THE OFFICIAL GAZETTE OF THE COLONY AND PROTECTORATE OF KENYA

(SPECIAL ISSUE)

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Colony and Protectorate of Kenya.

AN ORDINANCE.

No. 10 OF 1930.

Assented to in His Majesty's name this twenty-sixth day of May, 1930.

EDWARD GRIGG,
Governor.

[26TH MAY, 1930.] **Date of assent.**

An Ordinance to Establish a Code of Criminal Law.

By Proclamation. **Date of commencement.**

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

PART I.—GENERAL PROVISIONS.

CHAPTER I.

PRELIMINARY.

1. This Ordinance may be cited as "the Penal Code," and hereinafter is referred to as "this Code," and shall commence and come into operation on such date as the Governor may, by proclamation in the Gazette, appoint. **Short title and commencement.**

2. From and after the commencement of this Code, the Indian Penal Code shall cease to be applied to the Colony. Any reference to any provision in the Indian Penal Code in any Ordinance in force at the date of such commencement shall, so far as is consistent with its context, be deemed to be a reference to the corresponding provision in this Code. **Commencement of Code and its operation in lieu of the Indian Penal Code.**

Saving of certain laws.

3. Nothing in this Code shall affect—

(1) the liability, trial or punishment of a person for an offence against the Common Law or against any other law in force in the Colony other than this Code; or

(2) the liability of a person to be tried or punished for an offence under the provisions of any law in force in the Colony relating to the jurisdiction of the Colonial courts in respect of acts done beyond the ordinary jurisdiction of such courts; or

(3) the power of any court to punish a person for contempt of such court; or

(4) the liability or trial of a person, or the punishment of a person under any sentence passed or to be passed, in respect of any act done or commenced before the commencement of this Code; or

(5) any power of His Majesty, or of the Governor as the representative of His Majesty, to grant any pardon or to remit or commute in whole or in part or to respite the execution of any sentence passed or to be passed; or

(6) any of the Statutes, Ordinances, Regulations or Articles for the time being in force for the government of His Majesty's military or naval or air forces, or the military or police forces of the Colony:

Provided that if a person does an act which is punishable under this Code and is also punishable under another Ordinance or Statute of any of the kinds mentioned in this section, he shall not be punished for that act both under that Ordinance or Statute and also under this Code.

CHAPTER II.

INTERPRETATION.

General rule of construction of Code.

4. This Code shall be interpreted in accordance with the principles of legal interpretation obtaining in England, and expressions used in it shall be presumed, so far as is consistent with their context, and except as may be otherwise expressly provided, to be used with the meaning attaching to them in English criminal law and shall be construed in accordance therewith.

Interpretation.

5. In this Code, unless the context otherwise requires—

" Colony " means the Colony and Protectorate of Kenya;

" court " means a court of competent jurisdiction;

" dangerous harm " means harm endangering life;

" dwelling-house " includes any building or structure or part of a building or structure which is for the time being kept by the owner or occupier for the residence therein of himself, his family or servants or any of them, and it is immaterial that it is from time to time uninhabited; a building or structure adjacent to or occupied with a dwelling-house is deemed to be part of the dwelling-house if there is a communication between such building or structure and the dwelling-house, either immediate or by means of a covered and enclosed passage leading from the one to the other, but not otherwise;

" felony " means an offence which is declared by law to be a felony or, if not declared to be a misdemeanour, is punishable, without proof of previous conviction, with death, or with imprisonment with hard labour for three years or more;

" grievous harm " means any harm which amounts to a maim or dangerous harm, or seriously or permanently injures health or which is likely so to injure health, or which extends to permanent disfigurement, or to any permanent or serious injury to any external or internal organ, membrane or sense;

" harm " means any bodily hurt, disease or disorder whether permanent or temporary;

" judicial proceeding " includes any proceeding had or taken in or before any court, tribunal, commission of inquiry, or person, in which evidence may be taken on oath, or in or before a native tribunal, whether such tribunal takes evidence on oath or not;

" knowingly " used in connexion with any term denoting uttering or using, implies knowledge of the character of the thing uttered or used;

" local authority " means a local authority established under any Ordinance;

" maim " means the destruction or permanent disabling of any external or internal organ, member or sense;

" misdemeanour " means any offence which is not a felony;

" money " includes bank notes, bank drafts, cheques and any other orders, warrants or requests for the payment of money;

