



**Tuvalu**

# **CRIMINAL PROCEDURE CODE**

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Tuvalu

## CRIMINAL PROCEDURE CODE

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Tuvalu

## CRIMINAL PROCEDURE CODE<sup>1</sup>

Commencement [14th October 1963]

### PART I - PRELIMINARY

#### 1 Short title

This Act (hereinafter referred to as this Code) may be cited as the Criminal Procedure Code.

#### 2 Interpretation

In this Code, unless the context otherwise requires –

“**advocate**” means any legal practitioner entitled to practise before the High Court or any court subordinate thereto under any law for the time being in force;

“**cognisable offence**” means any felony and any other offence for which a police officer may under any law for the time being in force arrest without warrant;

“**complaint**” means an allegation that some person known or unknown has committed an offence;

“**court**” means the High Court or any magistrate’s court as the context may require;

“**customs laws**” includes any Act relating to the customs or excise and “**offences against the customs laws**” includes any act of any person contrary to the customs laws or any failure of any person to perform an act required by the customs laws to be performed by him;

“**justice of the peace**” means any person appointed to be a justice of the peace under the provisions of the Magistrates’ Courts Act;<sup>2</sup>

“**mental health wing**” means a place appointed as such for the care and treatment and detention of patients under the provisions of the Mental Treatment Act;<sup>3</sup>

“**non-cognisable offence**” means an offence for which a police officer may not arrest without warrant;

“**police officer**” includes any special constable enrolled under the Police Act;<sup>4</sup>

“**preliminary investigation**” or “**preliminary inquiry**” means an investigation of or an inquiry into a criminal charge held by a magistrate’s court with a view to the committal of the accused person for trial before the High Court;

“**private prosecution**” means a prosecution instituted and conducted by any person other than a public prosecutor or a public officer in his official capacity;

“**public prosecutor**” means any person appointed as such under section 71, and includes the Attorney-General and any other legal officer, police officer or other person acting under the direction of the Attorney-General;

“**Registrar of the High Court**” means a person appointed as such under section 17(1) of the Superior Courts Act;<sup>5</sup>

“**rules of court**” means rules of court made under the provisions of section 80 of the Constitution; and

“**Senior Magistrate**” means the Senior Magistrate referred to in section 3 of the Magistrates’ Courts Act.<sup>6</sup>

### 3 Inquiry into and trial of offences

Subject to the express provisions of any other law for the time being in force, all offences shall be inquired into, tried and otherwise dealt with according to the provisions hereinafter contained.

## PART II - POWERS OF COURTS

### 4 Power to try offences

Subject to the other provisions of this Code —

- (a) any offence may be tried by the High Court;
- (b) any offence may be tried by the Senior Magistrate’s Court where the maximum punishment prescribed by law for such offence does not exceed —
  - (i) imprisonment for a term of 14 years; or

- (ii) a fine; or
  - (iii) both such imprisonment and such fine; or where jurisdiction so to do has been conferred upon it by order made under the provisions of section 25(3) of the Magistrates' Courts Act; and
- (c) any offence may be tried by any magistrate's court where the maximum punishment prescribed by law for such offence does not exceed —
- (i) imprisonment for a term of 1 year; or
  - (ii) a fine of \$200; or
  - (iii) both such fine and such imprisonment; or where jurisdiction so to do has been conferred upon it by order made under the provisions of section 25(3) of the Magistrates' Courts Act.

## **5 Offences under certain laws**

- (1) Any offence under any law for the time being in force in Tuvalu shall, when any court is mentioned in that behalf in such law, be tried by such court.

For the purposes of this subsection a provision in any law for any offence to be tried summarily shall be construed as a reference to the trial of such offence by a magistrate's court.

- (2) When no court is mentioned in the manner referred to in subsection (1) in respect of any offence, such offence may be tried in accordance with this Code.

## **6 Sentences which High Court may pass**

The High Court may pass any sentence authorised by law.

## **7 Sentences which magistrate's court may pass**

- (1) The Senior Magistrate's Court may, in cases in which such sentences are authorised by law, pass the following sentences —
- (a) imprisonment for a term not exceeding 5 years; or
  - (b) a fine not exceeding \$1,000; or
  - (c) both such imprisonment and such fine.
- (2) A magistrate's court may, in the cases in which such sentences are authorised by law, pass the following sentences —
- (a) imprisonment for a term not exceeding 1 year; or
  - (b) a fine not exceeding \$200; or
  - (c) both such imprisonment and such fine.

**8 Combination of sentences**

- (1) Any court may pass any lawful sentence combining any of the sentences which it is authorised by law to pass.
- (2) In determining the extent of the court's jurisdiction under section 7 to pass a sentence of imprisonment the court shall be deemed to have jurisdiction to pass the full sentence of imprisonment provided in the said section in addition to any term of imprisonment which may be awarded in default of payment of a fine, costs or compensation.

**9 Sentences in cases of conviction of several offences at one trial**

- (1) When a person is convicted at one trial of 2 or more distinct offences the court may sentence him, for such offences, to the several punishments prescribed therefor which such court is competent to impose; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the court may direct, unless the court directs that such punishments shall run concurrently.
- (2) In the case of consecutive sentences it shall not be necessary for a magistrate's court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to impose on conviction of a single offence, to send the offender for trial before a higher court:  
  
Provided that the aggregate punishment shall not exceed twice the amount of punishment which such magistrate's court is competent to impose in the exercise of its ordinary jurisdiction.
- (3) For the purposes of appeal or confirmation the aggregate of consecutive sentences imposed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.

**PART III - GENERAL PROVISIONS****10 Arrest**

- (1) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.
- (2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest:



Provided that nothing in this section contained shall be deemed to justify the use of greater force than was reasonable in the particular circumstances in which it was employed or was necessary for the apprehension of the offender.

## **11 Search of place entered by person sought to be arrested**

- (1) If any person acting under a warrant of arrest, or any police officer having authority to arrest, has reason to believe that the person to be arrested has entered into or is within any place, the person residing in or being in charge of such place, shall, on demand of such person acting as aforesaid or such police officer, allow him free ingress thereto and afford all reasonable facilities for a search therein.
- (2) If ingress to such place cannot be obtained under subsection (1), it shall be lawful in any case for a person acting under a warrant, and, in any case in which a warrant may issue but cannot be obtained without affording the person to be arrested an opportunity to escape, for a police officer to enter such place and search therein, and, in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, or otherwise effect entry into such house or place, if after notification of his authority and purpose and demand of admittance duly made he cannot otherwise obtain admittance.

## **12 Power to break out of house or other place for purpose of liberation**

Any police officer or other person authorised to make an arrest may break out of any house or other place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

## **13 No unnecessary restraint**

The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

## **14 Search of arrested persons**

- (1) Whenever a person is arrested by a police officer or a private person, the police officer making the arrest or to whom the private person makes over the person arrested may search such person, and place in safe custody all articles other than necessary wearing apparel found upon him:

Provided that whenever the person arrested can be legally admitted to bail and bail is furnished, such person shall not be searched unless there are reasonable grounds for believing that he has about his person any —

- (a) stolen articles; or

- (b) instruments of violence; or
  - (c) tools connected with the kind of offence which he is alleged to have committed; or
  - (d) other articles which may furnish evidence against him in regard to the offence which he is alleged to have committed.
- (2) The right to search an arrested person does not include the right to examine his private person.
- (3) Where any property has been taken from a person under this section, and the person is not charged before any court but is released on the ground that there is no sufficient reason to believe that he has committed any offence, any property so taken from him shall be restored to him.

## **15 Powers of police officers to detain and search persons, vehicles and vessels in certain circumstances**

- (1) Any police officer who has reason to suspect that any article stolen or unlawfully obtained, or any article in respect of which a criminal offence or an offence against the customs laws has been, is being, or is about to be, committed, is being conveyed, whether on any person or in any vehicle, package or otherwise, or is concealed or carried on any person in a public place, or is concealed or contained in any vehicle or package in a public place, for the purpose of being conveyed, may, without warrant or other written authority, detain and search any such person, vehicle or package, and may take possession of and detain any such article which he may reasonably suspect to have been stolen or unlawfully obtained or in respect of which he may reasonably suspect that a criminal offence or an offence against the customs laws has been, is being, or is about to be committed, together with the package, if any, containing it, and may also detain the person conveying, concealing or carrying such article:

Provided that this subsection shall not extend to the case of postal matter in transit by post except where such postal matter has been, or is suspected of having been, dishonestly appropriated during such transit.

- (2) Any police officer of or above the rank of sergeant may, if he has reason to suspect that there is on board any vessel any property stolen or unlawfully obtained, enter without warrant, and with or without assistants, board such vessel and may remain on board for such reasonable time as he may deem expedient, and may search with or without assistants any and every part of such vessel, and, after demand and refusal of keys, may break open any receptacle, and upon discovery of any property which he may reasonably suspect to have been stolen or unlawfully obtained may take possession of and detain such property and may also detain the person in whose possession the same is found. Such police officer may pursue and detain any person who is in the act of conveying any such property away from any such vessel, or

after such person has landed with the property so conveyed away or found in his possession.

- (3) Any person detained under this section shall be dealt with under the provisions of section 23.

## **16 Mode of searching women**

Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency.

## **17 Power to seize offensive weapons**

Notwithstanding the provisions of section 14, the officer or other person making any arrest may take from the person arrested any instruments of violence which he has about his person, and shall deliver all articles so taken to the court or officer before which or whom the officer or person making the arrest is required by law to produce the person arrested.

## **18 Arrest by police officer without warrant**

Any police officer may, without an order from a magistrate and without a warrant, arrest —

- (a) any person whom he suspects upon reasonable grounds of having committed a cognisable offence;
- (b) any person who commits any offence in his presence;
- (c) any person who obstructs a police officer while in the execution of his duty, or who has escaped or attempts to escape from lawful custody;
- (d) any person in whose possession anything is found which may reasonably be suspected to be stolen property or who may reasonably be suspected of having committed an offence with reference to such thing;
- (e) any person whom he suspects upon reasonable grounds of being a deserter from Her Majesty's Army or Navy or Air Force;
- (f) any person whom he finds in any highway, yard or other place during the night and whom he suspects upon reasonable grounds of having committed or being about to commit a felony;
- (g) any person whom he suspects upon reasonable grounds of having been concerned in any act committed at any place out of Tuvalu which, if committed in Tuvalu, would have been punishable as an offence, and for which he is, under the Extradition Act 1870 or the Fugitive Offenders Act 1967, or otherwise, liable to be apprehended and detained in Tuvalu;

- (h) any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of housebreaking;
- (i) any person for whom he has reasonable cause to believe a warrant of arrest has been issued;
- (j) any released convict committing a breach of any provision prescribed by section 40 of the Penal Code or of any rule made thereunder.

## **19 Refusal to give name and residence**

- (1) When any person who in the presence of a police officer has committed or has been accused of committing a non-cognisable offence refuses on the demand of such officer to give particulars of his name and residence, or gives particulars of a name or residence which such officer has reason to believe to be false, such officer may arrest such person in order that his name or residence may be ascertained.
- (2) When the true name and residence of such person have been ascertained he shall be released on his executing a bond, with or without sureties, to appear before a magistrate if so required:  

Provided that if such person is not resident in Tuvalu the bond shall be secured by a surety or sureties resident in Tuvalu.
- (3) Should the true name and residence of such person not be ascertained within 24 hours from the time of arrest, or should he fail to execute the bond or, if so required, to furnish sufficient sureties, he shall forthwith be taken before the nearest magistrate having jurisdiction.

## **20 Disposal of persons arrested by police officer**

A police officer making an arrest without a warrant shall, without unnecessary delay and subject to the provisions of this Code as to bail, take or send the person arrested before a magistrate having jurisdiction in the case or before an officer of or above the rank of sergeant or before the officer in charge of the nearest police station.

## **21 Arrest by private person**

- (1) Any private person may arrest any person who in his view commits a cognisable offence, or whom he reasonably suspects of having committed a felony, provided a felony has been committed.
- (2) Persons found committing any offence involving injury to property may be arrested without a warrant by the owner of the property or his servants or person authorised by him.

**22 Disposal of person arrested by private person**

- (1) Any private person arresting any other person without a warrant shall without unnecessary delay make over the person so arrested to a police officer, or in the absence of a police officer shall take such person to the nearest police station.
- (2) If there is reason to believe that such person comes under the provisions of section 18, a police officer shall re-arrest him.
- (3) If there is reason to believe that he has committed a non-cognisable offence, and he refuses on the demand of a police officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 19. If there is no sufficient reason to believe that he has committed any offence he shall be at once released.

**23 Detention of persons arrested without warrant**

When any person has been taken into custody without a warrant for an offence other than murder or treason, the officer of or above the rank of sergeant or the officer in charge of the police station to whom such person shall have been brought may in any case and shall, if it does not appear practicable to bring such person before an appropriate magistrate's court within 24 hours after he has been so taken into custody, inquire into the case, and unless the offence appears to the officer to be of a serious nature, release the person on his entering into a recognisance with or without sureties, for a reasonable amount to appear before a magistrate's court at a time and place to be named in the recognisance, but where any person is retained in custody he shall be brought before a magistrate's court as soon as practicable:

Provided that an officer of or above the rank of sergeant or the officer in charge of the police station may release a person arrested on suspicion on a charge of committing any offence, when, after due inquiry, insufficient evidence is, in his opinion, disclosed on which to proceed with the charge.

**24 Police to report apprehensions**

Where any person is released under the proviso to section 23, the police officer who authorised such release shall report the same to the nearest magistrate as soon as it is reasonably possible to do so.

**25 Offence committed in magistrate's presence**

When any offence is committed in the presence of a magistrate within the local limits of his jurisdiction he may himself arrest or order any person to arrest the offender, and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody.

**26 Arrest by magistrate**

Any magistrate may at any time arrest or direct the arrest in his presence, within the local limits of his jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

**27 Recapture of person escaping**

If a person in lawful custody escapes or is rescued, the person from whose custody he escapes or is rescued may immediately pursue and arrest him in any place in Tuvalu.

**28 Provisions of section 11 and 12 to apply to arrests under section 27**

The provisions of sections 11 and 12 shall apply to arrests under section 27, although the person making any such arrest is not acting under a warrant and is not a police officer having authority to arrest.

**29 Assistance to a magistrate or police officer**

Every person is bound to assist a magistrate or police officer reasonably demanding his aid —

- (a) in the taking or preventing the escape of any other person whom such magistrate or police officer is authorised to arrest;
- (b) in the prevention or suppression of a breach of the peace, or in the prevention of any injury attempted to be committed to any railway, canal, telegraph or public property.

**30 Security for keeping the peace**

- (1) Whenever a magistrate is informed on oath that any person is likely to commit a breach of the peace, or to do any wrongful act that may probably occasion a breach of the peace, the magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to enter into a recognisance, with or without sureties, for keeping the peace for such period, not exceeding 1 year, as the magistrate thinks fit.
- (2) Proceedings shall not be taken under this section unless either the person informed against, or the place where the breach of the peace or disturbance is apprehended, is within the local limits of such magistrate's jurisdiction.

**31 Security for good behaviour from persons disseminating seditious matters**

Whenever a magistrate is informed on oath that there is within the limits of his jurisdiction any person who, within or without such limits, either orally or in writing or in any other manner, disseminates, or attempts to disseminate, or in any way abets the dissemination of —

- (a) any seditious matter, that is to say, any matter the publication of which is made an offence under any law for the time being in force; or
- (b) any matter concerning a judge which amounts to criminal libel,

such magistrate may (in the manner provided in this Code) require such person to show cause why he should not be ordered to enter into a recognisance, with or without sureties, for his good behaviour for such period, not exceeding 1 year, as the magistrate thinks fit.

**32 Security for good behaviour from vagrants and suspected persons**

Whenever a magistrate is informed on oath that any person is taking precautions to conceal his presence within the local limits of such magistrate's jurisdiction, and that there is reason to believe that such person is taking such precautions with a view to committing any offence, such magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to enter into a recognisance, with sureties, for his good behaviour for such period, not exceeding 1 year, as the magistrate thinks fit.

**33 Security for good behaviour from habitual offenders**

When a magistrate is informed on oath that any person within the local limits of his jurisdiction —

- (a) is by habit a robber, house breaker or thief; or
- (b) is by habit a receiver of stolen property, knowing the same to have been stolen; or
- (c) habitually protects or harbours thieves, or aids in the concealment or disposal of stolen property; or
- (d) habitually commits or attempts to commit, or aids or abets in the commission of, any offence punishable under Parts XXXIII, XXXV or sections 345 to 359 inclusive of Part XXXVI of the Penal Code;<sup>7</sup> or
- (e) habitually commits or attempts to commit, or aids or abets in the commission of, offences involving a breach of the peace; or
- (f) is so desperate and dangerous as to render his being at large without security hazardous to the community,

such magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to enter into a recognisance with

sureties, for his good behaviour for such period, not exceeding 2 years, as the magistrate thinks fit.

### **34 Order to be made**

When a magistrate acting under section 30, 31, 32 or 33 deems it necessary to require any person to show cause under such section, he shall make an order in writing setting forth —

- (a) the substance of the information received;
- (b) the amount of the recognisance;
- (c) the term for which it is to be in force; and
- (d) the number, character and class of sureties, if any, required.

### **35 Procedure in respect of person present in court**

If the person in respect of whom such order is made is present in court, it shall be read over to him or, if he so desires, the substance thereof shall be explained to him.

### **36 Summons or warrant in case of person not so present**

If such person is not present in court, the magistrate shall issue a summons requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is to bring him before the court:

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

### **37 Copy of order under section 34 to accompany summons or warrant**

Every summons or warrant issued under section 36 shall be accompanied by a copy of the order made under section 34, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with or arrested under the same.

### **38 Power to dispense with personal attendance**

The magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered to enter into a recognisance for keeping the peace, and permit him to appear by an advocate.



**39 Inquiry as to truth of information**

- (1) When an order under section 34 has been read or explained under section 35 to a person present in court, or when any person appears or is brought before a magistrate in compliance with or in execution of a summons or warrant issued under section 36, the magistrate shall proceed to inquire into the truth of the information upon which the action has been taken, and to take such further evidence as may appear necessary.
- (2) Such inquiry shall be made, as nearly as may be practicable, in the manner hereinafter prescribed for conducting trials and recording evidence in trials before magistrates' courts.
- (3) For the purposes of this section the fact that a person comes within the provisions of section 33 may be proved by evidence of general repute or otherwise.
- (4) Where 2 or more persons have been associated together in the matter under inquiry, they may be dealt with in the same or separate inquiries as the magistrate thinks just.

**40 Order to give security**

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

Provided that —

- (a) no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 34;
  - (b) the amount of every recognisance shall be fixed with due regard to the circumstances of the case and shall not be excessive;
  - (c) when the person in respect of whom the inquiry is made is a minor, the recognisance shall be entered into only by his sureties.
- (2) Any person ordered to give security for good behaviour under this section may appeal to the Senior Magistrate, or, if the order under appeal was made by the Senior Magistrate, to the High Court, and the provisions of Part IX (relating to appeals) shall apply to every such appeal.

