CHAPTER 7

CRIMINAL PROCEDURE CODE

ARRANGEMENT OF SECTIONS

SECTION

Part IV

Provisions Relating to all Criminal Investigations and Proceedings

Part V

Mode of Taking and Recording Evidence in Inquiries and Trials

Part VI

Procedure in Trials before Magistrates' Courts

PART VII

PROVISIONS RELATING TO THE COMMITTAL OF ACCUSED PERSONS FOR TRIAL BEFORE THE HIGH COURT

PART VIII

PROCEDURE IN TRIALS BEFORE THE HIGH COURT

Part IX

Appeals from Magistrates' Courts and Cases Stated

Part X

Supplementary Provisions

CHAPTER 7

CRIMINAL PROCEDURE CODE

AN ACT TO MAKE PROVISION FOR THE PROCEDURE TO BE FOLLOWED IN CRIMINAL CASES

10 of 1961
12 of 1963
5 of 1967
19 of 1967
4 of 1968
11 of 1970
LN 46 of 1974
17 of 1976
LN 46A of 1978
LN 88 of 1978
12 of 1980
4 of 1981

[*1st June 1962*]

PART I

PRELIMINARY

Short title

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

Interpretation
19 of 1967, s. 2
17 of 1976, s. 2
LN 46A of 1978
4 of 1981, s. 2

2. 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" and "offence against the customs laws" bear the meanings ascribed to those terms by the Customs and Excise Act; Cap. 121

"district" means a district constituted under the provisions of the Magistrates' Courts Act; Cap. 20

"English" includes Solomon Islands pidgin;

"medical practitioner" means any person registered as a medical or dental practitioner under the Medical and Dental Practitioners Act; Cap. 102

"mental hospital" means a place appointed as such for the care and treatment and detention of patients under the provisions of the Mental Treatment Act; Cap. 103

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

"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;

"Principal Magistrate's Court" means a Principal Magistrate's Court constituted by section 3(1) of the Magistrates' Courts Act;

Cap. 20

"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 Director of Public Prosecutions, and any other legal officer, police officer or other person acting under the direction of the Director of Public Prosecutions;

"Registrar of the High Court" means a person appointed as such under the provisions of the Constitution;

"Rules of Court" means Rules of Court made under the provisions of section 90 of the Constitution;

"surveyor" means the Surveyor-General or a Land Surveyor registered under the Land Surveys Act.

Cap. 134

Inquiry into and trial of offences

3. 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

Power to try offences
12 of 1963, Sched
17 of 1976, s. 3

4. 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 a Principal Magistrate's Court where the maximum punishment prescribed by law for such offence does not exceed—

(i) imprisonment for a term of fourteen years; or

(ii) a fine; or

(iii) all or any of the punishments referred to in the preceding two sub-paragraphs together; 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 one year; or

(ii) a fine of two hundred dollars; or

(iii) all or any of the punishments referred to in the preceding two sub-paragraphs together.

Offences under certain laws
LN 46A of 1978

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

For the purposes of this a provision in any law for an 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.

Sentences which High Court may pass

6. The High Court may pass any sentence authorised by law.

Sentences which a Magistrate's Court may pass
17 of 1976, s. 4

7.—(1) A Principal 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 five years;

(*b*) a fine not exceeding one thousand dollars.

(2) A Magistrate's Court of the First Class or of the Second Class may, in cases in which such sentences are authorised by law, pass the following sentences:—

(*a*) imprisonment for a term not exceeding one year;

(*b*) a fine not exceeding two hundred dollars.

Combination of sentences

8.—(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.

Sentences in cases of conviction of several offences at one trial

9.—(1) When a person is convicted at one trial of two or more distinct offences the court may sentence him, for such offences, to the several punishments prescribed therefor which such court is competent to impose; such punishments when consisting of imprisonment to commence the one after the expiration of the

other in such order as the court may direct, unless the court directs that such punishments shall run concurrently.

(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

Arrest

10.—(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.

Search of place entered by person sought to be arrested

11.—(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.

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

12. 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.

No unnecessary restraint

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

Search of arrested persons

14.—(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.

Power of police officers to detain and search persons, vehicles and vessels in certain circumstances

15.—(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.

Mode of searching women

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

Power to seize offensive weapons

17. 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.

Arrest by police officer without warrant
12 of 1963, Sched
LN 46A of 1978

18. 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 Solomon Islands which, if committed in Solomon Islands, would have been punishable as an offence, and for which he is, under the Extradition Act, or otherwise, liable to be apprehended and detained in Solomon Islands; Cap. 59

(*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 any rule made thereunder. Cap. 26

Refusal to give name and residence
LN 46A of 1978

19.—(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 Solomon Islands the bond shall be secured by a surety or sureties resident in Solomon Islands.

(3) Should the true name and residence of such person not be ascertained within twenty-four 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.

Disposal of persons arrested by police officer

20. 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.

Arrest by private person

21.—(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 persons authorised by him.

Disposal of person arrested by private person

22.—(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.

Detention of persons arrested without warrant
11 of 1970, Sched

23. When any person has been taken into custody without a warrant for an offence other than murder or treason, the officer in charge of a 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 twenty-four 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 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.

Police to report apprehensions

24. 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.

Offence committed in Magistrate's presence

25. 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.

Arrest by Magistrate

26. 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.

Recapture of person escaping
LN 46A of 1978

27. 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 Solomon Islands.

Provisions of sections 11 and 12 to apply to arrests under section 27

28. 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.

Assistance to a Magistrate or police officer

29. 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.

Security for keeping the peace

30.—(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 one 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.

Security for good behaviour from persons disseminating seditious matters

31. 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 wise 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 one year, as the Magistrate thinks fit.

Security for good behaviour from vagrants and suspected persons

32. 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 one year, as the Magistrate thinks fit.

Security for good behaviour from habitual offenders
12 of 1963, Sched

33. 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 352 to 366 inclusive of Part XXXVI of the Penal Code; or Cap. 26

(*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 two years, as the Magistrate thinks fit.

Order to be made

34. When a Magistrate acting under sections 30, 31, 32 or 33 deems it necessary to require any person to show cause under any 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.

Procedure in respect of person present in court

35. 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.

Summons or warrant in case of person not so present

36. 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.

Copy of order under section 34 to accompany summons or warrant

37. 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.

Power to dispense with personal attendance

38. 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.

Inquiry as to truth of information

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

Order to give security

40.—(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 High Court, and the provisions of Part IX (relating to appeals) shall apply to every such appeal.

Discharge of person informed against

41. 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.

Commencement of period for which security is required

42.—(1) If any person in respect of whom an order requiring security is made under sections 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.

Contents of recognisance

43. 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.

Power to reject sureties

44. 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.

Procedure on failure of person to give security

45.—(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) 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 one 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 High Court, and the proceedings shall be laid as soon as conveniently may be before such court.

(3) The High Court, 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 it thinks fit.

(4) The period, if any, for which any person is imprisoned for failure to give security shall not exceed two years.

(5) If the security is tendered to the officer in charge 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.

Power to release persons imprisoned for failure to give security

46. 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 High Court, and such court may, if it thinks fit, order such person to be discharged.

Power of High Court to cancel recognisance

47. The 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.

Discharge of sureties

48.—(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, such 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.

Police to prevent offences

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

Information of design to commit such offences

50. 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.

Arrest to prevent such offences

51. 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.

Prevention of injury to public property

52. 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

General authority of High Court and Magistrates' Courts
LN 46A of 1978

53. The High Court and every Magistrate's Court has authority to cause to be brought before it any person who—

(*a*) is within Solomon Islands 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 Solomon Islands, or which according to law may be dealt with as if it had been committed within Solomon Islands,

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

Accused person to be sent to district where offence committed
LN 46A of 1978

54. Where a person accused of having committed an offence within Solomon Islands has removed from the district within which the offence was committed and 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.