" night " or " night-time " means the interval between half-past six o'clock in the evening and half-past six o'clock in the morning;

" oath " includes affirmation or declaration;

" offence " is an act, attempt or omission punishable by law;

" Ordinance " includes any orders or rule or regulations made under the authority of any Ordinance;

" person " and " owner," and other like terms, when used with reference to property, include corporations of all kinds and any other association of persons capable of owning property, and also when so used include His Majesty;

" person employed in the public service " means any person holding any of the following offices or performing the duty thereof, whether as a deputy or otherwise, namely—

(i) any civil office including the office of Governor, the power of appointing a person to which or of removing from which is vested in His Majesty or in the Governor or in the Governor in Council or in any public Commission or Board; or

(ii) any office to which a person is appointed or nominated by Ordinance or Statute or by election; or

(iii) any civil office, the power of appointing to which or removing from which is vested in any person or persons holding an office of any kind included in either of the two last preceding paragraphs of this section; or

(iv) any office of arbitrator or umpire in any proceeding or matter submitted to arbitration by order or with the sanction of any court, or in pursuance of any Ordinance;

and the said term further includes—

(i) a justice of the peace;

(ii) a member of a commission of inquiry appointed under or in pursuance of any Ordinance;

(iii) any person employed to execute any process of a court, including a native tribunal;

(iv) all persons belonging to the military or police forces of the Colony;

(v) all persons in the employment of any government department;

(vi) a person acting as a minister of religion of whatsoever denomination, in so far as he performs functions in respect of the notification of intending marriage or in respect of the solemnisation of marriage, or in respect of the making or keeping of any register or certificate of marriage, birth, baptism, death or burial, but not in any other respect;

(vii) a person in the employ of a local authority;

"possession"—(*a*) "be in possession of" or "have in possession" includes not only having in one's own personal possession, but also knowingly having anything in the actual possession or custody of any other person, or having anything in any place (whether belonging to or occupied by oneself or not) for the use or benefit of oneself or of any other person; (*b*) if there are two or more persons and any one or more of them with the knowledge and consent of the rest has or have anything in his or their custody or possession, it shall be deemed and taken to be in the custody and possession of each and all of them;

"property" includes everything animate or inanimate capable of being the subject of ownership;

"public" refers not only to all persons within the Colony, but also to the persons inhabiting or using any particular place, or any number of such persons, and also to such indeterminate persons as may happen to be affected by the conduct in respect to which such expression is used;

"public way" includes any highway, market place, square, street, bridge or other way which is lawfully used by the public;

"public place" or "public premises" includes any public way and any building, place or conveyance to which, for the time being, the public are entitled or permitted to have access either without any condition or upon condition of making any payment, and any building or place which is for the time being used for any public or religious meetings or assembly or as an open court;

"publicly" when applied to acts done, means either (*a*) that they are so done in any public place as to be seen by any person whether such person be or be not in a public place; or (*b*) that they are so done in any place not being a public place as to be likely to be seen by any person in a public place;

"Statute" means an Act of the Imperial Parliament or an Act of the Indian Legislature, and includes any orders, rules, regulations, by-laws or other subsidiary legislation made or passed under the authority of any Statute;

"utter" means and includes using or dealing with and attempting to use or deal with and attempting to induce any person to use, deal with, or act upon the thing in question;

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

"vessel" includes any ship, a boat and every other kind of vessel used in navigation either on the sea or in inland waters;

"wound" means any incision or puncture which divides or pierces any exterior membrane of the body, and any membrane is exterior for the purpose of this definition which can be touched without dividing or piercing any other membrane.

CHAPTER III.

Territorial Application of This Code.

Extent of jurisdiction of Colonial courts.

6. The jurisdiction of the courts of the Colony for the purposes of this Code extends to every place within the Colony or within three nautical miles of the coast thereof measured from low water mark.

Offences committed partly within and partly beyond the jurisdiction.

7. When an act which, if wholly done within the jurisdiction of the court, would be an offence against this Code, is done partly within and partly beyond the jurisdiction, every person who within the jurisdiction does or makes any part of such act may be tried and punished under this Code in the same manner as if such act had been done wholly within the jurisdiction.

CHAPTER IV.

General Rules as to Criminal Responsibility.

Ignorance of law.

8. Ignorance of the law does not afford any excuse for any act or omission which would otherwise constitute an offence unless knowledge of the law by the offender is expressly declared to be an element of the offence.

Bona fide claim of right.