**41 Discharge of person informed against**

If on an inquiry under section 39 it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should enter into a recognisance, the magistrate shall make an entry on the record to that effect, and, if such person is in custody only for

the purposes of the inquiry, shall release him, or if such person is not in custody, shall discharge him.

#### **42 Commencement of period for which security is required**

- (1) If any person in respect of whom an order requiring security is made under section 34 or 40 is, at the time such order is made, sentenced to or undergoing a sentence of imprisonment, the period for which such security is required shall commence on the expiration of such sentence.
- (2) In other cases such period shall commence on the date of such order unless the magistrate, for sufficient reason, fixes a later date.

#### **43 Contents of recognisance**

The recognisance to be entered into by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be, and in the latter case the commission or attempt to commit or the aiding, abetting, counselling or procuring the commission of any offence punishable with imprisonment, wherever it may be committed, shall be a breach of the recognisance.

#### **44 Power to reject sureties**

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

#### **45 Procedure on failure of person to give security**

- (1) If any person ordered to give security as aforesaid does not give such security on or before the date on which the period for which such security is to be given commences, he shall, except in the case mentioned in subsection (2) of this section, be committed to prison, or, if he is already in prison, be detained in prison until such period expires or until within such period he gives the security to the court or magistrate who made the order requiring it.
- (2) When such person has been ordered by a magistrate to give security for a period exceeding 1 year, such magistrate shall, if such person does not give such security as aforesaid, issue a warrant directing him to be detained in prison pending the orders of the Senior Magistrate, or, if the warrant is to be issued by the Senior Magistrate, pending the orders of the High Court, and the proceedings shall be laid as soon as conveniently may be before such court.
- (3) The Senior Magistrate or the High Court, as the case may be, after examining the proceedings and requiring from the magistrate any further information or

evidence which it thinks necessary may make such order in the case as he or it thinks fit.

- (4) The period, if any, for which any person is imprisoned for failure to give security shall not exceed 2 years.
- (5) If the security is tendered to the officer of the prison, he shall forthwith refer the matter to the court or magistrate who made the order and shall await the orders of such court or magistrate.

#### **46 Power to release persons imprisoned for failure to give security**

Whenever a magistrate is of opinion that any person imprisoned for failing to give security may be released without hazard to the community, such magistrate shall make an immediate report of the case for the orders of the Senior Magistrate's Court, and such court may, if it thinks fit, order such person to be discharged.

#### **47 Power of High Court and Senior Magistrate to cancel recognisance**

The Senior Magistrate or High Court may at any time, for sufficient reasons to be recorded in writing, cancel any recognisance for keeping the peace or for good behaviour executed under any of the preceding sections by order of any court.

#### **48 Discharge of sureties**

- (1) Any surety for the peaceable conduct or good behaviour of another person may at any time apply to a magistrate to cancel any recognisance entered into under any of the preceding sections within the local limits of his jurisdiction.
- (2) On such application being made the magistrate shall issue his summons or warrant, as he thinks fit, requiring the person for whom such surety is bound to appear or to be brought before him.
- (3) When such person appears or is brought before the magistrate, the magistrate shall cancel the recognisance and shall order such person to give, for the unexpired portion of the term of such recognisance, fresh security of the same description as the original security. Every such order shall for the purposes of sections 43, 44, 45 and 46 be deemed to be an order made under section 40.

#### **49 Police officers to prevent offences**

Every police officer may interpose for the purpose of preventing, and shall to the best of his ability prevent, the commission of any offence.

**50 Information of design to commit such offences**

It shall be the duty of every police officer below the rank of Inspector who receives information of a design to commit any cognisable offence to communicate such information to the police officer to whom he is subordinate, or to any other officer whose duty it is to prevent or take cognisance of the commission of any such offence.

**51 Arrest to prevent such offences**

A police officer knowing of a design to commit any cognisable offence may arrest, without orders from a magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot otherwise be prevented.

**52 Prevention of injury to public property**

A police officer may of his own authority interpose to prevent any injury attempted to be committed in his view to any public property, movable or immovable, or the removal of or injury to any public landmark or buoy or other mark used for navigation.

## **PART IV - PROVISIONS RELATING TO ALL CRIMINAL INVESTIGATIONS AND PROCEEDINGS**

**53 General authority of High Court and magistrates' courts**

The High Court and every magistrate's court has authority to cause to be brought before it any person who —

- (a) is within Tuvalu and is charged with an offence committed within, or which may be inquired into or tried within, the local limits of its jurisdiction; or
- (b) is within the local limits of its jurisdiction and is charged with an offence committed within Tuvalu, or which according to law may be dealt with as if it had been committed within Tuvalu,

and to deal with the accused person according to its jurisdiction.

**54 Accused person to be sent to district where offence committed**

Where a person accused of having committed an offence within Tuvalu has removed from the district within which the offence was committed but is found within

another district, the court within whose jurisdiction he is found may cause him to be brought before it and shall, unless authorised to proceed in the case, send him in custody to the court within whose jurisdiction the offence is alleged to have been committed, or require him to give security for his surrender to that court, there to answer the charge and to be dealt with according to law.

#### **55 Removal of accused person under warrant**

Where any person is to be sent in custody in pursuance of the last preceding section, a warrant shall be issued by the court within whose jurisdiction he is found, and that warrant shall be sufficient authority to any person to whom it is directed to receive and detain the person therein named and to carry him and deliver him up to the court within whose jurisdiction the offence was committed or may be inquired into or tried. The person to whom the warrant is directed shall execute it according to its tenor without delay.

#### **56 Powers of High Court**

The High Court may inquire into and try any offence subject to its jurisdiction at any place where it has power to hold sittings:

Provided that, except under section 70, no criminal case shall be brought under the cognisance of the High Court unless the same shall have been previously investigated by a magistrate's court and the accused person shall have been committed for trial before the High Court.

#### **57** *[Repealed by 9 of 1987]*

#### **58 Ordinary place of inquiry or trial**

Subject to the provisions of section 56, and to the powers of transfer conferred by section 67, every offence shall ordinarily be inquired into and tried by a court within the local limits of whose jurisdiction it was committed, or within the local limits of whose jurisdiction the accused was apprehended, or is in custody on a charge for the offence, or has appeared in answer to a summons lawfully issued charging the offence.

#### **59 Trial at place where act done or where consequence of offence ensues**

When a person is accused of the commission of any offence by reason of anything which has been done or of any consequence which has ensued, such offence may be inquired into or tried by a court within the local limits of whose jurisdiction any such thing has been done or any such consequence has ensued.

**60 Trial where offence is connected with another offence**

When an act is an offence by reason of its relation to any other act which is also an offence or which would be an offence if the doer were capable of committing an offence, a charge of the first-mentioned offence may be inquired into or tried by a court within the local limits of whose jurisdiction either act was done.

**61 Trial where place of offence is uncertain**

When it is uncertain in which of several local areas an offence was committed; or

- (a) when an offence is committed partly in one local area and partly in another; or
- (b) when an offence is a continuing one, and continues to be committed in more local areas than one; or
- (c) when it consists of several acts done in different local areas,

it may be inquired into or tried by a court having jurisdiction over any of such local areas.

**62 Offence committed on a journey**

An offence committed whilst the offender is in the course of performing a journey or voyage may be inquired into or tried by a court through or into the local limits of whose jurisdiction the offender or the person against whom or the thing in respect of which the offence was committed passed in the course of that journey or voyage.

**63 Senior Magistrate to decide in cases of doubt**

Whenever any doubt arises as to the court by which any offence should be inquired into or tried, any court entertaining such doubt may, in its discretion, report the circumstances to the Senior Magistrate, and the Senior Magistrate shall decide by which court the offence shall be inquired into or tried; and such decision of the Senior Magistrate shall be final and conclusive, except that it shall be open to an accused person to show that no court in Tuvalu has jurisdiction in the case.

**64 Court to be open**

- (1) Subject to subsection (2) and to section 19(2) of the Superior Courts Act<sup>8</sup>, the place in which any criminal court is held for the purpose of inquiring into or trying any offence shall be deemed an open court to which the public generally may have access, so far as the same can conveniently contain them.
- (2) A presiding magistrate has the same powers to exclude persons (other than the complainant, the defendant and their representatives) from proceedings for

trying or inquiring into any offence before him as are conferred upon the High Court by section 19(2) of the Superior Courts Act.

## **65 Transfer of case where offence committed outside jurisdiction**

- (1) If upon the hearing of any complaint it appears that the cause of the complaint arose outside the limits of the jurisdiction of the court before which such complaint has been brought, the court may, on being satisfied that it has no jurisdiction, direct the case to be transferred to the court having jurisdiction where the cause of complaint arose.
- (2) If the accused person is in custody and the court directing such transfer thinks it expedient that such custody should be continued, or, if he is not in custody, that he should be placed in such custody, the court shall direct the offender to be taken by a police officer before the court having jurisdiction where the cause of complaint arose, and shall give a warrant for that purpose to such officer, and shall deliver to him the complaint and recognisances, if any, taken by such court, to be delivered to the court before whom the accused person is to be taken; and such complaint and recognisances, if any, shall be treated to all intents and purposes as if they had been taken by such last-mentioned court.
- (3) If the accused person is not continued or placed in custody as aforesaid, the court shall inform him that it has directed the transfer of the case as aforesaid, and thereupon the provisions of the preceding subsection respecting the transmission and validity of the documents in the case shall apply.

## **66 Procedure when after commencement of inquiry or trial, the magistrate finds case should be transferred to another magistrate**

If, in the course of any inquiry or trial before a magistrate, the evidence appears to warrant a presumption that the case is one which should be tried or committed for trial by some other magistrate, he shall stay proceedings and submit the case with a brief report thereon to the Senior Magistrate.

## **67 Power to change venue**

- (1) Whenever it is made to appear to the Senior Magistrate or the High Court —
  - (a) that a fair and impartial inquiry or trial cannot be had in any magistrate's court; or
  - (b) that some question of law of unusual difficulty is likely to arise; or
  - (c) that a view of the place in or near which any offence has been committed may be required for the satisfactory inquiry into or trial of the same; or

- (d) that an order under this section will tend to the general convenience of the parties or witnesses; or
  - (e) that such an order is expedient for the ends of justice or is required by any provision of this Code;  
it may order —
    - (i) that any offence be inquired into or tried by any court could not empowered under the preceding sections of this Part but in other respects competent to inquire into or try such offence; or
    - (ii) that any particular criminal case or class of cases be transferred from a magistrate's court to any other magistrate's court; or
    - (iii) that an accused person be committed for trial to itself.
- (2) The Senior Magistrate or the High Court may act on the report of the lower court or the application of a party interested or on its own initiative.
  - (3) Every application by an interested party for the exercise of the power conferred by this section shall be made by motion, which shall be supported by affidavit.
  - (4) Every accused person making any such application shall give to the Attorney-General or to such person as he may appoint notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least 24 hours have elapsed between the giving of such notice and the hearing of the application.
  - (5) When an accused person makes any such application the Senior Magistrate or the High Court may direct him to execute a bond, with or without sureties, conditioned that he will, if convicted, pay the costs of the prosecutor.

## 68 Power of Attorney-General to enter *nolle prosequi*

- (1) In any criminal case and at any stage thereof before verdict or judgment, as the case may be, the Attorney-General may enter a *nolle prosequi*, either by stating in court or by informing the court in writing that the Crown intends that the proceedings shall not continue, and thereupon the accused shall be at once discharged in respect of the charge for which the *nolle prosequi* is entered, and if he has been committed to prison shall be released, or if on bail his recognisances shall be discharged; but such discharge of an accused person shall not operate as a bar to any subsequent proceedings against him on account of the same facts.
- (2) If the accused shall not be before the court when such *nolle prosequi* is entered, the registrar or clerk of such court shall forthwith cause notice in writing of the entry of such *nolle prosequi* to be given to the officer in charge of the prison in which such accused may be detained, and also, if the accused person has been committed for trial, to the magistrate by whom he was so



committed, and such magistrate shall forthwith cause a similar notice in writing to be given to any witnesses bound over to prosecute and give evidence and to their sureties (if any) and also the accused and his sureties in case he shall have been admitted to bail.

## **69 Delegation of powers by Attorney-General**

- (1) The Attorney-General may order in writing that all or any of the powers vested in him under this Code be vested for the time being in any public officer and the exercise of these powers by such public officer shall then operate as if they had been exercised by the Attorney-General:

Provided that the Attorney-General may revoke any order made by him under this section.

- (2) The Attorney-General may exercise any powers or perform any duties vested in him under this Code notwithstanding any order made under subsection (1).
- (3) The production of a document purporting to be signed by the Attorney-General or of any transcript in official form of any cable, telegraphic or wireless message purporting to have been sent by the Attorney-General and containing any order or revocation made under the provisions of this section shall be prima facie evidence for the purposes of this section of such order or revocation.

## **70 Information by the Attorney-General**

- (1) Notwithstanding anything in this Code contained the Attorney-General may, with the previous sanction of the Governor-General, exhibit to the High Court, against persons subject to the jurisdiction of the High Court, informations for all purposes for which Her Majesty's Attorney-General for England may exhibit informations on behalf of the Crown in the High Court of Justice in England.
- (2) Such proceedings may be taken upon every such information as may lawfully be taken in the case of similar informations filed by Her Majesty's Attorney-General for England so far as the circumstances of the case and the practice and procedure of the High Court will admit.

## **71 Power to appoint public prosecutors**

The Attorney-General may appoint any advocate or police officer to be a public prosecutor either generally or for the purposes of a particular case.

**72 Powers of public prosecutors**

A public prosecutor may appear and plead without any written authority before any court in which any case of which he has charge is under inquiry, trial or appeal; and if any private person instructs an advocate to prosecute in any such case the public prosecutor may conduct the prosecution, and the advocate so instructed shall act therein under his directions.

**73 Police officers may conduct prosecutions before magistrates' courts**

In any trial or inquiry before a magistrate's court, if the proceedings have been instituted by a police officer, any police officer may appear and conduct the prosecution notwithstanding the fact that he is not the officer who made the complaint or charge.

**74 Public prosecutors and police officers to be subject to directions of Attorney-General**

Every police officer conducting a prosecution under the provisions of section 73, and every public prosecutor, shall be subject to the express directions of the Attorney-General.

**75 Conduct of prosecution**

Any person conducting a prosecution may do so personally or by an advocate.

**76 Complaint and charge**

- (1) Proceedings may be instituted either by the making of a complaint or by the bringing before a magistrate of a person who has been arrested without warrant.
- (2) Any person who believes from a reasonable and probable cause that an offence has been committed by any person may make a complaint thereof to a magistrate having jurisdiction to cause such person to be brought before him.
- (3) A complaint may be made orally or in writing, but, if made orally, shall be reduced to writing by the magistrate, and, in either case, shall be signed by the complainant and the magistrate:

Provided that where proceedings are instituted by a police or other public officer acting in the course of his duty, a formal charge duly signed by such officer may be presented to the magistrate and shall, for the purposes of this Code, be deemed to be a complaint.

- (4) The magistrate, upon receiving any such complaint, shall, unless such complaint has been laid in the form of a formal charge under the preceding

subsection, draw up or cause to be drawn up and shall sign a formal charge containing a statement of the offence with which the accused is charged.

- (5) When an accused person who has been arrested without a warrant is brought before a magistrate, a formal charge, containing a statement of the offence with which the accused is charged, shall be signed and presented by the police officer preferring the charge.

## **77 Issue of summons or warrant**

- (1) Upon receiving a complaint and having signed the charge in accordance with the provisions of section 76, the magistrate may in his discretion issue either a summons or a warrant to compel the attendance of the accused person before a magistrate's court having jurisdiction to inquire into or try the offence alleged to have been committed:

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

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

## **78 Notice to attend court**

- (1) Notwithstanding the other requirements of this Code, it shall be lawful for any police officer to serve personally upon any person who is reasonably suspected of having committed any offence to which this section applies a notice in the prescribed form requiring such person to attend court in answer to the charge stated thereon at such place and on such date and time (not being less than 10 days from the date of such service) as shown on such notice or to appear by advocate or to enter a written plea of guilty:

Provided that such notice shall be served not later than 14 days from the date upon which the offence is alleged to have been committed.

- (2) Such notice as aforesaid shall for all purposes be regarded as a summons issued under the provisions of this Code.
- (3) A copy of such notice shall be signed by the police officer preferring the charge and shall be placed before the court by which the charge is to be heard before the time fixed for such hearing.
- (4) The offences to which this section applies are —
  - (a) any offence under the Traffic Act<sup>9</sup> which is punishable only by a fine or by imprisonment (with or without a fine) for a period not exceeding 3 months;

- (b) any offence under the Dogs Act;<sup>10</sup>
  - (c) any offence under Part III of the Importation of Animals Act.<sup>11</sup>
- (5) Nothing in this section shall be deemed to prevent the institution of proceedings under the other provisions of this Code.

## **79 Form and contents of summons**

- (1) Every summons issued by a court under this Code shall be in writing, in duplicate, signed by the presiding officer of such court or by such other officer as the Senior Magistrate may from time to time direct.
- (2) Every summons shall be directed to the person summoned and shall require him to appear at a time and place to be therein appointed before a court having jurisdiction to inquire into and deal with the complaint or charge. It shall state shortly the offence with which the person against whom it is issued is charged.

## **80 Service of summons**

Every summons shall, if practicable, be served personally on the person summoned by delivering or tendering to him one of the duplicates of the summons.

## **81 Service when person summoned cannot be found**

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

## **82 Procedure when service cannot be effected as before provided**

If service in the manner provided by either of the 2 last preceding sections cannot by the exercise of due diligence be effected, one of the duplicates of the summons shall be affixed to some conspicuous part of the house in which the person summoned ordinarily resides, and thereupon the summons shall be deemed to have been duly served.

## **83 Service on company**

Service of a summons on an incorporated company or other body corporate may be effected by serving it on the secretary, local manager or other principal officer of the corporation or by registered letter addressed to the chief officer of the corporation in Tuvalu at the registered office of such company or body corporate; and in the latter case service shall be deemed to have been effected when the letter would arrive in ordinary course of post.

**84 Where summons may be served**

A summons may be served at any place within Tuvalu.

**85 Proof of service when serving officer not present**

- (1) Where the person who has served a summons is not present at the hearing of the case, and in any case where a summons issued by a court has been served outside the local limits of its jurisdiction, an affidavit purporting to be made before a magistrate or justice of the peace that such summons has been served shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved.
- (2) The affidavit mentioned in this section may be attached to the duplicate of the summons and returned to the court.