Removal of accused person under warrant

55. 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 district 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.

Powers of High Court

56. 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 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.

Place and date of sessions of the High Court

57.—(1) For the exercise of its original jurisdiction the High Court shall hold sittings at such places and on such days as the Chief Justice may direct.

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

Ordinary place of inquiry or trial

58. 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.

Trial at place where act done or where consequence of offence ensues

59. 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.

Trial where offence is connected with another offence

60. 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.

Trial where place of offence is uncertain

61. 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.

Offence committed on a journey

62. 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.

High Court to decide in cases of doubt
LN 46A of 1978

63. 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 High Court, and the High Court shall decide by which court the offence shall be inquired into or tried. Any such decision of the High court shall be final and conclusive, except that it shall be open to an accused person to show that no court in Solomon Islands has jurisdiction in the case.

Court to be open

64. 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:

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

Transfer of case where offence committed outside jurisdiction

65.—(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.

Procedure when, after commencement of inquiry or trial, the Magistrate finds case should be transferred to another Magistrate

66. 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 Chief Justice.

Power of High Court to change venue
LN 46A of 1978

67.—(1) Whenever it is made to appear to 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 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 High Court may act on the report of the lower court or on 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 Director of Public Prosecutions 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 appli-

cation unless at least twenty-four 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 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.

Power of Director of Public Prosecutions to enter *nolle prosequi* *LN 46A of 1978*

68.—(1) In any criminal case and at any stage thereof before verdict or judgment, as the case may be, the Director of Public Prosecutions 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 witness 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.

Delegation of powers by Director of Public Prosecutions *LN 46A of 1978*

69. The Director of Public Prosecutions may order in writing that all or any of the powers vested in him by section 68 and Part VII be vested for the time being in any other legal officer in the public service, and the exercise of these powers by such legal officer shall then operate as if they had been exercised by the Director of Public Prosecutions.

Power to revoke order made under section 69 *LN 46A of 1978*

70. The Director of Public Prosecutions may in writing revoke any order made by him under the preceding section.

Power to appoint public prosecutors *LN 46A of 1978*

71. The Director of Public Prosecutions may appoint any advocate or police officer to be a public prosecutor either generally or for the purposes of a particular case.

Powers of public prosecutors

72. 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.

Police may conduct prosecutions before Magistrates' Courts

73. 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.

Public prosecutors and police officers to be subject to directions of Director of Public Prosecutions *LN 46A of 1978*

74. 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 Director of Public Prosecutions.

Conduct of prosecution

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

Complaint and charge

76.—(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.

Issue of summons or warrant

77.—(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.

Notice to attend court
LN 46 of 1974

78.—(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 ten 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, and, if he does not intend to appear in person, to enter his written consent to the trial taking place in his absence:

Provided that such notice shall be served not later than fourteen 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 which is punishable only by a fine or by imprisonment (with or without a fine) for a period not exceeding four months; Cap. 131 *5 of 1967, s. 86*

(*b*) any offence under the provisions of the Bicycles Act*; and

(*c*) any offence under the Trespass and Branding Act.*

(5) Nothing in this section shall be deemed to prevent the institution of proceedings under the other provisions of this Code.

Form and contents of summons

79.—(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 Chief Justice 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.

Service of summons

80. 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.

Service when person summoned cannot be found

81. 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.

Procedure when service cannot be effected as before provided

82. If service in the manner provided by either of the two 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.

Service on company
LN 46A of 1978

83. 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

*Omitted from the Revised Edition under Act 5 of 1995

corporation in Solomon Islands at the registered office of such company or body corporate. In the latter case service shall be deemed to have been effected when the letter would arrive in ordinary course of post.

Where summons may be served
LN 46A of 1978

84. A summons may be served at any place within Solomon Islands

Proof of service when serving officer not present

85.—(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.

Power to dispense with personal attendance of accused
19 of 1967, s. 4
LN 46 of 1974

86.—(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 or when the offence with which the accused is charged is punishable only by fine or by imprisonment not exceeding three months or by both such fine and imprisonment, dispense with the personal attendance of the accused, provided that the accused consents to the trial taking place in his absence and 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. 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.

Warrant after issue of summons

87. 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.

Summons disobeyed

88. 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.

Form, contents and duration of warrant of arrest

89.—(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.

Court may direct security to be taken

90.—(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.

Warrants to whom directed

91.—(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.

Notification of substance of warrant

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

Person arrested to be brought before the court without delay

93. 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.

Where warrant of arrest may be executed
LN 46A of 1978

94. A warrant of arrest may be executed at any place in Solomon Islands.

Procedure on arrest of person outside jurisdiction

95.—(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.

Irregularities in warrant

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

Power to take bond for appearance

97. 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.

Arrest for breach of bond for appearance

98. 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 him.

Power of court to order prisoner to be brought before it

99.—(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.

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

100. 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.

Power to issue search warrant

101. 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.

Execution of search warrants

102. 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.

Persons in charge of closed place to allow ingress thereto and egress therefrom

103.—(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 sections 11 or 12.

(3) Where any person in or about such building 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.

Detention of property seized

104.—(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.

Provisions applicable to search warrants

105. 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.

Bail in certain cases

106.—(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 High Court 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.

Recognisance of bail

107. 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 continue so to attend until otherwise directed by the court or police officer as the case may be.

Discharge from custody

108.—(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.

Deposit instead of recognisance

109. 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.

Power to order sufficient bail when that first taken is insufficient

110. 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.

Discharge of sureties

111.—(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.

Death of surety

112. 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.

Persons bound by recognisance absconding may be committed *LN 46A of 1978*

113. If it is made to appear to any court, by information on oath, that any person bound by recognisance is about to leave Solomon Islands, 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.

Forfeiture of recognisance

114.—(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 six 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 fourteen 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.

Appeal from and revision of orders

115. All orders passed under section 114 by any Magistrate shall be appealable to and may be revised by the High Court.

Power to direct levy of amount due on certain recognisances

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

Offences to be specified in charge or information with necessary particulars

117. 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.

Joinder of counts in a charge or information

118.—(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.

Joinder of two or more accused in one charge or information

119. 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.

Rules for the framing of charges and informations

120. The following provisions shall apply to all charges and information 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 Code—

(*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 any 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;

Cap. 26
12 of 1963, Sched
19 of 1967, s. 5

(*j*) when a person is charged with any offence under sections 259, 273 or 278 of the Penal Code 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.

Persons convicted or acquitted not to be tried again for same offence

121. 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.

Person may be tried again for separate offence

122. 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 subsection (1) of section 118.

Consequences supervening or not known at time of former trial

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

Where original court was not competent to try subsequent charge

124. 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.

Previous conviction, how proved
19 of 1967, s. 6
LN 46A of 1978
LN 88 of 1978

125.—(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; or

(*c*) by production by the officer having the custody thereof of the appropriate court register recording such conviction or an extract from such register certified under the hand of such officer to be a copy thereof,

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 Director of Public Prosecutions given under the hand of an officer appointed by the Commissioner of Police 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 Solomon Islands 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 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.

Leave of Director of Public Prosecutions necessary for institution of proceeding against foreigners
LN 46A of 1978
LN 88 of 1978
Cap. 60

126. (1) Proceedings for the trial of any person, who is not a citizen or person entitled under the provisions of sections 7 or 8 of the Immigration Act to enter and reside in Solomon Islands, for an offence committed within Solomon Islands waters, shall not be instituted in any court except with the leave of the Director of Public Prosecutions 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 Director of Public Prosecutions 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. The production of a document purporting to be signed by the Director of Public Prosecutions and containing such leave and certificate shall be sufficient evidence for all 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.