9. A person is not criminally responsible in respect of an offence relating to property, if the act done or omitted to be done by him with respect to the property was done in the exercise of an honest claim of right and without intention to defraud.

Intention: motive.

10. Subject to the express provisions of this Code relating to negligent acts and omissions, a person is not criminally responsible for an act or omission which occurs independently of the exercise of his will, or for an event which occurs by accident.

Unless the intention to cause a particular result is expressly declared to be an element of the offence constituted, in whole or part, by an act or omission, the result intended to be caused by an act or omission is immaterial.

Unless otherwise expressly declared, the motive by which a person is induced to do or omit to do an act, or to form an intention is immaterial so far as regards criminal responsibility.

Mistake of fact.

11. A person who does or omits to do an act under an honest and reasonable, but mistaken, belief in the existence of any state of things is not criminally responsible for the act or omission to any greater extent than if the real state of things had been such as he believed to exist.

The operation of this rule may be excluded by the express or implied provisions of the law relating to the subject.

Presumption of sanity.

12. Every person is presumed to be of sound mind, and to have been of sound mind at any time which comes in question, until the contrary is proved.

Insanity.

13. A person is not criminally responsible for an act or omission if at the time of doing the act or making the omission he is through any disease affecting his mind incapable of understanding what he is doing, or of knowing that he ought not to do the act or make the omission.

But a person may be criminally responsible for an act or omission, although his mind is affected by disease, if such disease does not in fact produce upon his mind one or other of the effects above mentioned in reference to that act or omission.

Intoxication.

14. A person is not criminally responsible for an act or omission if at the time of doing the act or making the omission he is in such a state of intoxication that he is incapable of understanding what he is doing, or controlling his action, or knowing that he ought not to do the act or make the omission, provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

Save as aforesaid, a person shall not, on the ground of intoxication, be deemed to have done any act or made any omission involuntarily, or be exempt from criminal responsibility for any act or omission.

When intention to cause a specific result is an element of an offence, intoxication, whether complete or partial, and whether intentional or unintentional, shall be taken into account for the purpose of ascertaining whether such an intention in fact existed.

Immature age.

15. A person under the age of seven years is not criminally responsible for any act or omission.

A person under the age of twelve years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission he had capacity to know that he ought not to do the act or make the omission.

A male person under the age of twelve years is presumed to be incapable of having carnal knowledge.

16. Except as expressly provided by this Code, a judicial officer is not criminally responsible for anything done or omitted to be done by him in the exercise of his judicial functions, although the act done is in excess of his judicial authority or although he is bound to do the act omitted to be done. **Judicial officers.**

17. A person is not criminally responsible for an offence if it is committed by two or more offenders, and if the act is done or omitted only because during the whole of the time in which it is being done or omitted the person is compelled to do or omit to do the act by threats on the part of the other offender or offenders instantly to kill him or do him grievous bodily harm if he refuses; but threats of future injury do not excuse any offence. **Compulsion.**

18. An act or omission which would otherwise be an offence shall be excused if the person accused can show that it was done or omitted to be done only in order to avoid consequences which could not otherwise be avoided, and which if they had followed would have inflicted upon him or upon others whom he was bound to protect inevitable and irreparable evil, that no more was done than was reasonably necessary for that purpose, and that the evil inflicted by it was not disproportionate to the evil avoided. **Necessity.**

19. A married woman is not free from criminal responsibility for doing or omitting to do an act merely because the act or omission takes place in the presence of her husband; but on a charge against a wife for any offence other than treason or murder, it shall be a good defence to prove that the offence was committed in the presence of, and under the coercion of, the husband. **Compulsion by husband.**

20. A person cannot be punished twice either under the provisions of this Code or under the provisions of any other law for the same act or omission, except in the case where the act or omission is such that by means thereof he causes the death of another person, in which case he may be convicted of the offence of which he is guilty by reason of causing such death, notwithstanding that he has already been convicted of some other offence constituted by the act or omission. **Person not to be punished twice for same offence.**

CHAPTER V.

PARTIES TO OFFENCES.

21. When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say— **Principal offenders.**

(*a*) every person who actually does the act or makes the omission which constitutes the offence;

(*b*) every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence;

(*c*) every person who aids or abets another person in committing the offence;

(*d*) any person who counsels or procures any other person to commit the offence.

In the last-mentioned case he may be charged either with committing the offence or with counselling or procuring its commission.