**86 Power to dispense with personal attendance of accused**

- (1) Whenever a magistrate issues a summons in respect of any offence other than a felony, he may if he sees reason to do so, and shall when the offence with which the accused is charged is punishable only by fine or by imprisonment not exceeding 3 months or by both such fine and imprisonment, dispense with the personal attendance of the accused, provided that he pleads guilty in writing or appears by an advocate.
- (2) Notwithstanding the provisions of subsection (1) the magistrate inquiring into or trying any case may in his discretion, at any subsequent stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in the manner hereinafter provided:  
  
Provided that no warrant shall be issued in such case unless a complaint or charge has been made upon oath.
- (3) If a magistrate imposes a fine on an accused person whose personal attendance has been dispensed with under this section, and such fine is not paid within the time prescribed for such payment, the magistrate may forthwith issue a summons calling upon such accused person to show cause why he should not be committed to prison for such term as the magistrate may then prescribe; and if such accused person does not attend upon the return of such summons the magistrate may forthwith issue a warrant and commit such person to prison for such term as the magistrate may then fix.
- (4) If, in any case in which under this section the attendance of an accused person is dispensed with, previous convictions are alleged against such person and are not admitted in writing or through such person's advocate, the magistrate may adjourn the proceedings and direct the personal attendance of the accused, and, if necessary, enforce such attendance in the manner hereinafter provided.

- (5) Whenever the attendance of an accused person has been so dispensed with and his attendance is subsequently required, the cost of any adjournment for such purpose shall be borne in any event by the accused.

### **87 Warrant after issue of summons**

Notwithstanding the issue of a summons, a warrant may be issued at any time before or after the time appointed in the summons for the appearance of the accused, but no such warrant shall be issued before the time appointed in the summons for the appearance of the accused unless a complaint has been made upon oath.

### **88 Summons disobeyed**

If the accused does not appear at the time and place appointed in and by the summons, and his personal attendance has not been dispensed with under section 86, the court may issue a warrant to apprehend him and cause him to be brought before such court.

### **89 Form, contents and duration of warrant of arrest**

- (1) Every warrant of arrest shall be under the hand of the judge or magistrate issuing the same.
- (2) Every warrant shall state shortly the offence with which the person against whom it is issued is charged and shall name or otherwise describe such person, and it shall order the person or persons to whom it is directed to apprehend the person against whom it is issued and bring him before the court issuing the warrant or before some other court having jurisdiction in the case to answer to the charge therein mentioned and to be further dealt with according to law.
- (3) Every such warrant shall remain in force until it is executed or until it is cancelled by the court which issued it.

### **90 Court may direct security to be taken**

- (1) Any court issuing a warrant for the arrest of any person in respect of any offence other than murder or treason may in its discretion direct by endorsement on the warrant that, if such person executes a bond with sufficient sureties for his attendance before the court at a specified time and thereafter until otherwise directed by the court, the officer to whom the warrant is directed shall take such security and shall release such person from custody.
- (2) The endorsement shall state —
  - (a) the number of sureties;

- (b) the amount in which they and the person for whose arrest the warrant is issued are to be respectively bound; and
  - (c) the time at which he is to attend before the court.
- (3) Whenever security is taken under this section the officer to whom the warrant is directed shall forward the bond to the court.

#### **91 Warrants to whom directed**

- (1) A warrant of arrest shall normally be directed generally to all police officers. But any court issuing such a warrant may, if its immediate execution is necessary, and no police officer is immediately available, direct it to any other person or persons, and such person or persons shall execute the same.
- (2) When the warrant is directed to more officers or persons than one, it may be executed by all or by any one or more of them.

#### **92 Notification of substance of warrant**

The police officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested.

#### **93 Person arrested to be brought before the court without delay**

A person arrested under a warrant of arrest shall (subject to the provisions of section 90 as to security) without unnecessary delay be taken before the court before which he is required by law to be brought.

#### **94 Where warrant of arrest may be executed**

A warrant of arrest may be executed at any place in Tuvalu.

#### **95 Procedure on arrest of person outside jurisdiction**

- (1) When a warrant of arrest is executed outside the local limits of the jurisdiction of the court by which it was issued, the person arrested shall, unless the court which issued the warrant is nearer than the magistrate within the local limits of whose jurisdiction the arrest was made, or unless security is taken under section 90, be taken before a magistrate within the local limits of whose jurisdiction the arrest was made.
- (2) Such magistrate, shall, if the person arrested appears to be the person intended by the court which issued the warrant, direct his removal in custody to such court:

Provided that if such person has been arrested for an offence other than murder or treason, and he is ready and willing to give bail to the satisfaction of such magistrate, or if a direction has been endorsed under section 90 on the warrant and such person is ready and willing to give the security required by such direction, the magistrate may take such bail or security, as the case may be, and shall forward the bond to the court which issued the warrant.

- (3) Nothing in this section shall be deemed to prevent a police officer from taking security under section 90.

## **96 Irregularities in warrant**

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

## **97 Power to take bond for appearance**

Where any person for whose appearance or arrest the court is empowered to issue a summons or warrant is present in such court, the court may require such person to execute a bond, with or without sureties, for his appearance in such court.

## **98 Arrest for breach of bond for appearance**

When any person who is bound by any bond taken under this Code to appear before a court or who has made a deposit of money in lieu of executing such bond does not so appear, the court may issue a warrant directing that such person be arrested and produced before it.

## **99 Power of court to order prisoner to be brought before it**

- (1) Where any person for whose appearance or arrest a court is empowered to issue a summons or warrant is confined in any prison, the court may issue an order to the officer in charge of such prison requiring him to bring such prisoner in proper custody, at a time to be named in the order, before such court.
- (2) The officer so in charge, on receipt of such order, shall act in accordance therewith, and shall provide for the safe custody of the prisoner during his absence from the prison for the purpose aforesaid.



**100 Provisions of this Part generally applicable to summonses and warrants and powers of justices of the peace**

The provisions contained in this Part relating to a summons and warrant, and their issue, service and execution, shall, so far as may be, apply to every summons and every warrant of arrest issued under this Code or by a justice of the peace, and, save in so far as the same may be inconsistent with any other law, the powers of a magistrate or court in relation to the issuing of a summons or warrant may be exercised by a justice of the peace.

**101 Power to issue search warrant**

Where it is proved on oath to a magistrate or a justice of the peace that in fact or according to reasonable suspicion anything upon, by or in respect of which an offence has been committed or anything which is necessary to the conduct of an investigation into any offence is in any building, ship, vehicle, box, receptacle or place, the magistrate or justice of the peace may by warrant (called a search warrant) authorise a police officer or other person therein named to search the building, ship, vehicle, box, receptacle or place (which shall be named or described in the warrant) for any such thing and, if anything searched for be found, or any other thing which there is reasonable cause to suspect to have been stolen or unlawfully obtained be found, to seize it and carry it before the court issuing the warrant or some other court to be dealt with according to law.

**102 Execution of search warrants**

Every search warrant may be issued on any day (including Sunday) and may be executed on any day (including Sunday) between the hours of sunrise and sunset, but the magistrate or justice of the peace may, by the warrant, in his discretion, authorise the police officer or other person to whom it is addressed to execute it at any hour.

**103 Person in charge of closed place to allow ingress thereto and egress therefrom**

- (1) Whenever any building or other place liable to search is closed, any person residing in or being in charge of such building or place shall, on demand of the police officer or other person executing the search warrant, and on production of the warrant, allow him free ingress thereto and egress therefrom and afford all reasonable facilities for a search therein.
- (2) If ingress into or egress from such building or other place cannot be so obtained, the police officer or other person executing the search warrant may proceed in the manner prescribed by section 11 or 12.
- (3) Where any person in or about such buildings or place is reasonably suspected of concealing about his person any article for which search should be made,

such person may be searched. If such person is a woman the provisions of section 16 shall be observed.

#### **104 Detention of property seized**

- (1) When any such thing is seized and brought before a court, it may be detained until the conclusion of the case or the investigation, reasonable care being taken for its preservation.
- (2) If any appeal is made, or if any person is committed for trial, the court may order it to be further detained for the purpose of the appeal or the trial.
- (3) If no appeal is made, or if no person is committed for trial, the court shall direct such thing to be restored to the person from whom it was taken, unless the court sees fit or is authorised or required by law to dispose of it otherwise.

#### **105 Provisions applicable to search warrants**

The provisions of sections 89(1) and (3), 91 and 94 shall, so far as may be, apply to all search warrants issued under section 101.

#### **106 Bail in certain cases**

- (1) Subject to the provisions of section 23 where any person, other than a person accused of murder or treason, is arrested or detained without warrant by a police officer or appears or is brought before a court and is prepared at any time while in the custody of such officer or at any stage of the proceedings before such court to give bail, such person may in the discretion of the officer or court be admitted to bail with or without a surety or sureties.
- (2) The amount of bail shall be fixed with due regard to the circumstances of the case and shall not be excessive.
- (3) Notwithstanding anything contained in subsection (1), the Senior Magistrate or the High Court, as the case may be, may in any case direct that any person be admitted to bail or that the bail required by a magistrate's court or police officer be reduced.

#### **107 Recognisance of bail**

Before any person is released on bail, the court or a police officer, as the case may be, shall take the recognisance of such person and of his surety or sureties, where such is or are required, conditioned for the appearance of such person at the time and place mentioned in the recognisance and such person shall attend at such time and place and shall continue so to attend until otherwise directed by the court or police officer as the case may be.

**108 Discharge from custody**

- (1) As soon as the recognisance with or without sureties, as the case may be, has been entered into the person admitted to bail shall be released and when he is in prison the court admitting him to bail shall issue an order of release to the officer in charge of the prison and such officer on receipt of the order shall release him.
- (2) Nothing in this section shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the recognisance was entered into.

**109 Deposit instead of recognisance**

When any person is required by any court or police officer to enter into a recognisance, with or without sureties, such court or police officer may, except in the case of a recognisance for good behaviour, permit him to deposit a sum of money to such amount as the court or police officer may fix in lieu of executing such a recognisance.

**110 Power to order sufficient bail when that first taken is insufficient**

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

**111 Discharge of sureties**

- (1) All or any of the sureties for the appearance and attendance of a person released on bail may at any time apply to a magistrate to discharge the recognisance either wholly or so far as it relates to the applicant or applicants.
- (2) On such application being made the magistrate shall issue his warrant of arrest directing that the person so released on bail be brought before him.
- (3) On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the magistrate shall direct the recognisance to be discharged either wholly or so far as it relates to the applicant or applicants, and shall call upon such person to find other sufficient sureties, and if he fails to do so may commit him to prison.

**112 Death of surety**

Where a surety to a recognisance dies before the recognisance is forfeited, his estate shall be discharged from all liability in respect of the recognisance, but the party who gave the recognisance may be required to find a new surety.

**113 Persons bound by recognisance absconding may be committed**

If it is made to appear to any court, by information on oath, that any person bound by recognisance is about to leave Tuvalu, the court may cause him to be arrested and may commit him to prison until the trial, unless the court shall see fit to admit him to bail upon further recognisance.

**114 Forfeiture of recognisance**

- (1) Whenever it is proved to the satisfaction of a court by which a recognisance under this Code has been taken, or when the recognisance is for appearance before a court, to the satisfaction of such court, that such recognisance has been forfeited, the court shall record the grounds of such proof, and may call upon any person bound by such recognisance to pay the penalty thereof, or to show cause why it should not be paid.
- (2) If sufficient cause is not shown and the penalty is not paid, the court may proceed to recover the same by issuing a warrant for the attachment and sale of the movable property belonging to such person, or his estate if he is dead.
- (3) Such warrant may be executed within the local limits of the jurisdiction of the court which issued it; and it shall authorise the attachment and sale of the movable property belonging to such person without such limits, when endorsed by any magistrate within the local limits of whose jurisdiction such property is found.
- (4) If such penalty is not paid and cannot be recovered by such attachment and sale, the person so bound shall be liable, by order of the court which issued the warrant, to imprisonment for a term not exceeding 6 months.
- (5) The court may, at its discretion, remit any portion of the penalty mentioned and enforce payment in part only.
- (6) When any person who has furnished security is convicted of an offence the commission of which constitutes a breach of the conditions of his recognisance, a certified copy of the judgment of the court by which he was convicted of such offence may be used as evidence in proceedings under this section against his surety or sureties, and, if such certified copy is so used, the court shall presume that such offence was committed by him unless the contrary is proved.
- (7) Where a sum of money has been deposited in lieu of executing a bond conditioned for the appearance of a person before a court, such court, if such sum of money appears to the court to be forfeited, may make an order accordingly:

Provided that the court, upon application made within a period of 14 days from the making of such order by or on behalf of the person who has deposited such sum of money, may in its discretion cancel or mitigate the forfeiture.

**115 Appeal from and revision of orders**

All orders passed under section 114 by any magistrate shall be appealable to and may be revised by the Senior Magistrate; or, if the order in question was passed by the Senior Magistrate, it shall be appealable to and may be revised by the High Court.

**116 Power to direct levy of amount due on certain recognisances**

The High Court may direct any magistrate to levy the amount due on a recognisance to appear and attend at the High Court.

**117 Offence to be specified in charge or information with necessary particulars**

Every charge or information shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the offence charged.

**118 Joinder of counts in a charge or information**

- (1) Any offences, whether felonies or misdemeanours, may be charged together in the same charge or information if the offences charged are founded on the same facts or form, or are part of, a series of offences of the same or a similar character.
- (2) Where more than one offence is charged in a charge or information, a description of each offence so charged shall be set out in a separate paragraph of the charge or information called a count.
- (3) Where, before trial, or at any stage of a trial, the court is of opinion that a person accused may be embarrassed in his defence by reason of being charged with more than one offence in the same charge or information, or that for any other reason it is desirable to direct that the person be tried separately for any one or more offences charged in a charge or information, the court may order a separate trial of any count or counts of such charge or information.

**119 Joinder of 2 or more accused in one charge or information**

The following persons may be joined in one charge or information and may be tried together, namely:

- (a) persons accused of the same offence committed in the course of the same transaction;
- (b) persons accused of an offence and persons accused of abetment, or of an attempt to commit such offence;

- (c) persons accused of different offences committed in the course of the same transaction;
- (d) persons accused of different offences provided that all offences are founded on the same facts, or form or are part of a series of offences of the same or a similar character.

## 120 Rules for the framing of charges and informations

The following provisions shall apply to all charges and informations and, notwithstanding any rule of law or practice, a charge or information shall, subject to the provisions of this Code, not be open to objection in respect of its form or contents if it is framed in accordance with the provisions of this section —

- (a)
  - (i) a count of a charge or information shall commence with a statement of the offence charged, called the statement of offence;
  - (ii) the statement of offence shall describe the offence shortly in ordinary language avoiding as far as possible the use of technical terms, and without necessarily stating all the essential elements of the offence, and if the offence charged is one created by enactment shall contain a reference to the section of the enactment creating the offence;
  - (iii) after the statement of the offence, particulars of such offence shall be set out in ordinary language, in which the use of technical terms shall not be necessary:  
Provided that where any rule of law or any Act limits the particulars of an offence which are required to be given in a charge or information, nothing in this paragraph shall require any more particulars to be given than those required;
  - (iv) where a charge or information contains more than one count, the counts shall be numbered consecutively;
- (b)
  - (i) where an enactment constituting an offence states the offence to be the doing or the omission to do any one of any different acts in the alternative, or the doing or the omission to do any act in any one of any different capacities, or with any one of different intentions, or states any part of the offence in the alternative, the acts, omissions, capacities or intentions, or other matters stated in the alternative in the enactment, may be stated in the alternative in the count charging the offence;
  - (ii) it shall not be necessary, in any count charging an offence constituted by an enactment, to negative any exception or exemption from, or proviso or qualification to, the operation of the enactment creating the offence;

- (c)
- (i) the description of property in a charge or information shall be in ordinary language, and such as to indicate with reasonable clearness the property referred to, and, if the property is so described, it shall not be necessary (except when required for the purpose of describing an offence depending on any special ownership of property or special value of property) to name the person to whom the property belongs or the value of the property;
  - (ii) where the property is vested in more than one person, and the owners of the property are referred to in a charge or information, it shall be sufficient to describe the property as owned by one of those persons by name with others, and if the persons owning the property are a body of persons with a collective name, such as a joint stock company or “Inhabitants”, “Trustees”, “Commissioners”, or “Club” or other such name, it shall be sufficient to use the collective name without naming any individual;
  - (iii) property belonging to or provided for the use of any public establishment, service or department may be described as the property of Her Majesty the Queen;
  - (iv) coin and bank notes may be described as money; and any allegation as to money, so far as regards the description of the property, shall be sustained by proof of any amount of coin or of any bank or currency note (although the particular species of coin of which such amount was composed or the particular nature of the bank or currency note, shall not be proved); and in cases of stealing, embezzling and defrauding by false pretences, by proof that the accused person dishonestly appropriated or obtained any coin or any bank or currency note, or any portion of the value thereof, although such coin or bank or currency note may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same or to any other person and such part shall have been returned accordingly;
- (d) the description or designation in a charge or information of the accused person, or of any other person to whom reference is made therein, shall be such as is reasonably sufficient to identify him, without necessarily stating his correct name, or his abode, style, degree, or occupation; and if, owing to the name of the person not being known, or for any other reason, it is impracticable to give such a description or designation, such description or designation shall be given as is reasonably practicable in the circumstances, or such person may be described as “a person unknown”;

- (e) where it is necessary to refer to any document or instrument in a charge or information, it shall be sufficient to describe it by any name or designation by which it is usually known, or by the purport thereof, without setting out any copy thereof;
- (f) subject to other provisions of this section, it shall be sufficient to describe any place, time, thing, matter, act or omission whatsoever to which it is necessary to refer in any charge or information in ordinary language in such a manner as to indicate with reasonable clearness the place, time, thing, matter, act or omission referred to;
- (g) it shall not be necessary in stating any intent to defraud, deceive or injure to state an intent to defraud, deceive or injure any particular person, where the enactment creating the offence does not make an intent to defraud, deceive or injure a particular person an essential ingredient of the offence;
- (h) where a previous conviction of an offence is charged in a charge or information, it shall be charged at the end of the charge or information by means of a statement that the accused person has been previously convicted of that offence at a certain time and place without stating the particulars of the offence;
- (i) figures and abbreviations may be used for expressing anything which is commonly expressed thereby;
- (j) when a person is charged with any offence under sections 252, 266 or 271 of the Penal Code<sup>12</sup> it shall be sufficient to specify the gross amount of property in respect of which the offence is alleged to have been committed and the dates between which the offence is alleged to have been committed without specifying particular times or exact dates.

### **121 Persons convicted or acquitted not to be tried again for the same offence**

A person who has been once tried by a court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal has not been reversed or set aside, not be liable to be tried again on the same facts for the same offence.

### **122 Person may be tried again for separate offence**

A person convicted or acquitted of any offence may afterwards be tried for any other offence with which he might have been charged on the former trial under section 118(1).