Summons for witness

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

Warrant for witness who disobeys summons

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

Warrant for witness in first instance

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

Mode of dealing with witness arrested under warrant

130. 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.

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

131.—(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.

Penalty for non-attendance of witness

132.—(1) Any person summoned to attend as a witness who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the court, or fails to attend after adjournment of the court after being ordered to attend, shall be liable by order of the court to a fine of forty dollars.

(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 fifteen days unless such fine is paid before the end of the said term.

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

Power to summon material witness, or examine person present

133. 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 for 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.

Evidence to be given on oath

134. Every witness in any criminal cause or 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 the evidence having been so taken being also recorded in the proceedings.

Refractory witness

135.—(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 eight days, and may in the meantime commit such person to prison, unless he sooner consents to do what is required of him.

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

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

Cases when wife or husband may be called without the consent of the accused
12 of 1963, Sched

136. 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 such person is charged with an offence under Part XVI or section 170 of the Penal Code; Cap. 26

(*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.

Issue of commission for examination of witness

137.—(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 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.

Parties may examine witnesses

138.—(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.

Return of commission

139.—(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.

Adjournment of inquiry or trial

140. 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.

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

141. 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 215 or any right of the person charged to make a statement without being sworn.

Procedure where person charged is the only witness called

142. 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.

Right of reply
19 of 1967, s. 7

143. 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.

Inquiry by court as to unsoundness of mind of accused
19 of 1967, s. 8
LN 46A of 1978

144.—(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 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 order that the accused be detained in safe custody in such place and manner as it may think fit, and shall transmit the court record or a certified

copy thereof to the Director of Public Prosecutions for consideration by the Governor-General.

(5) Upon consideration of the record, the Governor-General in his discretion may by order under his hand addressed to the court direct that the accused be detained in a mental hospital or other suitable place of custody, and the court shall issue a warrant in accordance with such order; and such warrant shall be sufficient authority for the detention of the accused until the Governor-General in his discretion makes a further order in the matter or until the court which found him incapable of making his defence orders him to be brought before it again in manner provided by sections 147 and 148.

Defence of unsoundness of mind at preliminary investigation

145. 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.

Defence of unsoundness of mind on trial
19 of 1967, s. 9
LN 46A of 1978

146.—(1) (*a*) 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 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 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.

(*b*) When such special finding is made the court shall report the case for the order of the Governor-General and shall meanwhile order the accused to be kept in custody in such place and in such manner as the court shall direct.

(*c*) The Governor-General, in his discretion, may order such person to be confined in a mental hospital, prison or other suitable place of safe custody.

(2) The officer in charge of a mental hospital, prison or other place in which any person is detained by an order of the Governor-General under subsection (1) shall make a report in writing to the Director of Public Prosecutions for the consideration of the Governor-General in respect of the condition, history and circumstances of the person so detained, at the expiration of a period of three years from the date of the Governor-General's order and thereafter at the expiration of each period of two years from the date of the last report.

(3) On the consideration of any such report, the Governor-General in his discretion may order that the person so detained be discharged or otherwise dealt with, subject to such conditions as to his remaining under supervision in any place or by any person, and to such other conditions for ensuring the safety and welfare of the person in respect of whom the order is made and of the public, as the Governor-General thinks fit.

(4) Notwithstanding the provisions of subsections (2) and (3), any person or persons thereunto empowered by the Governor-General may, at any time after a person has been detained by order of the Governor-General under subsection (1), make a special report to the Director of Public Prosecutions, for transmission to the Governor-General, on the condition, history and circumstances of the person so detained, and the Governor-General, on consideration of any such report, in his discretion, may order that the person be discharged or otherwise dealt with, subject to such conditions as to his remaining under supervision in any place or by any person, and to such other conditions for ensuring the safety and welfare of the person in respect of whom the order is made and of the public, as the Governor-General thinks fit.

(5) The Governor-General, in his discretion, may at any time order that a person detained by order of the Governor-General under subsection (1) be transferred from a mental hospital to a prison or from a prison to a mental hospital, or from any place in which he is detained or remains under supervision to either a prison or a mental hospital.

Procedure where person of unsound mind subsequently found capable of making defence
19 of 1967, s. 10
LN 46A of 1978

147.—(1) If any person detained in a mental hospital or other place of custody under section 144 or section 256 is found by the medical officer in charge of such mental hospital or place to be capable of making his defence, such medical officer shall forthwith forward a certificate to that effect to the Director of Public Prosecutions.

(2) The Director of Public Prosecutions shall thereupon inform the court which recorded the finding concerning such person under section 144 or section 256 whether it is the intention of the Crown that proceedings against such person shall continue or otherwise.

(3) In the former case, such court shall thereupon order the removal of such person from the place where he is detained and shall cause him to be brought in custody before it, and shall deal with him in manner provided by section 148; otherwise the court shall forthwith issue an order that such person be discharged in respect of the proceedings brought against him and released from custody and thereupon he shall be released, but such discharge and release shall not operate as a bar to any subsequent proceedings against him on account of the same facts.

Resumption of preliminary investigation or trial
19 of 1967, s. 10
LN 46A of 1978

148.—(1) Whenever any preliminary investigation or trial is postponed under section 144 or section 256, the court may at any time, subject to the provisions of section 147, 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, or begin again, as to the court may appear expedient.

(2) Any certificate forwarded to the Director of Public Prosecutions under section 147 may be given in evidence in any proceedings under this section, without further proof, unless it is proved that the medical officer by whom it purports to be signed did not in fact sign it, 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.

Procedure when accused does not understand proceedings
19 of 1967, s. 11
LN 46A of 1978

149.—(1) If the accused, though not insane, cannot be made to understand the proceedings—

(*a*) in cases tried by a Magistrate's Court, the court shall proceed to hear the evidence, and, if at the close of the evidence for the prosecution, and, if the defence has been called upon, of any evidence for the defence, the court is of the opinion that the evidence which it has heard would not justify a conviction, it shall acquit and discharge the accused, but if the court is of the opinion that the evidence which it has heard would justify a conviction it shall order the accused to be detained during the Governor-General's pleasure; but every such order shall be subject to confirmation by the High Court;

(*b*) in cases which are the subject of a preliminary investigation by a Magistrate's Court and of trial by the High Court—

(i) the Magistrate's Court shall hear the evidence for the prosecution, and if satisfied that a prima facie case has been proved shall commit the accused for trial by the High Court, and either admit him to bail or commit him to prison for safe keeping; and

(ii) if the Director of Public Prosecutions has filed an information, the High Court shall proceed to hear the evidence, and, if at the close of the evidence for the prosecution and, if the defence has been called upon, of any evidence for the defence, the court is of the opinion that the evidence which it has heard would not justify a conviction, it shall acquit and discharge the accused, but if the court is of the opinion that the evidence which it has heard would justify a conviction, it shall order the accused to be detained during the Governor-General's pleasure;

(iii) if the Director of Public Prosecutions states that he does not intend to file an information, the accused shall be at once discharged in respect of the charge made against him, and if he has been committed to prison shall be released, or if on bail his recognisances shall be discharged, but such a discharge shall not operate as a bar to any subsequent proceedings against him on account of the same facts.

(2) A person ordered to be detained during the Governor-General's pleasure shall be liable to be detained in such place and under such conditions as the Governor-General may in his discretion from time to time by order direct, and whilst so detained shall be deemed to be in lawful custody.

