has been executed.

(2) The Coroner shall inquire and find whether the sentence was duly carried out on the body of the person condemned to execution.

8. Burial or cremation of body- The body of any person on whom sentence of death is carried into execution shall be buried, or may, in any case where cremation is lawful, be cremated, under such conditions and in such place as the Minister of Justice may direct, either generally in respect of all executions or in any particular case.

THIRD SCHEDULE

FORMS (CAPITAL OFFENCES)

Form 1

Clause 4, Second Schedule

CERTIFICATE OF EXECUTION OF SENTENCE OF DEATH

I, A.B., the medical officer in attendance at the execution of C.D., at [specify name of prison or other place of execution], hereby certify that I have this day witnessed his execution by hanging, pursuant to the sentence passed on him by the High Court.

Dated at this day of 19

A. B.

Form 2

Clause 5, Second Schedule

DECLARATION OF EXECUTION OF SENTENCE OF DEATH

We hereby declare that we have this day been present at the execution of C.D. who was convicted by the High Court at..... on the day of 19....., and sentenced to death, and that the said sentence was carried out by hanging.

Dated at this day of 19

....., Sheriff
....., Superintendent
....., Prison Officer
....., Other Spectators

FOURTH SCHEDULE

Section 141

ENACTMENTS REPEALED