**123 Consequences supervening or not known at time of former trial**

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

**124 Where original court was not competent to try subsequent charge**

Subject to the provisions of any other law for the time being in force, a person convicted or acquitted of any offence constituted by any acts may, notwithstanding such conviction or acquittal, be subsequently charged with and tried for any other offence constituted by the same acts which he may have committed, if the court by which he was first tried was not competent to try the offence with which he is subsequently charged.

**125 Previous conviction how proved**

- (1) In any inquiry, trial or other proceeding under this Code, a previous conviction may be proved, in addition to any other mode provided by any law for the time being in force —
  - (a) by an extract certified, under the hand of the officer having the custody of the records of the court in which such conviction was had, to be a copy of the sentence or order; or
  - (b) by a certificate signed by the officer in charge of the prison in which the punishment or any part thereof was inflicted, or by production of the warrant of commitment under which the punishment was suffered, together with, in each of such cases, evidence as to the identity of the accused person with the person so convicted.
- (2) A certificate in the form prescribed by the Minister given under the hand of an officer appointed by the Minister in that behalf, who shall have compared the fingerprints of an accused person with the fingerprints of a person previously convicted, shall be prima facie evidence of all facts therein set forth provided it is produced by the person who took the fingerprints of the accused.
- (3) A previous conviction in any place outside Tuvalu may be proved by the production of a certificate purporting to be given under the hand of a police officer in the country where the conviction was had, containing a copy of the sentence or order, and the fingerprints, or photographs of the fingerprints of the person so convicted, together with evidence that the fingerprints of the person so convicted, together with evidence that the fingerprints of the person so convicted are those of the accused person.

Such a certificate as aforesaid shall be prima facie evidence of all facts therein set forth without proof that the officer purporting to sign it did in fact sign it and was empowered so to do.

## **126 Leave of Minister necessary for institution of proceedings against foreigners**

- (1) Proceedings for the trial of any person, who is not a citizen of Tuvalu, for an offence committed within Tuvalu waters, shall not be instituted in any court except with the leave of the Minister and upon his certificate that it is expedient that such proceedings should be instituted.
- (2) This section is subject to the following provisions —
  - (a) proceedings before a magistrate's court previous to the committal of an accused person for trial or to the determination of the court that the offender is to be put upon his trial shall not be deemed proceedings for the trial of the offence committed by such offender for the purposes of the said leave and certificate under this section;
  - (b) it shall not be necessary to aver in any charge or information that the leave or certificate of the Minister required by this section has been given, and the fact of the same having been given shall be presumed unless disputed by the accused person at the trial; and the production of a document purporting to be signed by the Minister or of any transcript in official form of any cable, telegraphic or wireless message purporting to have been sent by the Minister and containing such leave and certificate shall be prima facie evidence for the purposes of this section of the leave and certificate required by this section;
  - (c) this section shall not prejudice or affect the trial of any act of piracy as defined by the Law of Nations.
- (3) The term "offence" as used in this section means an act, neglect or default of such a description as would, if committed in England, be punishable on indictment according to the law of England for the time being in force.

## **127 Summons for witness**

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

**128 Warrant for witness who disobeys summons**

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

**129 Warrant for witness in first instance**

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

**130 Mode of dealing with witness arrested under warrant**

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

**131 Power of court to order prisoner to be brought up for examination**

- (1) Any court desirous of examining as a witness, in any case pending before it, any person confined in any prison may issue an order to the officer in charge of such prison requiring him to bring such prisoner in proper custody, at a time to be named in the order, before the court for examination.
- (2) The officer so in charge, on receipt of such order, shall act in accordance therewith and shall provide for the safe custody of the prisoner during his absence from the prison for the purpose aforesaid.

**132 Penalty for non-attendance of witness**

- (1) Any person summoned to attend as a witness who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the court, or fails to attend after adjournment of the court after being ordered to attend, shall be liable by order of the court to a fine not exceeding \$40.
- (2) Such fine may be levied by attachment and sale of any movable property belonging to such witness within the local limits of the jurisdiction of such court.
- (3) In default of recovery of the fine by attachment and sale the witness may, by order of the court, be imprisoned as a civil prisoner for a term of 15 days unless such fine is paid before the end of the said term.

- (4) For good cause shown, the Senior Magistrate or the High Court may remit or reduce any fine imposed under this section by a magistrate's court.

### **133 Power to summon material witness, or examine person present**

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

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

### **134 Evidence to be given on oath**

Every witness in any criminal cause of matter shall be examined upon oath or affirmation, and the court before which any witness shall appear shall have full power and authority to administer the usual oath or affirmation:

Provided that the court may at any time, if it thinks it just and expedient (for reasons to be recorded in the proceedings), take without oath the evidence of any person declaring that the taking of any oath whatever is according to his religious belief unlawful, or who by reason of immature age or want of religious belief ought, not, in the opinion of the court, to be admitted to give evidence on oath; the fact of evidence having been so taken being also recorded in the proceedings.

### **135 Refractory witness**

- (1) Whenever any person, appearing either in obedience to a summons or by virtue of a warrant, or being present in court and being verbally required by the court to give evidence —
- (a) refuses to be sworn; or
  - (b) having been sworn, refuses to answer any question put to him; or
  - (c) refuses or neglects to produce any document or thing which he is required to produce; or
  - (d) refuses to sign his deposition,

without in any such case offering any sufficient excuse for such refusal or neglect, the court may adjourn the case for any period not exceeding 8 days, and may in the meantime commit such person to prison, unless he sooner consents to do what is required of him.

- (2) If such person, upon being brought before the court at or before such adjourned hearing, again refuses to do what is required of him, the court may, if it sees fit, again adjourn the case and commit him for the like period, and so again from time to time until such person consents to do what is so required of him.
- (3) Nothing herein contained shall affect the liability of any such person to any other punishment or proceeding for refusing or neglecting to do what is so required of him, or shall prevent the court from disposing of the case in the meantime according to any other sufficient evidence taken before it.

### **136 Cases when wife or husband may be called without the consent of the accused**

In any inquiry or trial the wife or husband of the person charged shall be a competent witness for the prosecution or defence without the consent of such person —

- (a) in any case where the wife or husband of a person charged may, under any law in force for the time being, be called as a witness without the consent of such person;
- (b) in any case where a person is charged with an offence under Part XVI or section 163 of the Penal Code;
- (c) in any case where such person is charged in respect of an act or omission affecting the person or property of the wife or husband of such person or the children of either of them.

### **137 Issue of commission for examination of witness**

- (1) Whenever in the course of any proceeding under this Code the High Court or a magistrate is satisfied that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, the High Court or magistrate may with the consent of the parties issue a commission to any magistrate, within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.
- (2) The magistrate to whom the commission is issued shall proceed to the place where the witness is or shall summon the witness before him, and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in the case of a trial.

**138 Parties may examine witnesses**

- (1) The parties to any proceeding under this Code in which a commission is issued may respectively forward any interrogatories in writing which the court or magistrate directing the commission may think relevant to the issue, and the magistrate to whom the commission is directed shall examine the witness upon such interrogatories.
- (2) Any such party may appear before such magistrate by advocate, or, if not in custody, in person, and may examine, cross-examine, and re-examine (as the case may be) the said witness.

**139 Return of commission**

- (1) After any commission issued under section 137 has been duly executed it shall be returned, together with the deposition of the witness examined thereunder, to the High Court or to the magistrate (as the case may be), and the commission, the return thereto, and the deposition shall be open at all reasonable times to inspection of the parties, and may, subject to all just exceptions, be read in evidence in the case by either party, and shall form part of the record.
- (2) Any deposition so taken may also be received in evidence at any subsequent stage of the case before another court.

**140 Adjournment of inquiry or trial**

In every case in which a commission is issued under section 137 the proceedings may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

**141 Competency of accused and husband or wife as witnesses in criminal cases**

Every person charged with an offence and the wife or husband, as the case may be, of the person so charged shall be a competent witness for the defence at every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person:

Provided —

- (a) a person so charged shall not be called as a witness in pursuance of this section except upon his own application;
- (b) the failure of any person charged with an offence, or of the wife or husband, as the case may be, of the person so charged, to give evidence shall not be made the subject of any comment by the prosecution;

- (c) the wife or husband of the person charged shall not, save as hereinbefore mentioned, be called as a witness except upon the application of the person so charged;
- (d) nothing in this section shall make a husband compellable to disclose any communication made to him by his wife during the marriage, or a wife compellable to disclose any communication made to her by her husband during the marriage;
- (e) a person charged and being a witness in pursuance of this section may be asked any question in cross-examination notwithstanding that it would tend to criminate him as to the offence charged;
- (f) a person charged and called as a witness in pursuance of this section shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of or been charged with any offence other than that wherewith he is then charged, or is of bad character, unless —
  - (i) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged; or
  - (ii) he has personally or by his advocate asked questions of the witness for the prosecution with a view to establishing his own good character, or has given evidence of his own good character, or the nature or conduct of the defence is such as to involve imputations on the character of the complainant or the witnesses for the prosecution; or
  - (iii) he has given evidence against any other person charged with the same offence;
- (g) every person called as a witness in pursuance of this section shall, unless otherwise ordered by the court, give his evidence from the witness box or other place from which the other witnesses have given their evidence; and
- (h) nothing in this section shall affect the provisions of section 213 or any right of the person charged to make a statement without being sworn.

#### **142 Procedure where person charged is the only witness called**

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

**143 Right of reply**

In cases where the right of reply depends upon the question whether evidence has been called for the defence, the fact that the person charged has been called as a witness shall not of itself confer on the prosecution the right of reply.

**144 Inquiry by court as to state of accused's mind**

- (1) When in the course of a trial or preliminary investigation the court has reason to believe that the accused is of unsound mind so that he is incapable of making his defence, it shall inquire into the fact of such unsoundness.
- (2) If the court is of the opinion that the accused is of unsound mind so that he is incapable of making his defence, it shall postpone further proceedings in the case.
- (3) If the case is one in which bail may be taken, the court may release the accused person on sufficient security being given that he will be properly taken care of and prevented from doing injury to himself or to any other person, and for his appearance before the court or such officer as the court may appoint in that behalf.
- (4) If the case is one in which bail may not be taken, or if sufficient security is not given, the court shall report the case to the Minister, who, if satisfied by medical certificate, may order the accused to be confined in a mental health wing or other suitable place of custody, and the court shall issue a warrant in accordance with such order.

**145 Defence of unsoundness of mind at preliminary investigation**

When the accused person appears to be of sound mind at the time of a preliminary investigation, the court, notwithstanding that it is alleged that, at the time when the act was committed in respect of which the accused person is charged, he was by reason of some disease of mind labouring under a defect of reason as to be incapable of knowing the nature and quality of the act or, if he did know it, that he did not know that it was contrary to law, shall proceed with the case and, if the accused person ought, in the opinion of the court, to be committed for trial on information, the court shall so commit him.

**146 Defence of unsoundness of mind on trial**

- (1) Where any act or omission is charged against any person as an offence, and it is given in evidence on the trial of such person for that offence that at the time when the act was done or omission made he was by reason of a disease of mind labouring under such defect of reason as to be incapable of knowing the nature and quality of the act, or, if he did know it that he did not know it was contrary to law, then if it appears to the court before which such person is



tried that he did the act or made the omission charged but was incapable as aforesaid at the time when he did or made the same, the court shall make a special finding to the effect that the accused was guilty of the act or omission charged but was insane when he did the act or made the omission.

- (2) When such special finding is made the court shall report the case for the order of the Minister and shall meanwhile order the accused to be kept in custody as a criminal lunatic in such place and in such manner as the court shall direct.
- (3) The Minister may order such person to be confined in a mental health wing, prison or other suitable place of safe custody.

#### **147 Resumption of trial or investigation**

Whenever any preliminary investigation or trial is postponed the court may at any time resume the preliminary investigation or trial and require the accused to appear or be brought before such court, when, if the court considers him capable of making his defence, the preliminary investigation or trial shall proceed, but if the court considers the accused to be still incapable of making his defence, it shall act as if the accused were brought before it for the first time.

#### **148 Certificate of medical officer in charge of mental health wing as to sanity to be evidence**

If a person is confined in a mental health wing under the provisions of this Code and the medical officer in charge of such wing certifies that the accused person is capable of making his defence, such accused shall be taken before the court at such time as the court appoints to be dealt with according to law, and the certificate of such medical officer shall be receivable in evidence.

#### **149 Mode of delivering judgment**

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

Provided that the whole judgment shall be read out by the presiding judge or magistrate if he is requested so to do either by the prosecution or the defence.

- (2) The accused person shall, if in custody, be required by the court to attend, or hear judgment delivered, except where the court has proceeded to the determination of the case in the absence of the accused under section 186, or where his personal attendance during the trial has been dispensed with and the sentence is one of fine only, or he is acquitted.

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

### **150 Contents of judgment**

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

Provided that where the accused person has admitted the truth of the charge and has been convicted, it shall be a sufficient compliance with the provisions of this subsection if the judgment contains only the finding and sentence or other final order and is signed and dated by the presiding officer at the time of pronouncing it.

- (2) In the case of a conviction the judgment shall specify the offence of which, and the section of the law under which, the accused person is convicted, and the punishment to which he is sentenced.
- (3) In the case of an acquittal the judgment shall state the offence of which the accused person is acquitted and shall direct that he be set at liberty.

### **151 Copy of judgment to be given to accused on application**

On the application of the accused person a copy of the judgment, or, when he so desires, a translation in his own language, if practicable, shall be given to him without delay; and such copy shall be given free of cost.

### **152 Costs against accused or against a private prosecutor**

- (1) It shall be lawful for a judge or a magistrate to order any person convicted before him of an offence to pay to a private prosecutor such reasonable costs as to such judge or magistrate may seem fit, in addition to any other penalty imposed:

Provided that such costs shall not exceed \$100 in the case of the High Court or \$50 in the case of a magistrate's court.

- (2) It shall be lawful for a judge or magistrate who acquits or discharges a person accused of an offence, if the prosecution for such offence was originally instituted on a summons or warrant issued on the application of a private prosecutor, to order such private prosecutor to pay to the accused such reasonable costs as to such judge or magistrate may seem fit:

Provided that such costs shall not exceed \$100 in the case of an acquittal or discharge by the High Court or \$50 in the case of an acquittal or discharge by a magistrate's court:

Provided further that no such order shall be made if the judge or magistrate considers that the private prosecutor had reasonable grounds for making his complaint.

- (3) In this section "private prosecutor" means any prosecutor other than a public prosecutor.

### **153 Order to pay costs appealable**

An appeal shall lie from a magistrate's court to the Senior Magistrate's Court and from the Senior Magistrate's Court to the High Court from any order awarding costs; and the appellate court shall have power to give such costs of the appeal as it shall deem reasonable.

### **154 Compensation in case of frivolous or vexatious charge**

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

### **155 Property found on accused person**

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

- (a) that the property or a part thereof be restored to the person who appears to the court to be entitled thereto, and, if he be the person charged, that it be restored either to him or to such other person as he may direct; or
- (b) that the property or a part thereof be applied to the payment of any fine or any costs or compensation directed to be paid by the person charged.

### **156 Property stolen**

- (1) If any person guilty of any offence as is mentioned in Parts XXVII to XXXIV, both inclusive, of the Penal Code in stealing, taking, obtaining, extorting, converting, or disposing of, or in knowingly receiving any property, is prosecuted to conviction by or on behalf of the owner of such property, the property shall be restored to the owner or his representative.
- (2) In every case in this section referred to, the court before whom such offender is convicted shall have power to award writs of restitution for the said property or to order the restitution thereof in a summary manner:

Provided that nothing in this section shall apply to the case of any valuable security which has been in good faith paid or discharged by some person liable to the payment thereof, or, being a negotiable instrument, has been in good faith taken or received by transfer or delivery by some person for a just and valuable consideration without any notice or without reasonable cause to suspect that the same has been stolen.

- (3) On the restitution of any stolen property if it appears to the court by the evidence that the offender has sold the stolen property to any person, that such person has had no knowledge that the same was stolen, and that any moneys have been taken from the offender on his apprehension, the court may, on the application of such purchaser, order that out of such moneys a sum, not exceeding the amount of the proceeds of such sale, be delivered to the said purchaser.
- (4) The operation of any order under this section shall (unless the court before which the conviction takes place direct to the contrary in any case in which the title to the property is not in dispute) be suspended —
  - (a) in any case until the time for appeal has elapsed; and
  - (b) in a case where an appeal is lodged, until the determination of the appeal,

and in cases where the operation of any such order is suspended until the determination of the appeal, the order shall not take effect as to the property in question if the conviction is quashed on appeal; and the Chief Justice or the Senior Magistrate may give directions for securing the safe custody of any property pending the suspension of the operation of any such order.

- (5) Any person aggrieved by an order made under this section in any court other than the Senior Magistrate's Court may appeal to that court, or, if the order was made by the Senior Magistrate's Court, may appeal to the High Court, and upon the hearing of such appeal the court may by order annul or vary any order made on a trial for the restitution of any property to any person, although the conviction is not quashed; and the order, if annulled, shall not take effect, and, if varied, shall take effect as so varied.

### **157 When offence proved is included in offence charged**

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

**158 Persons charged with any offence may be convicted of attempt**

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

**159 Woman charged with murder of child may be convicted of infanticide**

When a woman is charged with the murder of her child, being a child under the age of 12 months, and the court is of opinion that she by any wilful act or omission caused its death but at the time of the act of omission she had not fully recovered from the effect of giving birth to such child and that by reason thereof or by reason of the effect of lactation consequent upon the birth of the child, the balance of her mind was then disturbed, she may, notwithstanding that the circumstances were such that but for the provisions of section 199 of the Penal Code she might be convicted of murder, be convicted of the offence of infanticide although she was not charged with it.

**160 Person charged with murder or manslaughter of any child or with infanticide or with an offence relating to the procuring of an abortion**

When a person is charged with murder or manslaughter of any child or with infanticide, or with an offence under section 150 or 151 of the Penal Code (relating to the procuring of abortion), and the court is of the opinion that he is not guilty of murder, manslaughter or infanticide or of an offence under section 150 or 151 of the Penal Code, but that he is guilty of the offence of killing an unborn child, he may be convicted of that offence although he was not charged with it.

**161 Person charged with killing an unborn child may be convicted for another offence**

When a person is charged with killing an unborn child and the court is of the opinion that he is not guilty of that offence but that he is guilty of an offence under one of the sections 150 or 151 of the Penal Code, he may be convicted of that offence although he was not charged with it.

**162 Person charged with murder or infanticide or killing an unborn child may be convicted of concealment of birth**

When a person is charged with the murder or infanticide of any child or with killing an unborn child and the court is of opinion that he is not guilty of any of the said offences, and, if it appears in evidence that the child had recently been born and that such person did, by some secret disposition of the dead body of the child, endeavour to conceal the birth of that child, he may be convicted of the offence of endeavouring to conceal the birth of that child although he was not charged with it.