(3) The Governor-General in his discretion may at any time of his own motion, or after receiving a report from any person or persons thereunto empowered by him, order that a person detained as provided in subsection (2) be discharged or otherwise dealt with, subject to such conditions as to the person remaining under supervision in any place or by any person, and such other conditions for ensuring the welfare of the said person and the public, as the Governor-General thinks fit.

(4) When a person has been ordered to be detained during the Governor-General's pleasure under paragraph (a) or paragraph (*b*) of subsection (1), the confirming or presiding Judge shall forward to the Director of Public Prosecutions a copy of the notes of evidence taken at the trial, with a report in writing signed by him containing any recommendation or observations on the case he may think fit to make.

Mode of delivering judgment

150.—(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, to hear judgment delivered; except where the court has proceeded to the determination of the case in the absence of the accused under section 188 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.

Contents of judgment

151.—(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 reasons 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.

Copy of judgment to be given to accused on application

152. 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. Such a copy shall be given free of cost.

Costs against accused or against a private prosecutor
19 of 1967, s. 12

153.—(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 public or private prosecutor, as the case may be, 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 one hundred dollars in the case of the High Court or fifty dollars in the case of a Magistrate's Court.

(2) It shall be lawful for a Judge or a 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 one hundred dollars in the case of an acquittal or discharge by the High Court or fifty dollars 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.

Order to pay costs appealable

154. An appeal shall lie to the High Court from any order awarding costs made by a Magistrate. The appellate court shall have power to give such costs of the appeal as it shall deem reasonable.

Compensation in case of frivolous or vexatious charge

155. 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.

Power of courts to award expenses or compensation out of fine
19 of 1967, s. 13

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

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

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

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

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

Property found on accused person

157. 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.

Property stolen
12 of 1963, Sched
Cap. 26

158.—(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 directs 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.

The Chief Justice or a Judge 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 High 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.

When offence proved is included in offence charged

159.—(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.

Persons charged with any offence may be convicted of attempt

160. 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.

Woman charged with murder of child may be convicted of infanticide
12 of 1963, Sched

Cap. 26

161. When a woman is charged with the murder of her child, being a child under the age of twelve months, and the court is of opinion that she by any wilful act or omission caused its death but at the time of the act or omission she had not fully recovered from the effect of giving birth to such child and that by reason thereof or by reason of the effect of lactation consequent upon the birth of the child, the balance of her mind was then disturbed, she may, notwithstanding that the circumstances were such that but for the provisions of section 206 of the Penal Code she might be convicted of murder, be convicted of the offence of infanticide although she was not charged with it.

Person charged with murder or manslaughter of any child or with infanticide or with an offence under sections 157 or 158 of the Penal Code may be convicted of killing unborn child
12 of 1963, Sched

162. When a person is charged with murder or manslaughter of any child or with infanticide, or with an offence under sections 157 or 158 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 sections 157 or 158 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.

Person charged with killing an unborn child may be convicted for an offence under sections 157 or 158 of the Penal Code
12 of 1963, Sched

163. 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 157 or 158 of the Penal Code, he may be convicted of that offence although he was not charged with it.

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

164. 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.

Person charged with manslaughter in connection with the driving of a motor vehicle may be convicted of offences under the Traffic Act
5 of 1967, s. 86
Cap. 131

165. 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 39 or section 40 of the Traffic Act he may be convicted of that offence although he was not charged with it.

Person charged with rape may be convicted of an offence under sections 141(1), 142, 143, 145 and 163 of the Penal Code
12 of 1963, Sched
Cap. 26

166. 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 141(1), 142, 143, 145 and 163 of the Penal Code, he may be convicted of that offence although he was not charged with it.

Person charged with incest may be convicted of unlawful carnal knowledge
12 of 1963, Sched

167. When a person is charged with an offence under section 164 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 an offence under one of the sections 142 and 143 of the Penal Code, he may be convicted of that offence although he was not charged with it.

Person charged with defilement of a girl under fifteen years of age may be convicted of an offence under sections 141(1), 142 and 145 of the Penal Code
12 of 1963, Sched

168. When a person is charged with the defilement of a girl under the age of fifteen years 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 141(1), 142 and 145 of the Penal Code, he may be convicted of that offence although he was not charged with it.

Person charged with defilement of a girl under thirteen years of age may be convicted of an offence under sections 141(1), 143 and 145 of the Penal Code
12 of 1963, Sched
Cap. 26

169. When a person is charged with the defilement of a girl under the age of thirteen years 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 141(1), 143 and 145 of the Penal Code, he may be convicted of that offence although he was not charged with it.

Person charged with burglary, etc., may be convicted of kindred offence
12 of 1963, Sched

170. 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.

Person charged with stealing may be convicted of receiving, embezzling, obtaining by false pretences or of possessing or conveying stolen property
12 of 1963, Sched

171. 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 273 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.

Person charged with obtaining by false pretences may be convicted of stealing
12 of 1963, Sched

172. 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.

Person charged with robbery may be convicted of assault with intent to rob
12 of 1963, Sched

173. 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.

Person charged with embezzlement may be convicted of stealing
12 of 1963, Sched.
Cap. 26

174. When a person is charged with any offence against section 273 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.

Construction of sections 159 to 174, both inclusive
12 of 1963, Sched

175. The provisions of sections 159 to 174 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 160 to 174, both inclusive, shall be construed as being without prejudice to the generality of the provisions of section 159.

Persons charged with jointly receiving property may be convicted on proof that property was received separately

176. When any two or more persons are charged with jointly receiving any property knowing the same to have been stolen, and it is proved that one 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.

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

177. 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.

Accused may be defended by an advocate

178. 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.

PART V

MODE OF TAKING AND RECORDING EVIDENCE IN INQUIRIES AND TRIALS

Evidence to be taken in presence of accused

179. 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).

Plans and reports by surveyors, Government analysts and geologists, and medical practitioners
19 of 1967, s. 14
11 of 1970, Sched

180.—(1) Any document purporting to be a plan made by a surveyor or a report under the hand of any analyst or geologist in the employment of the Government or of a medical practitioner upon any matter or thing submitted to him for examination or analysis and report may be used as evidence in any inquiry, trial or other proceeding under this Code.

(2) The court may presume that the signature to any such document is genuine and that the person signing it held the qualification or office which he professed to hold at the time when he signed it.

(3) When any document is so used, the court may, if it thinks fit, summon the surveyor, analyst, geologist or medical practitioner, as the case may be, and examine him as to the subject-matter of such document.

Admissions in proceedings
12 of 1980, s. 2

181.—(1) Subject to the provisions of of this section, any fact of which oral evidence may be given in any proceedings to which this Code applies may be admitted by or on behalf of the prosecutor or accused person, and the admission by any party of any such fact under this section shall be conclusive evidence in those proceedings of the fact admitted.

(2) An admission made under this section—

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

(*b*) if made otherwise than in court shall be in writing and if made in court shall be entered in the court record;

(*c*) if made in writing by an individual shall purport to be signed by the person making it and, if so made by a body corporate, shall purport to be signed by a director or manager, or the secretary or clerk, or some other similar officer of the body corporate;

(*d*) if made on behalf of an accused person who is an individual and is represented, shall be made by his advocate;

(*e*) if made at any stage before the trial by an accused person who is represented at the trial, must be approved by his advocate (whether at the time it was made or subsequently) before or at the proceedings in question:

Provided always that where an admission is made by an accused person who is not represented—

(i) the admission shall be made in writing or reduced to writing by the court; and

(ii) shall be read in court to the accused person by the court or an officer of the court; and

(iii) the effect of making the admission shall be explained to the accused person; and

(iv) the accused person shall be asked if he wishes to make the admission; and

(v) if the accused person appears to understand the admission and the effect thereof and states that he wishes to make it he shall be asked to put his signature thereto; and

(vi) the admission so signed by the accused person shall only then be an admission for the purposes of this section.