A conviction of counselling or procuring the commission of an offence entails the same consequences in all respects as a conviction of committing the offence.

Any person who procures another to do or omit to do any act of such a nature that, if he had himself done the act or made the omission, the act or omission would have constituted an offence on his part, is guilty of an offence of the same kind, and is liable to the same punishment, as if he had himself done the act or made the omission; and he may be charged with doing the act or making the omission.

Offences committed by joint offenders in prosecution of common purpose.

22. When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence.

Counselling another to commit an offence.

23. When a person counsels another to commit an offence, and an offence is actually committed after such counsel by the person to whom it is given, it is immaterial whether the offence actually committed is the same as that counselled or a different one, or whether the offence is committed in the way counselled or in a different way, provided in either case that the facts constituting the offence actually committed are a probable consequence of carrying out the counsel.

In either case the person who gave the council is deemed to have counselled the other person to commit the offence actually committed by him.

CHAPTER VI.

PUNISHMENTS.

Different kinds of punishments.

24. The following punishments may be inflicted by a court :—

(1) Death.

(2) Imprisonment.

(3) Corporal punishment.

(4) Fine.

(5) Forfeiture.

(6) Payment of compensation

(7) Finding security to keep the peace and be of good behaviour; or to come up for judgment.

Sentence of death.

25. (1) When any person is sentenced to death, the sentence shall direct that he shall be hanged by the neck until he is dead.

(2) Sentence of death shall not be pronounced on or recorded against any person who in the opinion of the court is under sixteen years of age, but in lieu thereof the court shall sentence such person to be detained during the Governor's pleasure, and if so sentenced he shall be liable to be detained in such place and under such conditions as the Governor may direct, and whilst so detained shall be deemed to be in legal custody.

26. (1) All imprisonment shall be with or without hard labour in the discretion of the court, unless the imposition of imprisonment only without hard labour is expressly prescribed by law. Imprisonment.

(2) A person liable to imprisonment for life or any other period may be sentenced for any shorter term.

(3) A person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment.

27. (1) A sentence of corporal punishment shall be to be whipped once only. Such whipping shall be with a rod or cane to be approved by the Governor or with such other instrument as the Governor may approve. The sentence shall specify the number of strokes which shall not exceed twenty-four. Where the number of strokes exceeds twelve such order shall be subject to confirmation by the Supreme Court and shall not be carried into effect until such confirmation shall have been received. Corporal punishment.

(2) No sentence of corporal punishment shall be passed upon any of the following persons :—

(*a*) Females.

(*b*) Males sentenced to death.

(*c*) Males whom the court considers to be more than forty-five years of age.

(3) Whenever a male person under the age of sixteen years is convicted of any offence for which he is liable to imprisonment, the court may, in its discretion, sentence him to corporal punishment in addition to or in substitution for any other punishment to which he is liable.

(4) A sentence of corporal punishment shall not be carried out except in the presence of a Government Medical Officer, or if no such Medical Officer is available, of a European Officer of the Colony, nor before such Medical or other Officer has after examination certified that in his opinion the prisoner is physically fit to undergo the sentence of corporal punishment about to be inflicted on him.

(5) The Medical or other European Officer may at any time during the carrying out of the sentence of corporal punishment intervene and prohibit the remainder of the sentence from being carried out, if in his opinion the prisoner is unable to bear such sentence without risk of grave or permanent injury.

(6) No sentence of corporal punishment shall be carried out by instalments.

28. Where a fine is imposed under any law, then in the absence of express provisions relating to such fine in such law the following provisions shall apply :— Fines.

(i) Where no sum is expressed to which the fine may extend the amount of the fine which may be imposed is unlimited, but shall not be excessive.

(ii) In the case of an offence punishable with a fine or a term of imprisonment the imposition of a fine or a term of imprisonment shall be a matter for the discretion of the court.

(iii) In the case of an offence punishable with imprisonment as well as a fine in which the offender is sentenced to a fine with or without imprisonment and in every case of an offence punishable with fine only in which the offender is sentenced to a fine the court passing sentence may, in its discretion—

(*a*) direct by its sentence that in default of payment of the fine the offender shall suffer imprisonment for a certain term, which imprisonment shall be in addition to any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of sentence; and also

(*b*) issue a warrant for the levy of the amount on the immovable and movable property of the offender by distress and sale under warrant: Provided that if the sentence directs that in default of payment of the fine the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no court shall issue a distress warrant unless for special reasons to be recorded in writing it considers it necessary to do so.