**163 Person charged with manslaughter in connection with the driving of a motor vehicle may be convicted of offences under the Traffic Act**

When a person is charged with manslaughter in connection with the driving of a motor vehicle by him and the court is of the opinion that he is not guilty of that offence, but that he is guilty of an offence under section 24 or section 25 of the Traffic Act, he may be convicted of that offence although he was not charged with it.

**164 Person charged with rape may be convicted of another offence**

When a person is charged with rape and the court is of the opinion that he is not guilty of that offence, but that he is guilty of an offence under one of the sections 133(1), 134, 135, 137 and 156 of the Penal Code, he may be convicted of that offence although he was not charged with it.

**165 Person charged with incest may be convicted of unlawful carnal knowledge**

When a person is charged with an offence under section 156 of the Penal Code and the court is of opinion that he is not guilty of that offence but that he is guilty of an offence under one of the sections 134 and 135 of the Penal Code, he may be convicted of that offence although he was not charged with it.

**166 Person charged with defilement of a girl under 15 years of age may be convicted of another offence**

When a person is charged with the defilement of a girl under the age of 15 years and the court is of opinion that he is not guilty of that offence but that he is guilty of an offence under one of the sections 133(1), 134 and 137 of the Penal Code, he may be convicted of that offence although he was not charged with it.

**167 Person charged with defilement of a girl under 13 years of age may be convicted of another offence**

When a person is charged with the defilement of a girl under the age of 13 years and the court is of opinion that he is not guilty of that offence but that he is guilty of an offence under one of the sections 133(1), 135 and 137 of the Penal Code, he may be convicted of that offence although he was not charged with it.

**168 Person charged with burglary, etc., may be convicted of kindred offence**

When a person is charged with any offence mentioned in Part XXXI of the Penal Code and the court is of the opinion that he is not guilty of that offence but that he is

guilty of any other offence mentioned in the said Part, he may be convicted of that other offence although he was not charged with it.

**169 Person charged with stealing may be convicted of receiving, embezzling, obtaining by false pretences or of possessing or conveying stolen property**

When a person is charged with stealing anything and —

- (a) it is proved that he received the thing knowing the same to have been stolen, he may be convicted of the offence of receiving although he was not charged with it;
- (b) it is proved that he committed an offence against section 266 of the Penal Code (relating to embezzlement), he may be convicted of embezzlement although he was not charged with it;
- (c) it is proved that he obtained the thing in any such manner as would amount, under the provisions of the Penal Code or of any other law for the time being in force, to obtaining it by false pretences with intent to defraud, he may be convicted of the offence of obtaining it by false pretences although he was not charged with it.

**170 Person charged with obtaining by false pretences may be convicted of stealing**

When a person is charged with obtaining anything capable of being stolen by false pretences with intent to defraud, and it is proved that he stole the thing, he may be convicted of the offence of stealing although he was not charged with it.

**171 Person charged with robbery may be convicted of assault with intent to rob**

When a person is charged with robbery, and it is proved that he committed an assault with intent to rob, he may be convicted of that offence although he was not charged with it.

**172 Person charged with embezzlement may be convicted of stealing**

When a person is charged with any offence against section 266 of the Penal Code (relating to embezzlement), and it is proved that he stole the property in question, he may be convicted of the offence of stealing although he was not charged with it.

**173 Construction of sections 157 to 172, both inclusive**

The provisions of sections 157 to 172, both inclusive, shall be construed as in addition to, and not in derogation of, the provisions of any other Act and the other

provisions of this Code, and the provisions of sections 158 to 172, both inclusive, shall be construed as being without prejudice to the generality of the provisions of section 157.

**174 Person charged with jointly receiving property may be convicted on proof that property was received separately**

When any 2 or more persons are charged with jointly receiving any property knowing the same to have been stolen, and it is proved that 1 or more of such persons separately received any part of such property, such of the persons may be convicted as are proved to have received any part of such property.

**175 Person charged with misdemeanour not to be acquitted if felony proved, unless court so directs**

If on any trial for misdemeanour the facts proved in evidence amount to a felony, the accused shall not be therefore acquitted of such misdemeanour, and no person tried for such misdemeanour shall be liable afterwards to be prosecuted for felony on the same facts, unless the court shall think fit, in its discretion, to refrain from giving a verdict and to direct such person to be prosecuted for felony, whereupon such person may be dealt with as if not previously put on trial for misdemeanour.

**176 Accused may be defended by an advocate or other person**

Any person accused of an offence before any criminal court, or against whom proceedings are instituted under this Code in any such court, may be defended by an advocate or, with the leave of the court, by any person.

**177 Appointment of assessors**

- (1) Before proceeding to hear a case the court may appoint as assessors 2 or 3 persons whom it considers suitable to assist the court:

Provided that the accused person or the advocate or other person defending him may object to the appointment of a person as an assessor in which case that person shall not be so appointed.

- (2) The validity of any proceedings shall not be affected by the absence therefrom at any stage of 1 or more or all of the assessors appointed under subsection (1).

**178 Decision when assessors have been appointed**

- (1) When in a case tried with assessors the case on both sides is closed the judge or magistrate may in his discretion sum up the evidence for the prosecution and the defence and shall require each of the assessors present to state his



opinion orally on all matters on which that opinion is asked and shall record that opinion.

- (2) The judge or magistrate having recorded the opinion of each of the assessors under subsection (1) shall then give judgment but in doing so shall not be bound to conform to any opinion which may have been expressed by an assessor and the decision on every matter on which an opinion may have been so expressed shall be vested exclusively in the judge or magistrate.
- (3) The assessors or any of them may retire to consider their opinions if they so wish and may during any such retirement or at any time during the trial consult with one another.

## **PART V - MODE OF TAKING AND RECORDING EVIDENCE IN INQUIRIES AND TRIALS**

### **179 Evidence to be taken in presence of accused**

Except as otherwise expressly provided, all evidence taken in any inquiry or trial under this Code shall be taken in the presence of the accused, or, when his personal attendance has been dispensed with, in the presence of his advocate (if any).

### **180 Manner of recording evidence before magistrate**

- (1) In inquiries and trials by or before a magistrate, the evidence of the witnesses shall be recorded in the following manner —
  - (a) the evidence of each witness or so much thereof as the magistrate deems material shall be taken down in writing in English by the magistrate, or in his presence and hearing and under his personal direction and superintendence, and shall be signed by the magistrate, and shall form part of the record;
  - (b) such evidence shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative:

Provided that the magistrate may, in his discretion, take down or cause to be taken down any particular question and answer.

- (2) If a witness asks that his evidence be read over to him the magistrate shall cause such evidence to be read over to him in a language which he understands.

### **181 Language of the court**

The language of the court in the case of both the High Court and magistrate's courts shall be English.

**182 Interpretation of evidence to accused**

- (1) Whenever any evidence is given in a language not understood by the accused, and he is present in person, it shall be interpreted to him in open court in a language which he understands.
- (2) When documents are put in for the purpose of formal proof it shall be in the discretion of the court to interpret as much thereof as appears necessary.

**183 Conviction or commitment on evidence partly recorded by one magistrate and partly by another**

Whenever any magistrate, after having heard and recorded the whole or any part of the evidence in an inquiry or trial, ceases to exercise jurisdiction therein and is succeeded, whether by virtue of an order of transfer under the provisions of this Code or otherwise, by another magistrate who has and who exercises such jurisdiction, the magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly by himself, or he may resummon the witnesses and recommence the inquiry or trial:

Provided that —

- (a) in any trial the accused may, when the second magistrate commences his proceedings, demand that the witnesses or any of them be resummoned and reheard and shall be informed of such right by the second magistrate when he commences his proceedings;
- (b) the Senior Magistrate or the High Court, as the case may be, may, on appeal, set aside any conviction passed on evidence not wholly recorded by the magistrate before whom the conviction was had, if it is of opinion that the accused has been materially prejudiced thereby, and may order a new inquiry or trial.

**184 Record of evidence in High Court**

The Chief Justice may from time to time give directions as to the manner in which evidence shall be taken down in cases coming before the High Court, and the judge shall take down the evidence or the substance thereof in accordance with such directions.

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## **PART VI - PROCEDURE IN TRIALS BEFORE MAGISTRATES' COURTS**

### **185 Non-appearance of complainant at hearing**

- (1) If, in any case which a magistrate's court has jurisdiction to hear and determine, the accused person appears in obedience to the summons served upon him at the time and place appointed in the summons for the hearing of the case, or is brought before the court under arrest, then, if the complainant, having had notice of the time and place appointed for the hearing of the charge, does not appear by himself or by his advocate, the court shall dismiss the charge, unless for some reason it shall think it proper to adjourn the hearing of the case until some other date, upon such terms as it shall think fit, in which event it may, pending such adjourned hearing, either admit the accused to bail or remand him to prison, or take such security for his appearance as the court shall think fit.
- (2) The expression "advocate" in this section and in sections 187 and 189 shall in relation to a complainant include a public prosecutor.

### **186 Court may proceed with hearing in absence of accused in certain cases**

Notwithstanding the provisions of section 179, if an accused person charged with any offence punishable with imprisonment for a term not exceeding 6 months or a fine not exceeding \$100 or both such imprisonment and fine does not appear at the time and place appointed in and by the summons, or by any bond for his appearance that he may have entered into, and his personal attendance has not been dispensed with under section 86, the court may, on proof of the proper service of the summons a reasonable time before, or on production of the bond, as the case may be, proceed to hear and determine the case in the absence of the accused or may adjourn the case and issue a warrant for the arrest of the accused in accordance with the provisions of section 89.

### **187 Appearance of both parties**

If at the time appointed for the hearing of the case both the complainant, by himself or by his advocate, and the accused person appear before the court which is to hear and determine the charge, or if the complainant appears in the manner aforesaid and the personal attendance of the accused person has been dispensed with under section 86 the court shall proceed to hear the case.

**188 Withdrawal of complaint**

- (1) The prosecutor may with the consent of the court at any time before a final order is passed in any case under this Part withdraw the complaint.
- (2) On any withdrawal as aforesaid —
  - (a) where the withdrawal is made after the accused person is called upon to make his defence, the court shall acquit the accused;
  - (b) where the withdrawal is made before the accused person is called upon to make his defence, the court shall subject to the provisions of section 195 in its discretion make one or other of the following orders —
    - (i) an order acquitting the accused;
    - (ii) an order discharging the accused.
- (3) An order discharging the accused under paragraph (b)(ii) of subsection (2) shall not operate as a bar to subsequent proceedings against the accused person on account of the same facts.

**189 Adjournment**

Before or during the hearing of any case, it shall be lawful for the court in its discretion to adjourn the hearing to a certain time and place to be then appointed and stated in the presence and hearing of the party or parties or their respective advocates then present, and in the meantime the court may suffer the accused person to go at large, or may commit him to prison, or may release him upon his entering into a recognisance, with or without sureties at the discretion of the court, conditioned for his appearance at the time and place to which such hearing or further hearing is adjourned:

Provided that no such adjournment shall be for more than 30 clear days, or if the accused person has been committed to prison, for more than 15 days, the day following that on which the adjournment is made being counted as the first day.

**190 Non-appearance of parties after adjournment**

- (1) If at the time or place to which the hearing or further hearing is adjourned, the accused person does not appear before the court which has made the order of adjournment, such court may, unless the accused person is charged with felony, proceed with the hearing or further hearing as if the accused were present, and if the complainant does not appear the court may dismiss the charge with or without costs as the court shall think fit.
- (2) If the accused person who has not appeared as aforesaid is charged with felony, or if the court, in its discretion, refrains from convicting the accused in his absence, the court shall issue a warrant for the apprehension of the accused person and cause him to be brought before the court.

**191 Conviction in absence of accused may be set aside**

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

**192 Commencement of sentence passed in absence of accused**

Any sentence passed under section 186 or 190 shall be deemed to commence from the date of apprehension, and the person effecting such apprehension shall endorse the date thereof on the back of the warrant of commitment.

**193 Accused to be called upon to plead**

- (1) The substance of the charge or complaint shall be stated to the accused person by the court, and he shall be asked whether he admits or denies the truth of the charge.
- (2) If the accused person admits the truth of the charge, his admission shall be recorded as nearly as possible in the words used by him, and the court shall convict him and pass sentence upon or make an order against him, unless there shall appear to it sufficient cause to the contrary.
- (3) If the accused person does not admit the truth of the charge, the court shall proceed to hear the case as hereinafter provided.
- (4) If the accused person refuses to plead, the court shall order a plea of “not guilty” to be entered for him.
- (5) When a corporation is charged with any offence before a magistrate’s court, the corporation may enter in writing by its representative a plea of “guilty” or “not guilty”; and if either the corporation does not appear by representative or, though it does so appear, fails to enter any plea, the court shall cause a plea of “not guilty” to be entered and the trial shall proceed as though the corporation had duly entered a plea of “not guilty”.
- (6) Where a charge against a corporation is one which may, with the consent of the accused, be tried by a magistrate’s court, and the corporation does not appear by representative or, if it does so appear, consents that the offence should be dealt with, the magistrate’s court may proceed to try such charge summarily in accordance with the provisions of this Code; and a representative for the purposes of this section need not be appointed under the seal of the corporation, and a statement in writing purporting to be signed by a managing director of the corporation, or by any person (by whatever name called) having or being one of the persons having the management of the affairs of the 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 section shall be admissible without further proof as prima facie evidence that that person has been so appointed.

**194 Procedure on plea of not guilty**

- (1) If the accused person does not admit the truth of the charge, the court shall proceed to hear the witnesses for the prosecution and other evidence (if any).
- (2) The accused person or the advocate or other person defending him may put questions to each witness produced against him.
- (3) If the accused person is not defended by an advocate or other person, the court shall, at the close of the examination of each witness for the prosecution, ask the accused person whether he wishes to put any questions to that witness and shall record his answer.

**195 Acquittal of accused person where no case to answer**

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

**196 The defence**

- (1) At the close of the evidence in support of the charge, if it appears to the court that a case is made out against the accused person sufficiently to require him to make a defence, the court shall again explain the substance of the charge to the accused and shall inform him that he has a right to give evidence on oath from the witness box, and that, if he does so, he will be liable to cross-examination, or to make a statement not on oath from the dock, and shall ask him whether he has any witnesses to examine or other evidence to adduce in his defence, and the court shall then hear the accused and his witnesses and other evidence (if any).
- (2) If the accused person states that he has witnesses to call but that they are not present in court, and the court is satisfied that the absence of such witnesses is not due to any fault or neglect of the accused person, and that there is a likelihood that they could, if present, give material evidence on behalf of the accused person, the court may adjourn the trial and issue process, or take other steps, to compel the attendance of such witnesses.

**197 Evidence in reply**

If the accused person adduces evidence in his defence introducing new matter which the prosecutor could not have foreseen, the court may allow the prosecutor to adduce evidence in reply to rebut the said matter.

**198 Opening and close of case for prosecution and defence**

- (1) Subject to the provisions of subsection (2) the prosecutor shall be entitled to address the court at the commencement of his case, and the accused person or the advocate or other person defending him shall be entitled to address the court at the commencement and in conclusion of his case.
- (2) If the accused person, or any one of several accused persons, adduces any evidence, the prosecutor shall, subject to the provisions of section 143, be entitled to reply.

**199 Variance between charge and evidence and amendment of charge**

- (1) Where, at any stage of a trial before the close of the case for the prosecution, it appears to the court that the charge is defective, either in substance or in form, the court may make such order for the alteration of the charge, either by way of amendment of the charge or by the substitution or addition of a new charge, as the court thinks necessary to meet the circumstances of the case:

Provided that where a charge is altered as aforesaid, the court shall thereupon call upon the accused person to plead to the altered charge:

Provided further that where a charge is altered under this subsection the accused may demand that the witnesses or any of them be recalled and give their evidence afresh or be further cross-examined by the accused or his advocate and, in such last-mentioned event, the prosecution shall have the right to re-examine any such witness on matters arising out of such further cross-examination.

- (2) Variance between the charge and the evidence adduced in support of it with respect to the day upon which the alleged offence was committed is not material and the charge need not be amended for such variance if it is proved that the proceedings were in fact instituted within the time (if any) limited by law for the institution thereof.
- (3) Where an alteration of a charge is made under subsection (1) or there is a variance between the charge and the evidence as described in subsection (2), the court shall, if it is of the opinion that the accused has been thereby misled or deceived, adjourn the trial for such period as may be reasonably necessary.

**200 Negative averments**

Any exception, exemption, proviso, excuse or qualification, whether it does or does not accompany in the same section the description of the offence in the law creating the offence, and whether or not specified or negated in the charge or complaint, may be provoked by the defendant, but no proof in relation thereto shall be required on the part of the complainant.

**201 The decision**

Subject to section 178 the court having heard both the prosecutor and the accused person and their witnesses and evidence shall either convict the accused and pass sentence upon or make an order against him according to law or shall acquit him or make an order under section 38 of the Penal Code.<sup>13</sup>

**202 Drawing up of conviction or order**

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

**203 Order of acquittal bar to further proceedings**

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

**204 Limitation of time for summary trials in certain cases**

Except where a longer time is specially allowed by law, no offence, the maximum punishment for which does not exceed imprisonment for 6 months or a fine of \$100 or both such imprisonment and fine, shall be triable by a magistrate's court, unless the charge or complaint relating to it is laid within 6 months from the time when the matter of such charge or complaint arose.

**205 Power to stop summary trial and hold preliminary inquiry in lieu**

If before or during the course of a trial before a magistrate's court it appears to the magistrate that the case is one which ought to be tried by the High Court or if before the commencement of the trial an application in that behalf is made by a public prosecutor that it shall be so tried, the magistrate shall not proceed with the trial but in lieu thereof he shall hold a preliminary inquiry in accordance with the provisions hereinafter contained, and in such case the provisions of section 219 shall not apply.

**206 Special procedure in minor cases**

- (1) Notwithstanding anything contained in this Code and subject to the provisions of any other Act a magistrate may, if so requested by the public prosecutor, try any offence, of which the maximum penalty does not exceed a fine of \$100 and imprisonment for 6 months, in the manner provided in this section:

Provided that no person may be so tried if in the opinion of the court he is under the age of 16 years.



- (2) Upon the trial of an offence to which the provisions of this section apply, the provisions of this Code shall be modified as hereinafter set out.
- (3) It shall be sufficient for the purposes of section 180 relating to the manner of recording evidence if the magistrate records the names of the witnesses and such notes, if any, on the evidence as he considers desirable.
- (4) Where the accused being charged in terms of section 193 makes a statement admitting the truth of the charge, the magistrate may, instead of recording the accused's statement in full, enter in the record a plea of guilty.
- (5) It shall be a sufficient compliance with the provisions of section 150 relating to the contents of the judgment if the magistrate's judgment consists only of the finding and sentence or other final order:  

Provided that the magistrate may be required by the Senior Magistrate or a judge, as the case may be, to state in writing the reasons for his decision.
- (6) The magistrate shall, if requested by the accused or the advocate or other person defending him or by the public prosecutor, record a sufficient note of any question of law and of any relevant evidence relating thereto which may arise during the trial of an offence under the provisions of this section.
- (7) The maximum penalty which may be imposed on the trial of an offence under the provisions of this section shall be a fine of \$10 or 1 month's imprisonment in default of payment thereof.