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

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

Manner of recording evidence before Magistrate

182.—(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.

Language of the court

183. The language of the court in the case of both the High Court and Magistrates' Courts shall be English.

Interpretation of evidence to accused

184.—(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.

Conviction or commitment on evidence partly recorded by one Magistrate and partly by another

185. 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 High Court 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.

Record of evidence in High Court

186. 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 Judges shall take down the evidence or the substance thereof in accordance with such directions.

PART VI

PROCEDURE IN TRIALS BEFORE MAGISTRATES' COURTS

Non-appearance of complainant at hearing

187.—(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 189 and 191 shall in relation to a complainant include a public prosecutor.

Court may proceed with hearing in absence of accused in certain cases
LN 46 of 1974

188. Notwithstanding the provisions of section 179, if an accused person charged with any offence punishable with imprisonment for a term not exceeding six months or a fine not exceeding one hundred dollars, 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 if the accused has consented thereto or may adjourn the case and issue a warrant for the arrest of the accused in accordance with the provisions of section 89.

Appearance of both parties

189. 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.

Withdrawal of complaint

190.—(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 197 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.

Adjournment

191. 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 thirty clear days, or if the accused person has been committed to prison, for more than fifteen days, the day following that on which the adjournment is made being counted as the first day.

Non-appearance of parties after adjournment

192.—(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.

Conviction in absence of accused may be set aside

193. 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.

Commencement of sentence passed in absence of accused

194. Any sentence passed under sections 188 or 192 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.

Accused to be called upon to plead

195.—(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 so dealt with, the Magistrate's Court may proceed to try such charge summarily in accordance with the provisions of this Code. 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.

Procedure on plea of not guilty

196. 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).

The accused person or his advocate may put questions to each witness produced against him.

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

Acquittal of accused person where no case to answer

197. 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.

The defence

198.—(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.

Evidence in reply

199. 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.

Opening and close of case for prosecution and defence
19 of 1967, s. 15

200.—(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 his advocate shall be entitled to address the court at the commencement and in conclusion of his case.

(2) If the accused person, or any of one of several accused persons, adduces any evidence, the prosecutor shall, subject to the provisions of section 143, be entitled to address the court at the close of the evidence for the defence and before the closing speech (if any) by or on behalf of the accused person or any one of several accused persons.

Variance between charge and evidence and amendment of charge

201.—(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.

Negative averments

202. 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 negatived in the charge or complaint,

may be proved by the defendant, but no proof in relation thereto shall be required on the part of the complainant.

The decision
19 of 1967, s. 16

203. 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 may, pursuant to the provisions of section 35 of the Penal Code, without proceeding to conviction, if it is of opinion that it is not expedient to inflict any punishment notwithstanding that it thinks the charge against the accused is proved, make an order dismissing the charge either absolutely or conditionally.

Cap. 26

Drawing up of conviction or order

204. 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.

Order of acquittal bar to further proceedings

205. 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.

Limitation of time for summary trials in certain cases

206. Except where a longer time is specially allowed by law, no offence, the maximum punishment for which does not exceed imprisonment for six months or a fine of one hundred dollars 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 six months from the time when the matter of such change or complaint arose.

Power to stop summary trial and hold preliminary inquiry in lieu

207. 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 220 shall not apply.

Committal by Magistrate to High Court for sentence
19 of 1967, s. 17
LN 88 of 1978

208.—(1) Where any person, not being less than eighteen years of age, is tried by a Magistrate's Court for an offence which is punishable either by that court or by the High Court and such person is convicted by the Magistrate's Court of that offence, then, if on obtaining information as to the character and

antecedents of such person the Magistrate's Court is of the opinion that they are such that greater punishment should be inflicted in respect of the offence than such court has power to inflict, the Magistrate's Court may, in lieu of dealing with such person in any manner in which it has power to deal with him, commit him in custody to the High Court for sentence in accordance with the following provisions of this section.

(2) Where the offender is so committed, the High Court shall inquire into the circumstances of the case so far as may be relevant to consideration of sentence, and shall have power to deal with the offender in any manner in which he could be dealt with if he had been convicted by the High Court:

Provided that, except where the offender has been convicted by the Magistrate's Court on his own plea of guilty, the High Court shall not deal with him before the period allowed for presenting an appeal against his conviction has elapsed, or if an appeal is presented, before the determination or discontinuance of the appeal.

(3) If any offender considers himself aggrieved by any sentence passed by the High Court pursuant to the provisions of this section, he may appeal to the Court of Appeal established by section 85 of the Constitution in like manner as if he had been tried, convicted and sentenced by the High Court.

Special procedure in minor cases

209.—(1) Notwithstanding anything contained in this Code and subject to the provisions of any other Act a Magistrate may, if so requested by a public prosecutor, try any offence, of which the maximum penalty does not exceed a fine of one hundred dollars or imprisonment for six months or both such fine and imprisonment, 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 sixteen 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 182 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 195 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 151 relating to the contents of the judgment if the Magistrate's judgment consists only of his finding and sentence or other final order:

Provided that the Magistrate may be required by a Judge to state in writing the reasons for his decision.

(6) The Magistrate shall if requested by the accused or his advocate 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 ten dollars or one month's imprisonment in default of payment thereof.

PART VII

PROVISIONS RELATING TO THE COMMITTAL OF ACCUSED PERSONS FOR TRIAL BEFORE THE HIGH COURT

Power to commit for trial

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

Court to hold inquiry in long or short form
19 of 1967, s. 18
12 of 1980, s. 3

211. 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 212 or the Magistrate may, if he considers it appropriate so to do having regard to the circumstances of the case and if application is not made to the contrary by the accused person or his advocate or by a public prosecutor, commit the person so charged directly for trial to the High Court in accordance with the provisions of this section, that is to say—

(*a*) the Magistrate shall 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 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 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 accused person to plead to the charge against him and record his plea thereto, if any;

(*c*) notwithstanding that the accused person pleads "guilty" or "not guilty" or abstains from pleading to such charge, the Magistrate shall thereupon require the prosecutor to tender to the court the statement of any witness whom it is intended to call in proof of the said 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 if the accused person is not represented by an advocate, but not otherwise unless requested to do so by the accused's advocate; and *12 of 1980, s. 3*

(*d*) if, having considered the contents of such statement, 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 215 and 216.

Conduct of preliminary inquiry in long form
19 of 1967, s. 18

212.—(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 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 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.

Statements of witnesses so taken down in writing shall be termed depositions.

(2) The accused person 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 does not employ an advocate, the court shall, at the close of the examination of each witness for the prosecution, ask the accused person whether he wishes to put any questions to that witness.

(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 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.

Variance between evidence and charge

213. 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.

Remand

214. 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 fifteen clear days at any one time, to some prison or other place of security. Or, if the remand is for not more than three 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.

During a remand the court may at any time order the accused to be brought before it.

The court may on a remand admit the accused to bail.

Provisions as to taking statement or evidence of accused person
19 of 1967, s. 20

215.—(1) If after the consideration of the statements of witnesses tendered to it in accordance with the provisions of paragraph (*c*) of section 211 or the examination of the witnesses

called on behalf of the prosecution in accordance with the provisions of section 212, 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. 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. The accused person shall sign or attest by his mark such record. 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.

Evidence and address in defence
19 of 1967, s. 21

216.—(1) Immediately after complying with the requirements of section 215 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 his advocate shall be at liberty to address the court—

(*a*) after the reading over of the statements of witnesses in accordance with the provisions of paragraph (*c*) of section 211 or the examination of witnesses called on behalf of the prosecution in accordance with the provisions of section 212 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 give evidence or to make a statement, but to call witnesses,

immediately after the evidence of such witnesses.