(iv) The term of imprisonment ordered by a court in respect of the non-payment of any sum of money adjudged to be paid by a conviction or in respect of the default of a sufficient distress to satisfy any such sum shall be such term as in the opinion of the court will satisfy the justice of the case, but shall not exceed in any case the maximum fixed by the following scale :—

Amount.	*Maximum period.*
Not exceeding Sh. 10	7 days.
Exceeding Sh. 10 but not exceeding Sh. 20 ...	14 days.
,, 20 ,, ,, 100 ...	1 month.
,, 100 ,, ,, 400 ...	2 months.
,, 400 ,, ,, 1,000 ...	4 months.
,, 1,000 ...	6 months.

Provided always that where such sum is adjudged to be paid as aforesaid by a native, the scale shall be as follows :—

Amount.	*Maximum period.*
Not exceeding Sh. 1	7 days.
Exceeding Sh. 1 but not exceeding Sh. 2 ...	14 days.
,, 2 ,, ,, 3 ...	1 month.
,, 3 ,, ,, 6 ...	2 months.
,, 6 ,, ,, 20 ...	4 months.
,, 20 ...	6 months.

(v) The imprisonment which is imposed in default of payment of a fine shall terminate whenever the fine is either paid or levied by process of law.

Forfeiture.

29. When any person is convicted of an offence under any of the following sections, namely, sections 88, 89, 90, 104 and 105, the court may, in addition to or in lieu of any penalty which may be imposed, order the forfeiture to His Majesty of any property which has passed in connexion with the commission of the offence or, if such property cannot be

forfeited or cannot be found, of such sum as the court shall assess as the value of the property; and any property or sum so forfeited shall be dealt with in such manner as the Governor may direct. Payment of any sum so ordered to be forfeited may be enforced in the same manner and subject to the same incidents as in the case of the payment of a fine.

30. Any person who is convicted of an offence may be adjudged to make compensation to any person injured by his offence. Any such compensation may be either in addition to or in substitution for any other punishment. Compensation.

31. A court may order any person convicted of an offence to pay the costs of and incidental to the prosecution or any part thereof. Costs.

32. A person convicted of an offence not punishable with death may, instead of, or in addition to, any punishment to which he is liable, be ordered to enter into his own recognizance, with or without sureties, in such amount as the court thinks fit, conditioned that he shall keep the peace and be of good behaviour for a time to be fixed by the court, and may be ordered to be imprisoned until such recognizance, with sureties, if so directed, is entered into; but so that the imprisonment for not entering into the recognizance shall not extend for a term longer than one year, and shall not, together with the fixed term of imprisonment, if any, extend for a term not longer than the longest term for which he might be sentenced to be imprisoned without fine. Security for keeping the peace.

33. When a person is convicted of any offence not punishable with death, the court may, instead of passing sentence, discharge the offender upon his entering into his own recognizance, with or without sureties, in such sum as the court may think fit, conditioned that he shall appear to receive judgment at some future sitting of the court or when called upon. Security for coming up for judgment.

34. When in this Code no punishment is specially provided for any misdemeanour, it shall be punishable with imprisonment for a term not exceeding two years or with a fine or with both. General punishment for misdemeanours.

35. Where a person after conviction for an offence is convicted of another offence, either before sentence is passed upon him under the first conviction or before the expiration of that sentence, any sentence, other than a sentence of death or of corporal punishment, which is passed upon him under the subsequent conviction, shall be executed after the expiration of the former sentence, unless the court directs that it shall be executed in lieu of the former sentence or of any part thereof. Sentences cumulative unless otherwise ordered.

PART II.—CRIMES.

Division I.—Offences Against Public Order.

CHAPTER VII.

Treason and Other Offences Against the Sovereign's Authority.

36. Any person who compasses, imagines, invents, devises or intends any act, matter or theory, the compassing, imagining, inventing, devising or intending whereof is treason by the law of England for the time being in force, and expresses, utters or declares such compassing, imagining, Treason by the law of England.

inventing, devising or intending by publishing any printing or writing or by any overt act, or does any act which, if done in England, would be deemed to be treason according to the law of England for the time being in force, is guilty of the offence termed treason and shall be liable to suffer death.

Instigating invasion.

37. Any person who instigates any foreigner to invade the Colony with an armed force is guilty of treason, and is liable to the punishment of death.

Concealment of treason.