## **PART VII - PROVISIONS RELATING TO THE COMMITTAL OF ACCUSED PERSONS FOR TRIAL BEFORE THE HIGH COURT**

### **207 Power to commit for trial**

Any magistrate may commit any person for trial to the High Court.

### **208 Court to hold inquiry in long or short form**

Whenever any charge has been brought against any person in respect of an offence not triable by a magistrate's court, or as to which the magistrate is of the opinion that it ought to be tried by the High Court or where an application in that behalf has been made by a public prosecutor, either the magistrate shall hold an inquiry according to the provisions of section 210 or the magistrate may, if it appears appropriate so to do having regard to the circumstances of the case and if application is not made to the contrary by or on behalf of the accused person or by a public prosecutor, commit the person so charged directly for trial to the High Court in accordance with the provisions of section 209.

**209 Conduct of preliminary inquiry in short form**

- (1) A magistrate conducting an inquiry in accordance with the provisions of this section shall —
  - (a) read over and explain to the accused person the charge in respect of which the inquiry is being held, and shall explain to the accused person that he will have an opportunity later on in the inquiry of making a statement if he so desires, and shall further explain to the accused person the purpose of the proceedings, namely to determine whether there is a sufficient case to put him on his trial by the High Court;
  - (b) the magistrate shall then require the prosecutor to tender to the court the written statement of any witness whom it is intended to call in proof of the charge at the trial of the accused person together with any exhibits which it is intended to produce at the said trial and shall read, or cause to be read, every such statement to the accused person.
- (2) If, having considered the contents of every statement so tendered, the magistrate is of the opinion that the facts alleged therein would, if proved in evidence, constitute sufficient grounds for committing the accused person for trial, he shall proceed as provided in sections 213 and 214.

**210 Conduct of preliminary inquiry in long form**

- (1) A magistrate conducting an inquiry in accordance with the provisions of this section shall, at the commencement of such inquiry, read over and explain to the accused person the charge in respect of which the inquiry is being held, and shall explain to the accused person that he will have an opportunity later on in the inquiry of making a statement if he so desires, and shall further explain to the accused person the purpose of the proceedings, namely to determine whether there is sufficient evidence to put him on his trial by the High Court, and shall then, in his presence, take down in writing, or cause to be so taken down, the statements on oath of those who know the facts and circumstances of the case, and statements of witnesses so taken down in writing shall be termed depositions.
- (2) The accused person or the advocate or other person defending him may put questions to each witness produced against him, and the answer of the witness thereto shall form part of such witness's deposition.
- (3) If the accused person is not defended by an advocate or other person, the court shall, at the close of the examination of each witness for the prosecution, ask the accused person whether he wishes to put any questions to that witness.
- (4) As the statement of each witness taken down under this section is completed it shall be read over to him in the presence of the accused person and shall, if necessary, be corrected.
- (5) If any witness denies the correctness of any part of the statement when the same is read over to him the magistrate may, instead of correcting the

evidence, make a memorandum thereon of the objection made to it by the witness, and shall add such remarks as he thinks necessary.

- (6) If the statement is taken down in a language different from that in which it has been given, and the witness does not understand the language in which it is taken down, the statement shall be interpreted to him in a language which he understands.
- (7) The deposition of each witness shall then be signed by him or attested by his mark and by the magistrate holding the inquiry.

### **211 Variance between evidence and charge**

No objection to a charge, summons or warrant for defect in substance or in form, or for variance between it and the evidence of the prosecution, shall be allowed; but if any variance appears to the court to be such that the accused person has been thereby deceived or misled, the court may, on the application of the accused person, adjourn the inquiry and allow any witness to be recalled and such questions to be put to him as by reason of the terms of the charge may have been omitted.

### **212 Remand**

- (1) If, from the absence of witnesses or any other reasonable cause to be recorded in the proceedings, the court considers it necessary or advisable to adjourn the inquiry the court may from time to time by warrant remand the accused for a reasonable time, not exceeding 15 clear days at any one time, to some prison or other place of security; or, if the remand is for not more than 3 days, the court may by word of mouth order the officer or person in whose custody the accused person is, or any other fit officer or person, to continue to keep the accused in his custody, and to bring him up at the time appointed for the commencement or continuance of the inquiry.
- (2) During a remand the court may at any time order the accused to be brought before it.
- (3) The court may on a remand admit the accused to bail.

### **213 Provisions as to taking statement or evidence of accused person**

- (1) If, after consideration of the statements of witnesses tendered to it in accordance with the provisions of section 209 (1) (b) or the examination of witnesses called on behalf of the prosecution in accordance with the provisions of section 210 (1) as the case may be, the court considers that such statements disclose, or on the evidence as it stands there are sufficient grounds for committing the accused for trial, the magistrate shall satisfy himself that the accused understands the charge and shall ask the accused whether he wishes to make a statement in his defence or not and, if he wishes to make a

statement, whether he wishes to make it on oath, or not; and the magistrate shall also explain to the accused that he is not bound to make a statement and that his statement, if he makes one, will be part of the evidence at the trial.

- (2) Everything which the accused person says, either by way of statement or evidence, shall be recorded in full and shall be shown or read over to him, and he shall be at liberty to explain or add to anything contained in the record thereof.
- (3) When the whole is made conformable to what he declares is the truth, the record thereof shall be attested by the magistrate, who shall certify that such statement or evidence was taken in his presence and hearing and contains accurately the whole statement made, or evidence given, as the case may be, by the accused person who shall sign or attest by his mark such record; and if he refuses, the court shall add a note of his refusal, and the record may be used as if he had signed or attested it.

#### **214 Evidence and address in defence**

- (1) Immediately after complying with the requirements of section 213 relating to the statement or evidence of the accused person, and whether the accused person has or has not made a statement or given evidence, the magistrate shall ask him whether he desires to call witnesses on his own behalf.
- (2) The magistrate shall take the evidence of any witnesses called by the accused person in like manner as in the case of the witnesses for the prosecution, and every such witness, not being merely a witness to the character of the accused person, shall be bound by recognisance to appear and give evidence at the trial of such accused person.
- (3) If the accused person states that he has witnesses to call, but that they are not present in court, and the magistrate is satisfied that the absence of such witnesses is not due to any fault or neglect of the accused person, and that there is a likelihood that they could, if present, give material evidence on behalf of the accused person, the magistrate may adjourn the inquiry and issue process, or take other steps, to compel the attendance of such witnesses, and on their attendance shall take their depositions and bind them by recognisance in the same manner as witnesses under subsection (2).
- (4) In any preliminary inquiry under this Part the accused person or the advocate or other person defending him shall be at liberty to address the court —
  - (a) after the reading over of the statements of witnesses in accordance with the provisions of section 209(1)(b) or the examination of witnesses called on behalf of the prosecution in accordance with the provisions of section 210, as the case may be;
  - (b) if no witnesses for the defence are to be called, immediately after the statement or evidence of the accused person;
  - (c) if the accused person elects —

- (i) to give evidence or to make a statement and witnesses for the defence are to be called, or
  - (ii) not to give evidence or to make a statement, but to call witnesses, immediately after the evidence of such witnesses.
- (5) If the accused person or the advocate or other person defending him addresses the court in accordance with the provisions of paragraph (a) or (c) of subsection (4) the prosecution shall have the right of reply.

### **215 Magistrate to record defence witnesses' names, etc.**

Where the accused person reserves his defence, or at the conclusion of any statement in answer to the charge or evidence in defence, as the case may be, the magistrate shall ask him whether he intends to call witnesses at the trial, other than any whose evidence has been taken under the provisions of this section, and, if so, whether he desires to give their names and addresses so that they may be summoned; and the magistrate shall thereupon record the names and addresses of any such witnesses whom he may mention.

### **216 Discharge of accused person**

If, after consideration of the statements of witnesses tendered in accordance with the provisions of section 209(1)(b) or, in the case of an inquiry conducted in accordance with the provisions of section 210, at the close of the case for the prosecution, as the case may be, or after hearing any evidence in defence, the magistrate considers that the case against the accused person is not sufficient to put him on his trial, the magistrate shall forthwith order him to be discharged as to the particular charge under inquiry; but such discharge shall not be a bar to any subsequent charge in respect of the same facts:

Provided always that nothing contained in this section shall prevent the court from proceeding, either forthwith, or after such adjournment of the inquiry as may seem expedient in the interests of justice, to investigate any other charge upon which the accused person may have been summoned or otherwise brought before it, or which, in the course of the investigation of the charge so dismissed as aforesaid, it may appear that the accused person has committed.

### **217 Power to apply to senior Magistrate for committal in certain cases where accused person discharged**

- (1) In any case where a magistrate's court discharges an accused person on a preliminary inquiry the court shall, if required to do so by the Attorney-General, transmit forthwith to him the record of the proceedings, including the statements of any witnesses read over in accordance with the provisions of section 209(1)(b) or certified copies or translations thereof, and if the Attorney-General on considering the case shall be of the opinion that the

accused person ought not to have been discharged he may apply to the Senior Magistrate for a warrant for the arrest and committal for trial of the accused person; and if the Senior Magistrate shall be of the opinion that the case, as presented before the magistrate's court, was sufficient to put the accused person on his trial, he may issue a warrant for the arrest of the accused person and for his committal to prison for trial, there to be kept until discharge in due course of law or admitted to bail; and any person so proceeded against shall be further prosecuted in the same manner as if he had been committed for trial by the magistrate's court which discharged him, and for the purposes of the other provisions of this Code the said magistrate's court shall be deemed to have committed him for trial.

- (2) An application under the preceding subsection may not be made after the expiry of 6 months from the date of discharge.
- (3) For the purpose of taking recognisances under section 220, the magistrate's court shall have in relation to any person required to be bound over under the section aforesaid all the powers vested in the court for compelling the attendance of witnesses.
- (4) The person in charge of a prison shall inform any person committed to such prison under the provisions of subsection (1) of his rights under sections 222 and 223, and notwithstanding the other provisions of this Code, the magistrate's court shall not be required so to inform him.

## **218 Committal for trial**

- (1) If the magistrate's court considers the case against the accused sufficient to put him on his trial, the court shall commit him for trial to the High Court and shall, until the trial, either admit him to bail or send him to prison for safe-keeping; and the warrant of such first-named court shall be sufficient authority to the officer in charge of any prison appointed for the custody of prisoners committed for trial.
- (2) In the case of a corporation the court may, if it considers the case against the accused corporation sufficient to put the accused corporation on trial, make an order authorising the Attorney-General or such person as he may appoint to file an information against such corporation, and for the purposes of this Code any such order shall be deemed to be a committal for trial.
- (3) In the case of an inquiry conducted in accordance with the provisions of section 209 the court after committing the accused person for trial to the High Court shall allow him to plead to the charge against him and shall record his plea thereto, if any.

## 219 Summary adjudication

If, at the close of or during the inquiry, it shall appear to the magistrate's court that the offence is of such a nature that it may suitably be dealt with under the powers possessed by the court, the court may, subject to the other provisions of this Code, hear and finally determine the matter and either convict the accused person or dismiss the charge:

Provided that in every such case —

- (i) if the inquiry was conducted in accordance with the provisions of section 209, the witnesses for the prosecution shall be called and the evidence of each of them taken in the manner provided in Part V, and the accused person shall be entitled to cross-examine them upon such evidence; or
- (ii) if the inquiry was conducted in accordance with the provisions of section 210, the accused person shall be entitled to have recalled for cross-examination or further cross-examination all witnesses for the prosecution whom he may require to be recalled.

## 220 Complainant and witnesses to be bound over

- (1) When the accused person is committed for trial before the High Court, the magistrate's court committing him shall —
  - (a) if the accused person has been committed for trial upon an inquiry conducted in accordance with the provisions of section 209, summon the witnesses whose statements have been read over to the accused person in accordance with the provisions of section 209(1)(b) and bind by recognisance, with or without sureties, as it may deem requisite, every witness called for the defence to appear at the trial to give evidence and also to appear and give evidence at any further examination concerning the charge which may be held by direction of the Attorney-General:

Provided that if after his committal for trial to the High Court at such inquiry the accused person has pleaded "guilty" to the charge against him, it shall not be necessary to summon or bind such witnesses unless the court be requested so to do either by the Attorney-General or by the trial judge; or
  - (b) if the accused person has been committed for trial upon an inquiry held in accordance with the provisions of section 210, bind by recognisance, with or without sureties as it may deem requisite, the complainant and every witness to appear at the trial to give evidence and also to appear and give evidence at any further examination concerning the charge which may be held by direction of the Attorney-General.
- (2) Nothing in subsection (1)(a) shall be construed to prevent an accused person who has pleaded "guilty" when allowed to plead in accordance with section

218(3) from altering that plea to one of “not guilty” when he appears for trial before the High Court.

## **221 Refusal to be bound over**

If a person refuses to enter into a recognisance on being required to do so in accordance with the provisions of section 220, the court may commit him to prison or into the custody of any officer of the court, there to remain until after the trial, unless in the meantime he enters into a recognisance; and if afterwards, from want of sufficient evidence or other cause, the accused is discharged, the court shall order that the person imprisoned for so refusing be also discharged.

## **222 Accused person entitled to copy of depositions and statements**

A person who has been committed for trial before the High Court shall be entitled at any time before the trial to have, without payment, a copy of the statements of witnesses read over in accordance with the provisions of section 209(1)(b) or, in the case of an inquiry held in accordance with the provisions of section 210, of the depositions, as the case may be, and the court shall at the time of committing him for trial inform the accused person of the effect of this provision.

## **223 Binding over of witnesses conditionally**

- (1) Where any person charged before a magistrate’s court with an offence triable upon information before the High Court is committed for trial, and it appears to such magistrate’s court, after taking into account anything which may be said with reference thereto by the accused person or the prosecutor, that the attendance at the trial of any witness whose statement has been read over in accordance with the provisions of section 209(1)(b) or who has been examined before it in accordance with the provisions of section 210, as the case may be, is unnecessary by reason of anything contained in any statement by the accused person, or of the statement or evidence of the witness being merely of a formal nature, the magistrate’s court —
  - (a) may, in the case of a witness whose statement has been read over in accordance with the provisions of section 209(1)(b), notwithstanding the provisions of section 220(1)(a) (which requires the court to summon such a witness) refrain from summoning the witness; or
  - (b) may, in the case of any other witness, if such witness has not already been bound over, bind him over to appear at the trial conditionally upon notice given to him and not otherwise, or if the witness has already been bound over, direct that he shall be treated as having been bound over to appear only conditionally as aforesaid; and
  - (c) shall transmit to the High Court a statement in writing of the names, addresses and occupations of the witnesses who have not been



summoned or who are, or who are treated as having been, bound over to appear at the trial conditionally.

- (2) Where, in accordance with the provisions of subsection (1), a witness has not been summoned or has been, or is to be treated as having been, bound over conditionally to appear at the trial, the Attorney-General or the person committed for trial may give notice at any time before the opening of the sessions of the High Court to the committing magistrate's court and at any time thereafter to the Registrar of the High Court that he desires the witness to attend at the trial and the court or Registrar to whom the notice is given shall forthwith summon the witness to appear at the trial or notify him that he is required so to appear in accordance with his recognisance.
- (3) The magistrate's court shall, on committing the accused person for trial, inform him of his right to require the attendance at the trial of any such witness as is referred to in subsection (2) and of the steps he must take for the purpose of enforcing that attendance.
- (4) Any documents or articles tendered or produced as exhibits in the magistrate's court by any witness whose attendance at the trial is stated to be unnecessary in accordance with the provisions of this section and marked as exhibits shall, unless in any particular case the magistrate's court otherwise orders, be retained by the magistrate's court and forwarded with the statements of the witnesses read over in accordance with the provisions of section 209(1)(b) or the depositions, as the case may be, to the Registrar of the High Court.

## **224 Taking the depositions of persons dangerously ill**

Whenever it appears to any magistrate that any person dangerously ill or hurt and not likely to recover is able and willing to give material evidence relating to any offence triable by the High Court, and it shall not be practicable to take the deposition in accordance with the provisions of this Code of the person so ill or hurt, such magistrate may take in writing the statement on oath or affirmation of such person, and shall subscribe the same, and certify that it contains accurately the whole of the statement made by such person, and shall add a statement of his reason for taking the same, and of the date and place when and where the same was taken, and shall preserve such statement and file it for record.

## **225 Notice to be given**

If the statement relates or is expected to relate to an offence for which any person is under a charge or committal for trial, reasonable notice of the intention to take the same shall be served upon the prosecutor and the accused person, and if the accused person is in custody he shall be brought by the person in whose charge he is, under an order in writing of the magistrate, to the place where the statement is to be taken.

**226 Transmission of statements**

If the statement relates to an offence for which any person is then subsequently committed for trial, it shall be transmitted to the Registrar of the High Court, and a copy thereof shall be transmitted to the Attorney-General or to such person as he may appoint.

**227 Use of statement in evidence**

Such statement so taken may afterwards be used in evidence on the trial of any person accused of an offence to which the same relates, if the person who made the statement be dead, or if the court is satisfied that for any sufficient cause his attendance cannot be procured, and if reasonable notice of the intention to take such statement was served upon the person (whether prosecutor or accused person) against whom it is proposed to be read in evidence, and he had or might have had, if he had chosen to be present, full opportunity of cross-examining the person making the same.

**228 Transmission of records to High Court and Attorney-General**

In the event of a committal for trial, the written charge, the statements of witnesses read over in accordance with the provisions of section 209(1)(b), the depositions, the statement (if any) of the accused person, the summonses or recognisances, as the case may be, of the complainant and of the witnesses, the recognisances of bail (if any), and any documents or things which have been tendered or produced as exhibits and marked as such, shall be transmitted without delay by the committing court to the Registrar of the High Court, and an authenticated copy of such statements and depositions and of the statement (if any) of the accused person shall be supplied to the Attorney-General by the Registrar.

**229 Power of Attorney-General to direct further investigation**

If, after receipt of the authenticated copy of the statements and depositions provided for by the last preceding section and before the trial before the High Court, the Attorney-General is of opinion that further investigation is required before such trial, the Attorney-General may direct that the original statements and depositions be remitted to the court which committed the accused person for trial, and such court may thereupon reopen the case and deal with it in all respects as if such person had not been committed for trial as aforesaid; and if the case be one which may suitably be dealt with under powers possessed by such court, it may, if thought expedient by the court, be so tried and determined accordingly.