(5) If the accused person or his advocate addresses the court in accordance with the provisions of paragraphs (*a*) or (*c*) of subsection (4) the prosecution shall have the right of reply.

(6) 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. The Magistrate shall thereupon record the names and addresses of any such witnesses whom he may mention.

Discharge of accused person
19 of 1967, s. 22

217. If, after consideration of the statements of witnesses tendered in accordance with the provisions of paragraph (*c*) of section 211 or, in case of an inquiry conducted in accordance with the provisions of section 212, at the close of the case for the prosecution, as the case may be, or after hearing any evidence for the 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 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 any offence which, in the course of the charge so dismissed as aforesaid, it may appear that the accused person has committed.

Power to apply to High Court for committal in certain cases where accused person discharged
19 of 1967, s. 23
LN 46A of 1978

218.—(1) In any case where a Magistrate's Court shall discharge an accused person on a preliminary inquiry the court shall, if required to do so by the Director of Public Prosecutions, transmit forthwith to him the record of the proceedings, including the statements of any witnesses read over in accordance with the provisions of paragraph (*c*) of section 211 or certified copies or translations thereof, and if the Director of Public Prosecutions on considering the case shall be of the opinion that the accused person ought not to have been discharged, it shall be lawful for him to apply to a Judge for a warrant for the arrest and committal for trial of the accused person; and if the Judge 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, it shall be lawful for him to issue a warrant for the arrest of the accused person and for his committal to prison for trial, there to be kept until discharged 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 six months from the date of discharge.

(3) For the purpose of taking recognisances under section 221, 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 223 and 224, and notwithstanding the other provisions of this Code, the Magistrate's Court shall not be required so to inform him.

Commitment for trial
19 of 1967, s. 24
LN 46A of 1978

219.—(1) If the Magistrate's Court considers the case against the accused person 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. 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 corporation on trial, make an order authorising the Director of Public Prosecutions 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.

Summary adjudication
19 of 1967, s. 25

220. 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 211, 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 212, the accused 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.

Complainants and witnesses to be bound over or summoned before the High Court
19 of 1967, s. 26.
LN 46A of 1978

221.—(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 211, summon the witnesses whose statements have been read over to the accused person in accordance with the provisions of paragraph (*c*) of section 211 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 Director of Public Prosecutions:

Provided that if 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 Director of Public Prosecutions 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 212, 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 at any further examination concerning the charge which may be held by direction of the Director of Public Prosecutions.

(2) Nothing in paragraph (*a*) of the preceding subsection shall be construed to prevent an accused person who has pleaded "guilty" when called upon to plead in accordance with section 211 (1) (*b*) from altering such plea to one of "not guilty" when he appears for trial before the High Court.

Refusal to be bound over
19 of 1967, s. 27

222. If a person refuses to enter into a recognisance on being required to do so pursuant to section 221, 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. 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.

Accused person entitled to copy of statements of witnesses or depositions
19 of 1967, s. 28

223. 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 paragraph (*c*) of section 211 or, in the case of an inquiry held in accordance with the provisions of section 212, of the depositions, as the case may be. The court shall at the time of committing him for trial inform the accused person of the effect of this provision.

Summoning and conditionally binding over of witnesses
19 of 1967, s. 29
LN 46A of 1978

224.—(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 or the prosecutor, that the attendance at the trial of any witness whose statement has been read over in accordance with the provisions of paragraph (*c*) of section 211 or who has been examined before it in accordance with the provisions of section 212 (1), 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 paragraph (*c*) of section 211, notwithstanding the provisions of section 221 (1) (*a*) (which requires the court to summon such a witness), refrain from summoning such 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, pursuant to the provisions of the preceding subsection, 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 Director of Public Prosecutions 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 any such court or Registrar to whom any such notice is given shall forthwith summon the witness to appear at the trial or notify him that he is required so to appear in pursuance of his recognisance.

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 aforesaid, and of the steps he must take for the purpose of enforcing such attendance.

(3) 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 witnesses read over in accordance with the provisions of paragraph (*c*) of section 211, or the depositions, as the case may be, to the Registrar of the High Court.

Taking the depositions of persons dangerously ill

225. 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.

Notice to be given

226. 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.

Transmission of statements
LN 46A of 1978

227. 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 Director of Public Prosecutions

Use of statement in evidence

228. 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.

Transmission of records to High Court and Director of Public Prosecutions
19 of 1967, s. 30
LN 46A of 1978

229. In the event of a committal for trial, the written charge, the statements of witnesses read over in accordance with the provisions of paragraph (*c*) of section 211, 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 Director of Public Prosecutions by the Registrar.

Power of Director of Public Prosecutions to direct further investigation
19 of 1967, s. 31
LN 46A of 1978

230. 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 Director of Public Prosecutions is of opinion that further investigation is required before such trial, it shall be lawful for the Director of Public Prosecutions to 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.

Powers of Director of Public Prosecutions as to additional witnesses
19 of 1967, s. 32
LN 46A of 1978

231. If, after receipt of the authenticated copy of the statements and depositions as aforesaid and prior to the trial before the High Court, the Director of Public Prosecutions 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 Director of Public Prosecutions may require the Magistrate's Court which committed the accused person for trial to take the depositions of such witness and compel his attendance either by binding over or by summons or by warrant as hereinbefore provided.

Return of depositions with a view to summary trial
19 of 1967, s. 33
LN 46A of 1978

232. If, prior to the trial before the High Court, the Director of Public Prosecutions 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 211, 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 212, the accused 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.

Filing of an information
19 of 1967, s. 34
LN 46A of 1978

233.—(1) If, after the receipt of the authenticated copy of the statements and depositions as aforesaid, the Director of Public Prosecutions 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 Director of Public Prosecutions shall be filed in the registry of the High Court.

(2) In any such information the Director of Public Prosecutions 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.

Notice of trial

234. 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 ,19 ".

Copy of information and notice of trial to be served

235. 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 aforesaid shall, as soon as may be after having received the copy or copies of the information and notice or notices of trial, and three 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.

Return of service

236. 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.

Postponement of trial
19 of 1967, s. 35

237.—(1) It shall be lawful for 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, to 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 to 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).

Information by Director of Public Prosecutions
LN 46A of 1978

238. All informations drawn up in pursuance of section 233 shall be in the name of and (subject to the provisions of section 69) signed by the Director of Public Prosecutions, 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.

23 & 24 Geo. 5, c. 36

Form of information
LN 46A of 1978

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

THE QUEEN *v. A.B.*

In the High Court of Solomon Islands

At the Sessions holden at in Solomon Islands on the day of ,19 .

INFORMATION BY THE DIRECTOR OF PUBLIC PROSECUTIONS

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

PART VIII

PROCEDURE IN TRIALS BEFORE THE HIGH COURT

Practice of High Court in its criminal jurisdiction

240. 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.

Preparation of Assessor Lists

241.—(1) The Chief Justice shall designate a Magistrate at each place at which sessions of the High Court are ordinarily held who shall, during the month immediately following the date upon which this Code comes into operation, and at intervals of two years thereafter or at such other times as the Chief Justice may direct, prepare a list of persons ordinarily resident within ten miles of the court-house who are suitable to serve as assessors setting out the name and surname and the occupation and place of abode of each person, and shall cause a copy to be posted on the court-house for a period of not less than three weeks and to be published in such other manner as the Chief Justice may direct.

(2) After the posting and publication of the list referred to in subsection (1) the Magistrate shall send the list to the Chief Justice who shall revise the list and shall, upon any evidence which may be adduced before him or of his own knowledge, information and belief, strike out from the list the name of any person therein included who, in his opinion, is not suitable to serve, or add to the list the name of any person who, in his opinion, is suitable to serve, as an assessor.