38. Any person who—

(1) becomes an accessory after the fact to treason; or

(2) knowing that any person intends to commit treason, does not give information thereof with all reasonable despatch to the Governor or a police officer, or use other reasonable endeavours to prevent the commission of the offence,

is guilty of the felony termed misprision of treason, and is liable to imprisonment for life.

Treasonable felonies.

39. Any person who forms an intention to effect any of the following purposes, that is to say—

(*a*) to depose His Majesty from the style, honour and royal name of the Imperial Crown of the United Kingdom, or of any other of His Majesty's dominions or countries; or

(*b*) to levy war against His Majesty within any part of His Majesty's dominions, or within any country which has been declared to be under his protection or in respect of which His Majesty has accepted a mandate, in order by force or constraint to compel him to change his measures or counsels, or in order to put any force or constraint upon, or in order to intimidate or overawe, the legislature or legislative authority of any of His Majesty's dominions, or of any country which has been declared to be under his protection or in respect of which His Majesty has accepted a mandate; or

(*c*) to instigate any foreigner to make an armed invasion of any of His Majesty's dominions or of any country which has been declared to be under his protection or mandate,

and manifests such intention by an overt act, or by publishing any printing or writing, is guilty of a felony, and is liable to imprisonment for life.

Promoting native war.

40. Any person who, without lawful authority, carries on, or makes preparation for carrying on, or aids in or advises the carrying on of, or preparation for, any war or warlike undertaking with, for, by, or against any native chief, or with, for, by, or against any band of natives, is guilty of a felony, and is liable to imprisonment for life.

Limitations as to trial for treason, misprision of treason, or treasonable felonies.

41. A person cannot be tried for treason, or for any of the felonies defined in the three last preceding sections, unless the prosecution is commenced within two years after the offence is committed.

Nor can a person charged with treason, or with any of such felonies, be convicted, except on his own plea of guilty, or on the evidence in open court of two witnesses at the least to one overt act of the kind of treason or felony alleged, or the evidence of one witness to one overt act, and one other witness to another overt act of the same kind of treason or felony. **Two witnesses necessary.**

This section does not apply to cases in which the overt act of treason alleged is the killing of His Majesty, or a direct attempt to endanger the life or injure the person of His Majesty.

42. Any person who advisedly attempts to effect any of the following purposes, that is to say— **Inciting to mutiny.**

(*a*) to seduce any person serving in the military forces of the Colony or any member of the police force from his duty and allegiance to His Majesty; or

(*b*) to incite any such persons to commit an act of mutiny or any traitorous or mutinous act; or

(*c*) to incite any such persons to make or endeavour to make a mutinous assembly,

is guilty of a felony, and is liable to imprisonment for life.

43. Any person who— **Aiding soldiers or policemen in acts of mutiny.**

(*a*) aids, abets, or is accessory to, any act of mutiny by, or

(*b*) incites to sedition or to disobedience to any lawful order given by a superior officer,

any non-commissioned officer or private of the military forces of the Colony or any police officer, is guilty of a misdemeanour.

44. Any person who, by any means whatever, directly or indirectly— **Inducing soldiers or policemen to desert.**

(*a*) procures or persuades or attempts to procure or persuade to desert, or

(*b*) aids, abets, or is accessory to the desertion of, or

(*c*) having reason to believe he is a deserter, harbours or aids in concealing,

any non-commissioned officer or private of the said military forces or any police officer, is guilty of a misdemeanour, and is liable to imprisonment for six months.

45. Any person who— **Aiding prisoners of war to escape.**

(1) knowingly and advisedly aids an alien enemy of His Majesty, being a prisoner of war in the Colony, whether such prisoner is confined in a prison or elsewhere, or is suffered to be at large on his parole, to escape from his prison or place of confinement, or, if he is at large on his parole, to escape from the Colony, is guilty of a felony, and is liable to imprisonment for life;

(2) negligently and unlawfully permits the escape of any such person as is mentioned in the last preceding paragraph, is guilty of a misdemeanour.

46. In the case of any of the offences defined in this Chapter, when the manifestation by an overt act of an intention to effect any purpose is an element of the offence, every **Definition of overt act.**

act of conspiring with any person to effect that purpose, and every act done in furtherance of the purpose by any of the persons conspiring, is deemed to be an overt act manifesting the intention.

Seditious conspiracy, libel and publications.