**230 Powers of Attorney-General as to additional witnesses**

If, after receipt of the authenticated copy of the statements and depositions as aforesaid and prior to the trial before the High Court, the Attorney-General is of the opinion that there is, in any case committed for trial, any material or necessary witness for the prosecution or the defence who has not been bound over to give evidence on the trial of the case, the Attorney-General may require the magistrate's court which committed the accused person for trial to take the deposition of such witness and compel his attendance either by binding over or by summons or by warrant as hereinbefore provided.

**231 Return of depositions with a view to summary trial**

If, prior to the trial before the High Court, the Attorney-General is of the opinion, upon the record of the committal proceedings received by him, that the case is one which may suitably be tried by a magistrate's court, he may cause the statements and depositions to be returned to the court which committed the accused, and thereupon the case shall be reopened, tried and determined in the same manner as if such person had not been committed for trial:

Provided that in every such case —

- (i) if the inquiry was conducted in accordance with the provisions of section 209, the witnesses for the prosecution shall be called and the evidence of each of them taken in the manner provided in Part V, and the accused person shall be entitled to cross-examine them upon such evidence; or
- (ii) if the inquiry was conducted in accordance with the provisions of section 210, the accused person shall be entitled to have recalled for cross-examination or further cross-examination all witnesses for the prosecution whom he may require to be recalled.

**232 Filing of an information**

- (1) If, after receipt of the authenticated copy of the statements and depositions as aforesaid, the Attorney-General is of the opinion that the case is one which should be tried upon information before the High Court, an information shall be drawn up in accordance with the provisions of this Code, and when signed by the Attorney-General shall be filed in the registry of the High Court.
- (2) In any such information the Attorney-General may charge the accused person with any offence which, in his opinion, is disclosed by the statements and depositions either in addition to, or in substitution for, the offence upon which the accused person has been committed for trial.

**233 Notice of trial**

The Registrar of the High Court shall endorse on or annex to every information filed as aforesaid, and to every copy thereof delivered to the officer of the court or police officer for service thereof, a notice of trial, which notice shall specify the particular sessions of the High Court at which the accused person is to be tried on the said information, and shall be in the following form, or as near thereto as may be —

“A.B.

Take notice that you will be tried on the information whereof this is a true copy at the sessions of the High Court to be held at ..... on the ..... day of ....., 20...”

**234 Copy of information and of notice of trial to be served**

The Registrar shall deliver or cause to be delivered to the officer of the court or police officer serving the information a copy thereof with the notice of trial endorsed on the same or annexed thereto, and, if there are more accused persons committed for trial than one, then as many copies as there are such accused persons; and the officer of the court or police officer aforesaid shall, as soon as may be after having received the copy or copies of the information and notice or notices of trial, and 3 days at least before the day specified therein for trial, by himself or his deputy or other officer, deliver to the accused person or persons committed for trial the said copy or copies of the information and notice or notices, and explain to him or them the nature and exigency thereof; and when any accused person shall have been admitted to bail and cannot readily be found, he shall leave a copy of the said information and notice of trial with someone of his household for him at his dwelling-house or with someone of his bail for him, and if none such can be found, shall affix the said copy and notice to the outer or principal door of the dwelling-house or dwelling-houses of the accused person or of any of his bail:

Provided always that nothing herein contained shall prevent any person committed for trial and in custody at the opening of or during any sessions of the High Court, from being tried thereat, if he shall express his assent to be so tried and no special objection be made thereto on the part of the Crown.

**235 Return of service**

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

**236 Postponement of trial**

- (1) The High Court, upon the application of the prosecutor or the accused person, if the court considers that there is sufficient cause for the delay, may postpone the trial of any accused person to the next sessions of the court held in the

district or some other convenient place, or to a subsequent sessions, and respite the summonses or recognisances of the complainant and witnesses, in which case the respited summonses or recognisances shall have the same force and effect as fresh summonses or recognisances to prosecute and give evidence at such subsequent sessions would have had.

- (2) The High Court may give such directions for the amendment of the information and the service of any notices which the court may deem necessary in consequence of any order made under subsection (1).

### **237 Information by Attorney-General**

All informations drawn up in pursuance of section 232 shall be in the name of and (subject to the provisions of section 69) signed by the Attorney-General, and when so signed shall be as valid and effectual in all respects as an indictment in England which has been signed by the proper officer of the court in accordance with the Administration of Justice (Miscellaneous Provisions) Act 1933.

### **238 Form of information**

Every information shall bear date of the day when the same is signed, and, with such modifications as shall be necessary to adapt it to the circumstances of each case, may commence in the following form —

THE QUEEN v. A.B.

In the High Court of Tuvalu

At the sessions holden at ..... in Tuvalu on the ..... day of .....,20... .

INFORMATION BY ATTORNEY-GENERAL

A.B. is charged with the following offence (or offences) —

## **PART VIII - PROCEDURE IN TRIALS BEFORE THE HIGH COURT ON INFORMATION**

### **239 Practice of High Court in its criminal jurisdiction**

Subject to the provisions of this Code and of any rules of court, the practice of the High Court in its criminal jurisdiction shall be assimilated so far as circumstances admit to the practice of Her Majesty's High Court of Justice in its criminal jurisdiction and of Courts of Oyer and Terminer and General Gaol Delivery in England.

**240 Pleading to information**

- (1) The accused person to be tried before the High Court upon an information shall be placed at the bar unfettered, unless the court shall see cause otherwise to order, and the information shall be read over to him by the Registrar or other officer of the court, and explained if need be by that officer or interpreted by the interpreter appointed by the court, and such accused person shall be required to plead instantly thereto, unless, where the accused person is entitled to service of a copy of the information, he shall object to the want of such service, and the court shall find that he has not been duly served therewith.
- (2) In the case of a corporation, the corporation may, by its representative, enter a plea in writing; and if either the corporation does not appear by representative or, although it does so appear, fails to enter any plea, the court shall cause a plea of “not guilty” to be entered.
- (3) A representative for the purposes of this section need not be appointed under the seal of the corporation, and a statement in writing purporting to be signed by a managing director of the corporation, or by any person (by whatever name called) having or being one of the persons having the management of the affairs of the 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 section shall be admissible without further proof as prima facie evidence that that person has been so appointed.
- (4) The provisions of this section shall have effect notwithstanding that the accused person or corporation, as the case may be, may already have pleaded to a charge alleging the commission of the same offence as that charged in the information before the High Court at an inquiry held in accordance with the provisions of section 208 into or concerning such offence.

**241 Orders for amendment of information, separate trial, and postponement of trial**

- (1) Every objection to any information for any formal defect on the face thereof shall be taken immediately after the information has been read over to the accused person and not later.
- (2) Where, before a trial upon information or at any stage of such trial, it appears to the court that the information is defective, the court shall make such order for the amendment of the information as the court thinks necessary to meet the circumstances of the case, unless, having regard to the merits of the case, the required amendments cannot be made without injustice; and all such amendments shall be made upon such terms as to the court shall seem just.
- (3) Where an information is so amended, a note of the order for amendment shall be endorsed on the information, and the information shall be treated for the

purposes of all proceedings in connection therewith as having been filed in the amended form.

- (4) Where, before a trial upon information or at any stage of such trial, the court is of opinion that the accused may be prejudiced or embarrassed in his defence by reason of being charged with more than 1 offence in the same information, or that for any other reason it is desirable to direct that the accused should be tried separately for any 1 or more offences charged in an information, the court may order a separate trial of any count or counts of such information.
- (5) Where, before a trial upon information or at any stage of such trial, the court is of opinion that the postponement of the trial of the accused is expedient as a consequence of the exercise of any power of the court under this Code, the court shall make such order as to the postponement of the trial as appears necessary.
- (6) Where an order of the court is made under this section for a separate trial or for postponement of a trial —
  - (a) the procedure on the separate trial of a count shall be the same in all respects as if the count had been found in a separate information, and the procedure on the postponed trial shall be the same in all respects as if the trial had not commenced; and
  - (b) the court may make such order as to admitting the accused to bail, and as to the enlargement of recognisances and otherwise as the court thinks fit.
- (7) Any power of the court under this section shall be in addition to and not in derogation of any other power of the court for the same or similar purposes.

## **242 Quashing of information**

- (1) If any information does not state, and cannot by any amendment authorised by the last preceding section be made to state, any offence of which the accused has had notice, it shall be quashed either on a motion made before the accused pleads or on a motion made in arrest of judgment.
- (2) A written statement of every such motion shall be delivered to the Registrar or other officer of the court by or on behalf of the accused and shall be entered upon the record.

## **243 Procedure in case of previous conviction**

Where an information contains a count charging an accused person with having been previously convicted of any offence, the procedure shall be as follows —

- (a) the part of the information stating the previous conviction shall not be read out in court, nor shall the accused be asked whether he has been

previously convicted as alleged in the information, unless and until he has either pleaded guilty to or been convicted of the subsequent offence;

- (b) if he pleads guilty to or is convicted of the subsequent offence, he shall then be asked whether he has been previously convicted as alleged in the information;
- (c) if he answers that he has been so previously convicted, the judge may proceed to pass sentence on him accordingly; but if he denies that he has been so previously convicted, or refuses to or does not answer such question, the court shall then hear evidence concerning such previous conviction:

Provided, however, that if upon the trial of any person for any such subsequent offence such person shall give evidence of his own good character, it shall be lawful for the public prosecutor or advocate for the prosecution, in answer thereto, to give evidence of the conviction of such person for the previous offence or offences before a verdict is returned and the court shall inquire concerning such previous conviction or convictions at the same time that they inquire concerning such subsequent offence.

#### **244 Plea of “not guilty”**

Every accused person upon being arraigned upon any information, by pleading generally thereto the plea of “not guilty”, shall, without further form, be deemed to have put himself upon the country for trial.

#### **245 Plea of autrefois acquit and autrefois convict**

- (1) Any accused person against whom an information is filed may plead —
  - (a) that he has been previously convicted or acquitted, as the case may be, of the same offence; or
  - (b) that he has obtained the Queen’s pardon for his offence.
- (2) If either of such pleas are pleaded in any case and denied to be true in fact, the court shall try whether such plea is true in fact or not.
- (3) If the court holds that the facts alleged by the accused do not prove the plea, or if it finds that it is false in fact, the accused shall be required to plead to the information.

#### **246 Refusal to plead**

If any accused person being arraigned upon any information stands mute of malice, or neither will, nor by reason of infirmity can, answer directly to the information, the court, if it thinks fit, shall order the Registrar or other officer of the court to enter a plea of “not guilty” on behalf of such accused person, and the plea so entered shall



have the same force and effect as if such accused person had actually pleaded the same; or else the court shall thereupon proceed to try whether the accused person be of sound or unsound mind, and, if he shall be found of sound mind, shall proceed with the trial, and if he shall be found of unsound mind, and consequently incapable of making his defence, shall order the trial to be postponed and the accused person to be kept meanwhile in safe custody in such place and manner as the court thinks fit, and shall report the case for the order of the Minister.

The Minister may order such accused person to be confined in a mental health wing, prison, or other suitable place for safe custody.

#### **247 Plea of “guilty”**

If the accused pleads “guilty” the plea shall be recorded and he may be convicted thereon.

#### **248 Proceedings after plea of “not guilty”**

If the accused pleads “not guilty”, or if a plea of “not guilty” is entered in accordance with the provisions of section 240 or 246, the court shall proceed to try the case.

#### **249 Power to postpone or adjourn proceedings**

- (1) If, from the absence of witnesses or any other reasonable cause to be recorded in the proceedings, the court considers it necessary or advisable to postpone the commencement of or to adjourn any trial, the court may from time to time postpone or adjourn the same on such terms as it thinks fit for such time as it considers reasonable, and may by warrant remand the accused to some prison or other place of security.
- (2) During a remand the court may at any time order the accused to be brought before it.
- (3) The court may on a remand admit the accused to bail.

#### **250 Opening of case for prosecution**

The public prosecutor or advocate for the prosecution shall open the case against the accused person, and shall call witnesses and adduce evidence in support of the charge.

**251 Additional witnesses for prosecution**

- (1) No witness who has not given evidence at the preliminary inquiry shall be called by the prosecution at any trial unless the accused person has received reasonable notice in writing of the intention to call such witness.
- (2) The notice shall state the witness's name and address and the substance of the evidence which he intends to give.
- (3) The court shall determine what notice is reasonable, regard being had to the time when and the circumstances under which the prosecution became acquainted with the nature of the witness's evidence and determined to call him as a witness.

**252 Cross-examination of witnesses for the prosecution**

The witnesses called for the prosecution shall be subject to cross-examination by the accused person or the advocate or other person defending him, and to re-examination by the public prosecutor or advocate for the prosecution.

**253 Deposition may be read as evidence in certain cases**

- (1) Where any person has been committed for trial for any offence, the deposition of any person taken before the committing magistrate's court may, if the conditions hereinafter set out are satisfied, without further proof be read as evidence on the trial of that person, whether for that offence or for any other offence arising out of the same transaction, or set of circumstances, as that offence.
- (2) The conditions referred to in subsection (1) are the following —
  - (a) the deposition must be the deposition either of a witness whose attendance at the trial is stated to be unnecessary in accordance with the provisions of section 223 or of a witness who is proved at the trial by oath of a credible witness to be absent from Tuvalu or dead or insane, or so ill as not to be able to travel, or to be kept out of the way by means of procurement of the accused or on his behalf, or to be unable to attend for any other sufficient cause;
  - (b) the deposition must purport to be signed by the magistrate before whom it purports to have been taken.
- (3) The provisions of this section shall not have effect in any case in which it is proved —
  - (a) that the deposition was not in fact signed by the magistrate by whom it purports to have been signed; or
  - (b) where the deposition is that of a witness whose attendance at the trial is stated to be unnecessary as aforesaid, that the witness has been duly notified that he is required to attend the trial.

**254 Deposition of expert witness may be read as evidence**

The deposition of a surveyor or of an analyst or geologist employed in the public service or of a medical practitioner, taken and attested by a magistrate in the presence of the accused person, may, with the consent of the accused person or his advocate, be read as evidence although the deponent is not called as a witness:

Provided that the court may, if it thinks fit, summon and examine such deponent as to the subject-matter of his deposition.

**255 Statement of accused**

The statement or evidence (if any) of the accused person duly recorded by or before the committing magistrate, and whether signed by the accused person or not, may be given in evidence without further proof thereof, unless it is proved that the magistrate purporting to sign the statement or evidence did not in fact sign it.

**256 Close of case for prosecution**

- (1) When the evidence of the witnesses for the prosecution has been concluded, and the statement or evidence (if any) of the accused person before the committing court has been given in evidence, the court, if it considers that there is no evidence that the accused or any one of several accused committed the offence, shall, after hearing, if necessary, any arguments which the public prosecutor or advocate for the prosecution or the advocate or other person defending him may desire to submit, record a finding of not guilty.
- (2) When the evidence of the witnesses for the prosecution has been concluded, and the statement or evidence (if any) of the accused person before the committing court has been given in evidence, the court, if it considers that there is evidence that the accused person, or any one or more of several accused persons, committed the offence, shall inform each such accused person of his right to address the court, either personally or by the advocate or other person defending him, to give evidence on his own behalf, or to make an unsworn statement, and to call witnesses in his defence, and in all cases shall require him or the advocate or other person defending him to state whether it is intended to call any witnesses as to fact other than the accused person himself and upon being informed thereof, the judge shall record the same.
- (3) If an accused person says that he does not mean to give evidence or make an unsworn statement, or to adduce evidence, then the advocate for the prosecution may sum up the case against such accused person.
- (4) If an accused person says that he means to give evidence or make an unsworn statement, or to adduce evidence, the court shall call upon such accused person to enter upon his defence.

**257 The defence**

The accused person or the advocate or other person defending him may then open his case, stating the facts or law on which he intends to rely, and making such comments as he thinks necessary on the evidence for the prosecution; and the accused person may then give evidence on his own behalf and he or the advocate or other person defending him may examine his witnesses (if any), and after their cross-examination and re-examination (if any) may sum up his case.

**258 Additional witnesses for the defence**

The accused person shall be allowed to examine any witness not previously bound over to give evidence at the trial if such witness is in attendance; and if he apprehends that any such witness will not attend the trial voluntarily, he shall be entitled to apply for the issue of process to compel such witness's attendance:

Provided that no accused person shall be entitled to any adjournment to secure the attendance of any witness unless he shows that he could not by reasonable diligence have taken earlier steps to obtain the presence of the witness.

**259 Evidence in reply**

If the accused person adduces evidence in his defence introducing new matter which the public prosecutor or advocate for the prosecution could not have foreseen, the court may allow the advocate for the prosecution to adduce evidence in reply to rebut the said matter.

**260 Prosecutor's reply**

If the accused person, or any one of several accused persons, adduces any evidence, the public prosecutor or advocate for the prosecution shall subject to the provisions of section 143 be entitled to reply.

**261 Where accused adduces no evidence**

If the accused person says that he does not mean to give or adduce evidence and the court considers that there is evidence that he committed the offence, the public prosecutor or advocate for the prosecution shall then, subject to the provisions of section 143, sum up the case against the accused person and the court shall then call on the accused person personally or by his advocate or other person defending him to address the court on his own behalf.

**262 Decision**

- (1) Subject to section 177 when the case on both sides is closed the judge shall then give judgment.

- (2) If the accused person is convicted the judge shall pass sentence on him according to law.

### **263 Calling upon the accused**

If the accused person is convicted, or if the accused person pleads guilty, it shall be the duty of the Registrar or other officer of the court 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 him shall have no effect on the validity of the proceedings.

### **264 Motion in arrest of judgment**

- (1) The accused person may, at any time before sentence, whether on his plea of guilty or otherwise, move in arrest of judgment on the ground that the information does not, after any amendment which the court has made and had power to make, state any offence which the court has power to try.
- (2) The court may, in its discretion, either hear and determine the matter during the same sitting, or adjourn the hearing thereof to a future time to be fixed for that purpose.
- (3) If the court decides in favour of the accused he shall be discharged from that information.

### **265 Sentence**

If no motion in arrest of judgment is made, or if the court decides against the accused person upon such motion, the court may sentence the accused person at any time during the session.

### **266 Power to reserve decision on question raised at trial**

The court before which any person is tried for an offence may reserve the giving of its final decision on questions raised at the trial, and its decision whenever given shall be considered as given at the time of trial.

### **267 Power to reserve decision on questions arising in the course of trial**

- (1) When any person has, in a trial before the High Court, been convicted of an offence, the judge may reserve for further consideration any question which has arisen in the course of the trial, and the determination of which would affect the event of the trial.
- (2) If the judge reserves any such question, the person convicted shall, pending the decision thereon, be remanded to prison, or if the judge thinks fit, be

admitted to bail; and upon such further consideration of the question so reserved the judge may affirm or quash the conviction.