(3) The revision of the lists shall take place on a date to be notified as the Chief Justice shall direct, and any person may appear at the revision either personally or by his advocate and claim that his name should be added to or excluded from a list.

(4) Each list when revised shall be signed by the Chief Justice and shall be published as the Chief Justice may direct and shall be used as the list of assessors for the purposes of any trial by the High Court, in which the assistance of assessors is required, at the place in respect of which it was prepared from the date of such publication until the date of publication of the next list for such place.

(5) A Judge may at any time on being satisfied that any person on the list is not suitable to serve as an assessor cause the name of such person to be removed from any list of assessors.

(6) In the event of a sessions of the High Court being held at any place where such sessions are not ordinarily held, or before the first publication of lists in accordance with the provisions of this section, the Chief Justice shall give such directions as he may consider to be necessary and desirable for the preparation and publication of a list of persons liable to serve as assessors for the purpose of the sessions.

(7) A list prepared in accordance with the foregoing provisions of this section may be referred to as an Assessor List.

Suitability for service as assessors
LN 46A of 1978

242. Subject to the exemptions and disqualifications hereinafter contained persons between the ages of twenty-one and sixty years resident in Solomon Islands having a competent knowledge of the English language shall be suitable to serve as assessors at trials held by the High Court within Solomon Islands:

Provided that the Chief Justice may from time to time give directions, either generally or in respect of particular persons or areas, regulating the area within which a person may be summoned to serve as an assessor.

Exemptions
11 of 1970, Sched LN 46A of 1978

243. The persons in this section enumerated shall be exempt from liability to serve as assessors—

(*a*) members of Parliament;

(*b*) salaried functionaries of any foreign government not carrying on business;

(*c*) physicians, surgeons, medical practitioners and apothecaries in actual practice;

(*d*) advocates in actual practice and their clerks;

(*e*) clergymen and ministers of religion in actual exercise of their office;

(*f*) officers and others on full pay in Her Majesty's Naval, Military and Air Forces;

(*g*) masters and pilots of vessels and holders of commercial licences as pilots of aircraft;

(*h*) police officers.

Disqualifications

244. Each of the following persons shall be disqualified from serving as an assessor—

(*a*) persons having or earning an income of less than one hundred dollars a year;

(*b*) persons disabled by mental or bodily infirmity;

(*c*) persons who have been previously convicted of any treason, felony or infamous crime and have not received a free pardon.

Summoning of assessors

245.—(1) The Registrar of the High Court shall ordinarily, seven days at least before the day which from time to time may be fixed for holding a sessions of the High Court, send a request in writing to a Magistrate empowered to hold a Magistrate's Court in the district in which such sessions are to be held, requiring him to summon as many persons as seem to the Judge who is to preside at the sessions to be needed for trials with the aid of assessors at the said sessions.

(2) The Magistrate to whom such request is sent shall thereupon summon from among the persons whose names appear on the Assessor List for the place at which the sessions are held the number of persons required. Such persons shall, subject to the directions of the Chief Justice, be summoned in rotation in the order in which their names appear in the said List.

Form of summons

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

Excuses

247. The High Court may for reasonable cause excuse any assessor from attendance at any particular sessions, and may, if it thinks fit, at the conclusion of any trial, direct that the assessors who have served at such trial shall not be summoned to serve again as assessors for a period of twelve months or for such longer period as the court may allow.

List of assessors attending

248.—(1) At each sessions the High Court shall cause to be made a list of the names of those who have attended as assessors at such sessions, and such list shall be kept with the list of the assessors as revised under section 241.

(2) A reference shall be made in the margin of the said revised list to each of the names which are mentioned in the list prepared under this section.

Penalty for non-attendance of assessor

249.—(1) Any person summoned to attend as an assessor who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the High Court, or fails to attend after adjournment of the court after being ordered to attend, shall be liable by order of the High Court to a fine of forty dollars.

(2) Such fine unless paid shall be levied by a Magistrate by attachment and sale of any movable property belonging to such assessor within the local limits of the jurisdiction of such Magistrate.

(3) For good cause shown, the High Court may remit or reduce any fine so imposed.

(4) In default of recovery of the fine by attachment and sale an assessor may, by order of the High Court, be imprisoned as a civil prisoner for a term of fifteen days unless such fine is paid before the end of the said term.

Pleading to information
19 of 1967, s. 36

250.—(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, though it does so appear, fails to enter any plea, the court shall cause a plea of "not guilty" to be entered.

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.

(3) 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 211 into or concerning such offence.

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

251.—(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. 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 one 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 one 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.

Quashing of information

252. 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.

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.

Procedure in case of previous convictions

253. 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.

Plea of "not guilty"

254. 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.

Plea of *autrefois* acquit and *autrefois* convict

255. 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.

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.

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.

Refusal to plead *LN 46A of 1978*

256. 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 Governor-General.

The Governor-General may order such accused person to be confined in a mental hospital, prison, or other suitable place for safe custody.

Plea of "guilty"

257. If the accused pleads "guilty" the plea shall be recorded and he may be convicted thereon.

Proceedings after plea of "not guilty"

258. If the accused pleads "not guilty", or if a plea of "not guilty" is entered in accordance with the provisions of sections 250 or 256, the court shall proceed to try the case.

Power to postpone or adjourn proceedings

259. 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.

During a remand the court may at any time order the accused to be brought before it.

The court may on a remand admit the accused to bail.

Selection of assessors

260. When the court thinks fit to call in the assistance of assessors, the court shall select such assessors from the list of those summoned to serve as assessors at the sessions.

Absence of an assessor

261. If, in the course of a trial in which the assistance of an assessor or of assessors has been called in, such assessor, if only one or all or any such assessors if more than one, is, or are from any sufficient cause prevented from attending throughout the trial, or absents himself or themselves and it is not practicable immediately to enforce attendance thereof, the trial shall proceed with the aid of the other assessors if any, or without assessors, if none remain.

Assessors to attend at adjourned sittings

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

Opening of case for prosecution

263. 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.

Additional witnesses for prosecution
4 of 1968, Sched

264. 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.

The notice must state the witness's name and address and the substance of the evidence which he intends to give. 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:

Provided that when, under the provisions of section 180, the plan of a surveyor or the report of a medical officer or other witness has been put in during the proceedings at the preliminary inquiry, and the surveyor, medical officer or other witness himself is called at the High Court trial, notice of the evidence of such surveyor, medical officer or other witness shall not be required to be given to the accused person.

Cross-examination of witnesses for the prosecution

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

Depositions may be read as evidence in certain cases
LN 46A of 1978

266. 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.

The conditions hereinbefore referred to 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 224, or of a witness who is proved at the trial by oath of a

credible witness to be absent from Solomon Islands 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:

Provided that the provisions of this section shall not have effect in any case in which it is proved—

(i) that the deposition was not in fact signed by the Magistrate by whom it purports to have been signed; or

(ii) 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.

Deposition of medical witness may be read as evidence
19 of 1967, s. 37
11 of 1970, Sched

267. The deposition of a surveyor or of an analyst or geologist in the employment of the Government 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.

Statement of accused

268. 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.

Close of case for prosecution

269.—(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 defence 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 his advocate (if any), 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 his advocate (if any) to state whether it is intended to call any witnesses as to fact other than the accused person himself. Upon being informed thereof, the Judge shall record the same. If such 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. If such 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.

The defence

270. The accused person or his advocate 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. The accused person may then give evidence on his own behalf and he or his advocate may examine his witnesses (if any), and after their cross-examination and re-examination (if any) may sum up his case.