47. Any person who—

(*a*) conspires with any other person or persons to do any act in furtherance of any seditious intention common to both or all of them; or

(*b*) prints or publishes any words or writing with a seditious intention; or

(*c*) sells, offers for sale, distributes or has in his possession any newspaper, book or document containing any seditious words or writing, or any newspaper, book or document which has been declared by the Governor in Council by proclamation to be a seditious publication or to be prohibited to be imported into the Colony; or

(*d*) imports into the Colony any newspaper, book or document containing any seditious words or writing or any newspaper, book or document which has been declared by the Governor in Council by proclamation to be a seditious publication or to be prohibited to be imported into the Colony,

is guilty of an offence and is liable to imprisonment for two years. If he has been previously convicted of any such offence he is liable to imprisonment for seven years.

Possessing seditious publications.

48. (1) Any person to whom any newspaper, book or document containing any seditious words or writing or any newspaper, book or document which has been declared by the Governor in Council by proclamation to be a seditious publication or to be prohibited to be imported into the Colony has been sent without his knowledge or privity shall forthwith deliver to the officer in charge of the nearest police station or to the nearest administrative officer such newspaper, book or document, and in default thereof is guilty of an offence and is liable to imprisonment for one year.

(2) A person who has complied with the provisions of sub-section (1) of this section or has been convicted of an offence under such sub-section shall not be liable to be convicted of an offence under paragraph (*c*) of section 47 of this Code.

Evidence necessary for conviction.

49. A person cannot be convicted of any offences against section 47 or section 48 on the uncorroborated testimony of one witness.

Forfeiture of seditious publications.

50. A court on convicting any person of an offence under section 47 or section 48 shall order any seditious or prohibited newspaper, book or document to be forfeited to His Majesty.

Powers of detention and examination of suspected packages, etc.

51. Any of the following officers, viz.—

any officer of the Posts and Telegraphs Department not below the rank of Junior Postmaster;

any officer of the Customs Department not below the rank of Examining Officer;

any police officer not below the rank of European Police Constable;

any other officer authorised in that behalf by the Governor,

may detain, open and examine any package or article which he suspects to contain any newspaper, book or document which it is an offence under section 47 or section 48 to print, publish, import, sell, offer for sale, distribute or possess, and during such examination may detain any person importing, distributing or posting such package or article, or in whose possession such package or article is found. If any such newspaper, book or document is found in such package or article, the whole package or article may be impounded and retained by the officer, and the person importing, distributing or posting it, or in whose possession it is found, may be arrested without warrant and proceeded against for the commission of an offence under section 47 or section 48.

Powers of arrest.

52. The Governor in Council may by proclamation declare any newspaper, book or document to be a seditious publication.

Power of Governor in Council to declare documents, etc., to be seditious publications.

53. The Governor in Council may by proclamation prohibit the importation into the Colony of any newspaper, book or document.

Power to prohibit importation of documents.

54. For the purposes of the seven last preceding sections—

Interpretation.

"newspaper" means any periodical work containing public news or comments on public news, and includes any part of such work or extract therefrom;

"book" includes every volume, part or division of a volume, pamphlet or leaflet in any language, and every sheet of music, map, chart or plan separately printed or lithographed, and any part of or extract from any such volume, pamphlet, leaflet, sheet of music, map, chart or plan;

"document" includes any painting, drawing or photograph or other visible representation.

55. For the purposes of the eight last preceding sections a seditious intention is an intention to bring into hatred or contempt or to excite disaffection against the person of His Majesty, his heirs or successors or the Government of the Colony, as by law established, or against the administration of justice; or to excite the inhabitants of the Colony to attempt to procure the alteration otherwise than by lawful means of any matter in the Colony as by law established; or to raise discontent or disaffection amongst the inhabitants of the Colony; or to promote feelings of ill-will and hostility between different classes of the population of the Colony:

Seditious intentions defined.

Provided that it shall be lawful for any person—

Innocent intention.

(*a*) to endeavour in good faith to show that the Sovereign has been misled or mistaken in any of his measures; or

(*b*) to point out in good faith errors or defects in the government or constitution of the Colony as by law established, or in legislation, or in the administration of justice, with a view to the reformation of such errors or defects; or

(*c*) to excite in good faith the inhabitants of the Colony to attempt to procure by lawful means the alteration of any matter in the Colony as by law established; or

(*d*) to point out in good faith, with a view to their removal, any matters which are producing or have a tendency to produce feelings of ill-will and enmity between different classes of the population of the Colony.

Unlawful oaths to commit capital offences.