### **268 Objections cured by verdict**

No judgment shall be stayed or reversed on the ground of any objection, which if stated after the information was read over to the accused person, or during the progress of the trial, might have been amended by the court, nor for any informality in swearing the witnesses or any of them.

### **269 Evidence for arriving at proper sentence**

The court may, before passing sentence, receive such evidence as it thinks fit, in order to inform itself as to the sentence proper to be passed.

## **PART IX - APPEALS FROM MAGISTRATES' COURTS AND CASES STATED**

### **270 Appeal to High Court**

- (1) Save as hereinafter provided, any person who is dissatisfied with any judgment, sentence or order of a magistrate's court in any criminal cause or matter to which he is a party may appeal to the Senior Magistrate, or, if the judgment, sentence or order was made by the Senior Magistrate's Court, to the High Court, against such judgment, sentence or order:

Provided that no appeal shall lie against an order of acquittal except by, or with the sanction in writing of, the Attorney-General.

- (2) When a person convicted on trial by a magistrate's court is not represented by an advocate he shall be informed by the magistrate of his right of appeal at the time when sentence is passed.
- (3) An appeal may be on a matter of fact as well as on a matter of law.
- (4) For the purposes of this Part the extent of a sentence shall be deemed to be a matter of law.
- (5) The Attorney-General shall be deemed to be a party to any criminal cause or matter in which the proceedings were instituted and carried on by a public prosecutor.

**271 Limitation of appeal on plea of guilty and in petty cases**

- (1) No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted of such plea by a magistrate's court, except as to the extent or legality of the sentence.
- (2) Save with the leave of the High Court, no appeal shall be allowed in a case in which a magistrate's court has passed a sentence of a fine not exceeding \$10 only, notwithstanding that a sentence of imprisonment has been passed by such court in default of the payment of such fine, if no substantive sentence of imprisonment has also been passed.
- (3) No conviction or sentence, which would not otherwise be liable to appeal, shall be appealable merely on the ground that the person convicted is ordered to find security to keep the peace.

**272 Appeal to be by way of petition**

- (1) Subject to the provisions of any rules of court, every appeal shall be in the form of a petition in writing signed by the appellant or his advocate and shall be presented to the magistrate's court from the decision of which the appeal is lodged within 14 days of the date of the decision appealed against:

Provided that the magistrate's court or the High Court may, at any time, for good cause, enlarge the period of limitation prescribed by this section.

- (2) For the purposes of this section and without prejudice to its generality, "good cause" shall be deemed to include —
  - (a) a case where the advocate engaged by the appellant was not present at the hearing before the magistrate's court and for that reason required further time for the preparation of the petition;
  - (b) any case in which a question of law of unusual difficulty is involved;
  - (c) a case in which the sanction of the Attorney-General is required by virtue of section 270.

**273 Form and contents of petition**

- (1) Every petition shall contain in a concise form the grounds upon which it is alleged that the magistrate's court from the decision of which the appeal is lodged has erred.
- (2) If the appellant is not represented by an advocate the petition may be prepared by or under the directions of the magistrate's court.
- (3) If the appellant is in prison custody and is not represented by an advocate the petition may be prepared by the officer in charge of the prison and forwarded by him to the magistrate's court.

- (4) Additional grounds of appeal may be filed by leave of the High Court at any time not later than 3 days before the date fixed for the hearing of the appeal in accordance with section 276.
- (5) Where 2 or more persons have been jointly tried and convicted and their interests do not conflict, one petition of appeal may be presented on behalf of all of them:  

Provided that in such case the High Court may hear the appeals separately or together as seems just.
- (6) Except by leave of the High Court it shall not be lawful for the appellant on the hearing of the appeal to allege or give evidence on any ground of appeal not included in the petition or in the additional grounds, if any, filed under subsection (4).
- (7) If the case is one which requires the leave of the High Court under section 271 the application for leave to appeal shall be endorsed on the petition.
- (8) For the purpose of considering or preparing a petition of appeal a person entitled to appeal or his advocate or an officer in charge of a prison shall be entitled to peruse the original record of the proceedings at such time as the clerk of court or the magistrate may allow.

#### **274 Petition to be forwarded to the High Court**

Upon receiving a petition of appeal the magistrate shall forthwith forward the petition of appeal together with the record of the proceedings to the Registrar of the High Court.

#### **275 Summary dismissal of appeal**

- (1) When the High Court has received the petition of appeal and the record of proceedings a judge shall peruse the same.
- (2) Where an appeal is brought on the grounds that the decision is unreasonable or cannot be supported having regard to the evidence or that the sentence is excessive and it appears to the judge that the evidence is sufficient to support the conviction and that there is no material in the circumstances of the case which could raise a reasonable doubt whether the conviction was right or lead him to the opinion that the sentence ought to be reduced, the appeal may, without being set down for hearing, be summarily dismissed by an order of the judge certifying that he has perused the record and is satisfied that the appeal has been lodged without any sufficient ground of complaint.
- (3) Whenever upon perusal of the grounds of appeal and record it appears to the judge that the appeal ought to be allowed, the appeal may, without being set down for hearing, be summarily allowed if the respondent gives notice in writing to the judge to the effect that he does not intend to oppose the appeal.



- (4) Whenever an appeal is summarily dismissed or allowed, notice of such dismissal or allowance shall forthwith be given by the Registrar of the High Court to the appellant or his advocate.

## **276 Notice of hearing**

If the High Court does not dismiss the appeal summarily the Registrar shall —

- (a) enter the appeal for hearing;
- (b) serve a notice of hearing on the parties;
- (c) supply the respondent with a copy of the petition and a copy of the judgment or order appealed against;
- (d) except when the appeal is against sentence only, supply the respondent with a copy of the proceedings;
- (e) where additional grounds of appeal are filed by the appellant under the provisions of section 273(4), serve notice on the respondent of such filing and supply the respondent with a copy of the document containing such additional grounds of appeal.

## **277 Admission to bail or suspension of sentence pending appeal**

- (1) Where a convicted person presents or declares his intention of presenting a petition of appeal, the High Court or the court which convicted such person may, if in the circumstances of the appeal case it thinks fit, order that he be released on bail, with or without sureties, or if such person is not released on bail shall, at the request of such person, order that the execution of the sentence or order against which the appeal is pending be suspended pending the determination of the appeal:

Provided that if such order be made before the petition of appeal is presented and no petition is presented within the time allowed, the order for bail or suspension shall forthwith be cancelled.

- (2) Where the appellant is released on bail or the sentence is suspended, the time during which he is at large after being so released or during which the sentence has been suspended shall be excluded in computing the term of any sentence to which he is for the time being subject.
- (3) An appellant whose sentence is suspended but who is not admitted to bail shall during the period of such suspension be treated in like manner as a prisoner awaiting trial.

## **278 Costs**

The High Court may make such order as to the costs to be paid by either party to an appeal as may seem just.

**279 Discontinuance of appeal**

- (1) An appellant may by giving notice in writing to the Registrar of the High Court discontinue his appeal at any time before the date of hearing and, upon such discontinuance and without prejudice to the power of the High Court to make an order for costs, no further steps shall be taken in the appeal, and the magistrate's court may proceed to enforce the decision appealed from.
- (2) The Registrar of the High Court shall send to the respondent a copy of the notice of discontinuance.

**280 Powers of High Court**

- (1) At the hearing of an appeal the High Court shall hear the appellant or his advocate, if he appears, and the respondent or his advocate, if he appears, and the High Court may thereupon confirm, reverse or vary the decision of the magistrate's court, or may remit the matter with the opinion of the High Court thereon to the magistrate's court, or may make such other order in the matter as to it may seem just, and may by such order exercise any power which the magistrate's court may have exercised:

Provided that the High Court may, notwithstanding that it is of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.

- (2) At the hearing of an appeal the High Court may, if it thinks that a different sentence should have been passed, quash the sentence passed by the magistrate's court and pass such other sentence warranted in law (whether more or less severe) in substitution thereof as it thinks ought to have been passed.
- (3) The High Court may at any stage adjourn the hearing of an appeal.

**281 Further evidence**

- (1) In dealing with an appeal from a magistrate's court the High Court, if it thinks additional evidence is necessary, may either take such evidence itself or direct it to be taken by a magistrate's court.
- (2) When the additional evidence is taken by a magistrate's court, such court shall certify such evidence to the High Court, which shall thereupon proceed to dispose of the appeal.
- (3) Evidence taken in pursuance of this section shall be taken as if it were evidence taken at a trial before a magistrate's court.

**282 Order of the High Court to be certified to lower court**

- (1) When a case is decided on appeal by the High Court, it shall certify its judgment or order to the court by which the judgment, sentence or order appealed against was recorded or passed.
- (2) The court to which the High Court certifies its judgment or order shall thereupon make such orders as are conformable to the judgment or order of the High Court, and shall take such steps as may be necessary to enforce such judgment or order.

**283 Right of appellant to be present**

An appellant, notwithstanding that he is in custody, shall be entitled to be present, if he desires it, at the hearing of the appeal.

**284 Revision by High Court to be certified to lower court**

When a case is revised by the High Court in exercise of the revisional powers conferred by the Magistrates' Courts Act, it shall certify its decision or order to the court by which the sentence or order so revised was recorded or passed, and the court to which the decision or order is so certified shall thereupon make such orders as are conformable to the decision so certified, and shall take such steps as may be necessary to enforce such decision or order.

**285 Case stated by magistrate's court**

- (1) After the hearing and determination by any magistrate's court of any summons, charge or complaint, either party to the proceedings before the said magistrate's court may, if dissatisfied with the said determination as being erroneous in point of law, or as being in excess of jurisdiction, apply in writing within 1 month from the date of the said determination, including the day of such date, to the said magistrate's court to state and sign a special case setting forth the facts and the grounds of such determination for the opinion thereon of the Senior Magistrate; and the Senior Magistrate may in like manner seek the opinion of the High Court.
- (2) Upon receiving any such application the magistrate shall forthwith draw up the special case and transmit the same to the Registrar of the High Court together with a certified copy of the conviction, order or judgment appealed from and all documents alluded to in the special case and the provisions of section 276 shall thereupon apply.

**286 Appellant entitled to copy of stated case**

The appellant shall be entitled upon payment of a fee of 5 cents for every folio of 72 words to obtain from the Registrar of the High Court a copy of the stated case:

Provided that no charge shall be made for a copy of the stated case supplied to the Attorney-General under this section

**287 Notice of time and place of hearing**

Upon receipt of the stated case the Registrar of the High Court shall set down the case for hearing and shall cause notice to be given to the appellant or his advocate, and to the respondent or his advocate, of the time and place at which such appeal will be heard, and shall furnish the respondent or his advocate with a copy of the stated case.

**288 Magistrate may refuse case when he thinks application frivolous**

If the magistrate be of opinion that the application is merely frivolous, but not otherwise, he may refuse to state a case, and shall, on the request of the appellant, sign and deliver to him a certificate of such refusal:

Provided that the magistrate shall not refuse to state a case when the application for that purpose is made to him by or under the direction of the Attorney-General, who may require a case to be stated with reference to proceedings to which he was not a party.

**289 Procedure on refusal of magistrate to state case**

When a magistrate has refused to state a case as aforesaid it shall be lawful for the appellant to apply to the High Court within 1 month of such refusal, upon an affidavit of the facts, for a rule calling upon such magistrate and also upon the respondent to show cause why such case should not be stated, and the High Court may make the same absolute or discharge it, with or without payment of costs, as to the court shall seem fit, and the magistrate, upon being served with such rule absolute, shall state a case accordingly.

**290 High Court to determine the questions on the case; its decision to be final**

- (1) The High Court shall (subject to the provisions of the next succeeding section) hear and determine the question or questions of law arising on the case stated, and shall thereupon reverse, affirm or amend the determination in respect of which the case has been stated, or remit the matter to the magistrate's court with the opinion of the High Court thereon, or may make such other order in relation to the matter, and may make such order as to

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

Provided always that no magistrate who shall state and deliver a case in pursuance of this Part or bona fide refuse to state one shall be liable to any cost in respect or by reason of such appeal against his determination or refusal.

- (2) Any costs awarded under this section shall be recoverable in the manner provided by section 31 of the Penal Code.

### **291 Case may be sent back for amendment or rehearing**

The High Court shall have power, if it thinks fit —

- (a) to cause the case to be sent back for amendment or restatement, and thereupon the same shall be amended or restated accordingly, and judgment shall be delivered after it has been so amended or restated;
- (b) to remit the case to the magistrate's court for rehearing and determination with such directions as it may deem necessary.

### **292 Orders of the High Court to be certified to lower court**

- (1) When a stated case is decided by the High Court it shall certify its judgment or order to the court in relation to whose determination the case has been stated.
- (2) The court to which the High Court certifies its judgment or order shall thereupon make such orders as are conformable to the judgment or order of the High Court, and shall take such steps as may be necessary to comply with or enforce such judgment or order.

### **293 Appellant may not proceed both by case stated and by appeal**

No person who has appealed under section 270 shall be entitled to have a case stated, and no person who has applied to have a case stated shall be entitled to appeal under section 270.

### **294 Contents of case stated**

A case stated by a magistrate shall set out —

- (a) the charge, summons, information or complaint;
- (b) the facts found by the magistrate's court to be admitted or proved;
- (c) any submission of law made by or on behalf of the complainant during the trial or inquiry;

- (d) any submission of law made by or on behalf of the accused during the trial or inquiry;
- (e) the finding and, in the case of conviction, the sentence of the magistrate's court;
- (f) any question or questions of law which the magistrate or any of the parties may desire to be submitted for the opinion of the High Court;
- (g) any question of law which the Attorney-General may require to be submitted for the opinion of the High Court.

### **295 Constitution of court hearing case stated**

A case stated for the opinion of the High Court shall be heard by one judge unless the Chief Justice shall otherwise direct.

### **296 High Court may enlarge time**

The High Court may, if it deems fit, enlarge any period of time prescribed by sections 285 or 289.

### **297 Appeals from magistrate's court to the Senior Magistrate's Court**

The provisions of sections 271 to 282 inclusive, 284, 289 to 292 inclusive, 294 and 296 shall apply in the case of appeals from a magistrate's court to the Senior Magistrate's Court in like manner as if the Senior Magistrate's Court were the High Court, and as if the Clerk of the Senior Magistrate's Court were the Registrar of the High Court.

## **PART X - SUPPLEMENTARY PROVISIONS**

### **298 Proceedings in wrong place**

No finding, sentence or order of any criminal court shall be set aside merely on the ground that the inquiry, trial or other proceedings, in the course of which it was arrived at or passed, took place in a wrong district or other local area, unless it appears that such error has in fact occasioned a failure of justice.

### **299 No appeal on point of form or matter of variance**

No finding, sentence or order passed by a magistrate's court of competent jurisdiction shall be reversed or altered on appeal or revision on account of any objection to any information, complaint, summons or warrant for any alleged defect therein in matter of substance or form or for any variance between such information,

complaint, summons or warrant and the evidence adduced in support thereof, unless it be found that such objection was raised before the magistrate's court whose decision is appealed from, nor unless it be found that, notwithstanding it was shown to the magistrate's court that by such variance the appellant had been deceived or misled, such magistrate's court refused to adjourn the hearing of the case to a future day:

Provided that if the appellant was not at the hearing before the magistrate's court represented by an advocate, the Senior Magistrate's Court or the High Court, as the case may be, may allow any such objection to be raised.

### **300 Power to issue directions of the nature of habeas corpus**

- (1) The Senior Magistrate's Court or the High Court whenever it thinks fit may direct —
  - (a) that any person within the limits of Tuvalu be brought up before the court to be dealt with according to law;
  - (b) that any person illegally or improperly detained in public or private custody within such limits be set at liberty;
  - (c) that any prisoner detained in any prison situate within such limits be brought before the court to be there examined as a witness in any matter pending or to be inquired into in such court;
  - (d) that any prisoner detained as aforesaid be brought before a court-martial or any commissioners acting under the authority of any commission from the Minister for trial or to be examined touching any matter pending before such court-martial or commissioners respectively;
  - (e) that any prisoner within such limits be removed from one custody to another for the purpose of trial; and
  - (f) that the body of a defendant within such limits be brought in on a return of *cepi corpus* to a writ of attachment.
- (2) The Chief Justice may from time to time issue directions to regulate the procedure in cases under this section.

### **301 [Repealed by 9 of 1987]**

### **302 Persons before whom affidavits may be sworn**

Affidavits and affirmations to be used before the High Court may be sworn and affirmed before a judge of the High Court or any magistrate or any Registrar or Deputy Registrar of the High Court or any person appointed to be a commissioner for oaths or who is otherwise permitted to administer oaths under the provisions of any other law for the time being in force.

**303 Shorthand note of proceedings**

Shorthand notes may be taken of the proceedings at the trial of any person before the Senior Magistrate's Court, or the High Court, and a transcript of such notes shall be made if the court so directs, and such transcript shall for all purposes be deemed to be the official record of the proceedings at such trial.

**304 Copies of proceedings**

If any person affected by any judgment or order passed in any proceedings under this Code desires to have a copy of the judgment or order or any deposition or other part of the record, he shall, on applying for such copy, be furnished therewith provided he pays for the same, unless the court for some special reason thinks fit to furnish it free of cost.

**305 Forms**

- (1) For the purposes of any criminal proceedings to which the provisions of this Code apply such forms may be used, for the respective purposes therein mentioned, as may be prescribed by any rules of court and if used shall be sufficient.
- (2) In the absence of such rules of court the forms in use for like purposes on 13th October 1963 may continue to be used, until other provision is made by rules of court, with such variation as the circumstances may require or the Chief Justice may direct.

**306 Expenses of assessors, witnesses, etc.**

Subject to any rules of court or to any directions which may be given from time to time by the Chief Justice, any court may order payment of the reasonable expenses of any assessor, complainant, or witness attending before such court for the purposes of any inquiry, trial or other proceeding under this Code from such funds as may be made available for that purpose.

**307 Saving**

Nothing contained in this Code shall affect the jurisdiction, practice or procedure of any court established under the Island Courts Act<sup>14</sup> or any law replacing that Act.



**ENDNOTES**

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<sup>1</sup> 1990 Revised Edition, Cap. 7 - Acts 6 of 1963, 7 of 1965, 10 of 1967, 3 of 1968, 8 of 1968, 4 of 1969, 2 of 1972, 3 of 1972, 24 of 1974, 9 of 1987; LN 16/1972

<sup>2</sup> Cap. 7.36

<sup>3</sup> Cap. 28.16

<sup>4</sup> Cap. 20.24

<sup>5</sup> Cap. 7.68

<sup>6</sup> Cap. 7.36

<sup>7</sup> Cap. 10.20

<sup>8</sup> Cap. 7.68

<sup>9</sup> Cap. 50.10

<sup>10</sup> Cap. 44.15

<sup>11</sup> Cap. 44.20

<sup>12</sup> Cap. 10.20

<sup>13</sup> Cap. 10.20

<sup>14</sup> Cap. 7.32