Additional witness for the defence

271. 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. 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.

Evidence in reply

272. 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.

Prosecutor's reply
19 of 1967, s. 38

273. 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 address the court at the close of the evidence for the defence and before the closing speech (if any) by or on behalf of the accused person or any one of several accused persons.

Where accused adduces no evidence

274. 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 to address the court on his own behalf.

Decision

275.—(1) When, in a case tried with assessors, the case on both sides is closed, the Judge may in his discretion sum up the evidence for the prosecution and the defence, and shall require each of the assessors to state his opinion orally on all matters on which such opinion is asked, and shall record such opinion.

(2) The Judge shall then give judgment, but in doing so shall not be bound to conform to the opinions of the assessors and the decision on all matters on which the opinion of the assessors has been asked shall be vested exclusively in the Judge.

(3) If the accused person is convicted, the Judge shall pass sentence on him according to law.

(4) Nothing in this section shall be read as prohibiting the assessors, or any of them, from retiring to consider their opinions if they so wish, or, during any such retirement or at any time during the trial, from consultation with one another.

Calling upon the accused

276. 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.

Motion in arrest of judgment

277.—(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.

Sentence

278. 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.

Power to reserve decision on question raised at trial

279. 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.

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

280.—(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.

Objections cured by verdict

281. 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.

Evidence for arriving at proper sentence

282. 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.

Appeal to High Court
LN 46A of 1978

283.—(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 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 Director of Public Prosecutions.

(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 to the High Court 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 Director of Public Prosecutions 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.

Limitation of appeal on plea of guilty and in petty cases

284.—(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 ten dollars 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.

Appeal to be by way of petition
LN 46A of 1978

285.—(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 fourteen 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 requires 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 Director of Public Prosecutions is required by virtue of section 283.

Form and contents of petition

286.—(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 three days before the date fixed for the hearing of the appeal in accordance with section 289.

(5) Where two 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 a 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 284 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.

Petition to be forwarded to the High Court

287. 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.

Summary dismissal of appeal

288.—(1) When the High Court has received the petition of appeal and the record of proceedings a Judge shall persue 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 an appeal is summarily dismissed notice of such dismissal shall forthwith be given by the Registrar of the High Court to the appellant or his advocate.

Notice of hearing

289. 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 subsection (4) of section 286, serve notice on the respondent of such filing and supply the respondent with a copy of the document containing such additional grounds of appeal.

Admission to bail or suspension of sentence pending appeal

290.—(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 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. 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.

Costs

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

Discontinuance of appeal

292.—(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.

Powers of High Court
19 of 1967, s. 39

293.—(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 might 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—

(*a*) 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 therefor as it thinks ought to have been passed; or

(*b*) if the appeal is against conviction alone and no sentence has been passed on the appellant by the Magistrate's Court by reason of the appellant's having been committed for sentence to the High Court by the Magistrate's Court in accordance with the provisions of section 208 prior to the presentation of an appeal, impose such sentence as it thinks fit.

(3) The High Court may at any stage adjourn the hearing of an appeal.

Further evidence

294.—(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.

Order of the High Court to be certified to lower court

295.—(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.

Right of appellant to be present

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

High Court order to be certified to lower court Cap. 20

297. 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.

Case stated by Magistrate's Court

298.—(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 one 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 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 289 shall thereupon apply.

Appellant entitled to copy of stated case
LN 46A of 1978

299. The appellant shall be entitled upon payment of a fee of five cents for every folio of seventy-two 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 Director of Public Prosecutions under this section.

Notice of time and place of hearing

300. 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.

Magistrate may refuse case when he thinks application frivolous
LN 46A of 1978

301. 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 Director of Public Prosecutions, who may require a case to be stated with reference to proceedings to which he was not a party.

Procedure on refusal of Magistrate to state case

302. 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 one 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.

High Court to determine the questions on the case; its decision to be final
12 of 1963, Sched.

303.—(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 that no Magistrate who shall state and deliver a case in pursuance of this Part or bona fide refuse to state one shall be liable to any costs in respect or by reason of such appeal against his determination or refusal.

(2) Any costs awarded under this section shall be recoverable in the manner provided by section 28 of the Penal Code.

Cap. 26

Case may be sent back for amendment or rehearing

304. 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.

Orders of the High Court to be certified to lower court

305.—(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.

Appellant may not proceed both by case stated and by appeal

306. No person who has appealed under section 283 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 283.

Contents of case stated

307. 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 Director of Public Prosecutions may require to be submitted for the opinion of the High Court.

Constitution of court hearing case stated

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

High Court may enlarge time

309. The High Court may, if it deems fit, enlarge any period of time prescribed by sections 298 or 302.

PART X

SUPPLEMENTARY PROVISIONS

Proceedings in wrong place

310. No finding, sentence or order of any criminal court shall be set aside merely on the ground that the inquiry, trial or other proceeding, 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.

No appeal on point of form or matter of variance

311. 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 High Court may allow any such objection to be raised.

Power to issue directions of the nature of habeas corpus
LN 46A of 1978
LN 88 of 1978

312.—(1) The High Court whenever it thinks fit may direct—

(*a*) that any person within the limits of Solomon Islands 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 Governor-General 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.

Power of the High Court to issue writs
19 of 1967, s. 40

313.—(1) The High Court may in the exercise of its criminal jurisdiction issue any writ or order which may be issued by the High Court of Justice in England.

(2) The Chief Justice may from time to time issue directions to regulate the procedure in cases under this section.

Persons before whom affidavits may be sworn

314. 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.

Shorthand note of proceedings
17 of 1976, s. 5

315. Shorthand notes may be taken of the proceedings at the trial of any person before a Principal 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.

Copies of proceedings

316. 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 disposition 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.

Forms

317. 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. In the absence of such Rules of Court the forms in use for like purposes immediately before the day upon which this Code came into operation 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.

Expenses of assessors, witnesses, etc.

318. 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.

Saving
LN 46A of 1978
Cap. 19

319. Nothing contained in this Code shall affect the jurisdiction, practice or procedure of any court established under the Local Courts Act or any law replacing that Act.

CHAPTER 7

CRIMINAL PROCEDURE CODE

Subsidiary Legislation

FORM OF CERTIFICATE OF PREVIOUS CONVICTIONS
(Section 125(2))

[*15th February 1965*]

LN 65/1965

The following form has been prescribed for the purposes of section 125(2) of the Code:

SOLOMON ISLANDS POLICE FORCE

CERTIFICATE OF PREVIOUS CONVICTIONS

(*Criminal Procedure Code, section* 125 (2))

C.R.O. No. .....
O.C.P.D./C.S.

CRIMINAL RECORDS OFFICE,
C.I.D. HONIARA.

.... 19 .....

I hereby certify that the finger impressions of..... taken at.....Police Station have been searched and his previous convictions, according to the records of the Criminal Records Office, are as overleaf. Those convictions marked with a cross, +, are supported by finger-prints which were taken at the time.

..... Officer in Charge.
Criminal Records Office.

RESULT OF TRIAL ON PRESENT CHARGE.

(In case where option of fine is given, state if fine was paid.)

Court and Place of Trial.	Date of Sentence	Offence (Quoting Law and Section).	Sentence	Full name convicted under.	Police Case File No.

NOTE.—ORIGINAL to be returned to C.R.O.
DUPLICATE for Police Case File.
TRIPLICATE to be attached to Committal Warrant for information of Prison.
QUADRUPLICATE to be handed into Court.

Station ..... Date ..... 19 .....

Signature of Officer filling in result of trial.

(*Reverse side of form.*)

Court and Place of Trial.	Date of Sentence	Offence (Quoting Law and Section).	Sentence	Full name convicted under.	Police Case File No.