56. Any person who—

(1) administers, or is present at and consents to the administering of, any oath, or engagement in the nature of an oath, purporting to bind the person who takes it to commit any offence punishable with death; or

(2) takes any such oath or engagement, not being compelled to do so,

is guilty of a felony, and is liable to imprisonment for life.

Other unlawful oaths to commit offences.

57. Any person who—

(1) administers, or is present at and consents to the administering of, any oath or engagement in the nature of an oath, purporting to bind the person who takes it to act in any of the ways following, that is to say—

(*a*) to engage in any mutinous or seditious enterprise;

(*b*) to commit any offence not punishable with death;

(*c*) to disturb the public peace;

(*d*) to be of any association, society or confederacy, formed for the purpose of doing any such act as aforesaid;

(*e*) to obey the orders or commands of any committee or body of men not lawfully constituted, or of any leader or commander or other person not having authority by law for that purpose;

(*f*) not to inform or give evidence against any associate, confederate or other person;

(*g*) not to reveal or discover any unlawful association, society or confederacy, or any illegal act done or to be done, or any illegal oath or engagement that may have been administered or tendered to or taken by himself or any other person, or the import of any such oath or engagement; or

(2) takes any such oath or engagement, not being compelled to do so,

is guilty of a felony, and is liable to imprisonment for seven years.

Compulsion, how far a defence.

58. A person who takes any such oath or engagement as is mentioned in the two last preceding sections cannot set up as a defence that he was compelled to do so, unless within fourteen days after taking it, or, if he is prevented by actual force or sickness, within fourteen days after the termination of

such prevention, he declares by information on oath before a magistrate, or, if he is on actual service in the military forces of the Colony or in the police force, either by such information or by information to his commanding officer, the whole of what he knows concerning the matter, including the person or persons by whom and in whose presence, and the place where and the time when, the oath or engagement was administered or taken.

Unlawful drilling.

59. (1) Any person who—

(*a*) without the permission of the Governor trains or drills any other person to the use of arms or the practice of military exercises, movements or evolutions; or

(*b*) is present at any meeting or assembly of persons, held without the permission of the Governor, for the purpose of training or drilling any other persons to the use of arms or the practice of military exercises, movements or evolutions,

is guilty of a felony, and is liable to imprisonment for seven years.

(2) Any person who, at any meeting or assembly held without the permission of the Governor, is trained or drilled to the use of arms, or the practice of military exercises, movements or evolutions, or who is present at any such meeting or assembly for the purpose of being so trained or drilled, is guilty of a misdemeanour.

Publishing false reports.

60. Any person who makes, publishes or circulates any statement, rumour or report—

(*a*) with intent to cause, or which is likely to cause, any person employed in the public service to disregard or fail in his duty; or

(*b*) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public, whereby any person may be induced to commit an offence against the State, or against the public tranquillity; or

(*c*) with intent to incite, or which is likely to incite, any class or community of persons to commit an offence against any other class or community,

is guilty of a misdemeanour, and is liable to imprisonment for two years:

Provided that it shall not amount to an offence under this section when the person making, publishing or circulating any statement, rumour or report has reasonable grounds to believe that the same is true, and makes, publishes or circulates it without any such intent as aforesaid.

CHAPTER VIII.

Offences Affecting Relations with Foreign States and External Tranquillity.

Defamation of foreign princes.

61. Any person who, without such justification or excuse as would be sufficient in the case of the defamation of a private person, publishes anything intended to be read, or any sign or visible representation, tending to degrade, revile or expose to hatred or contempt any foreign prince, potentate, ambassador, or other foreign dignitary with intent to disturb

peace and friendship between the United Kingdom or the Colony and the country to which such prince, potentate, ambassador or dignitary belongs, is guilty of a misdemeanour.

Foreign enlistment.

62. Any person commits a misdemeanour who does any of the following acts without the licence of His Majesty under his sign manual, or signified by Order in Council, or by proclamation, that is to say—

(*a*) who prepares or fits out any naval or military expedition to proceed against the dominions of any friendly state, or is engaged in such preparation or fitting-out, or assists therein, or is employed in any capacity in such expedition; or

(*b*) who, being a British subject, accepts or agrees to accept any commission or engagement in the military or naval service of any foreign state at war with any friendly state, or, whether a British subject or not, induces any other person to accept or agree to accept any commission or engagement in the military or naval service of any such foreign state as aforesaid; or

(*c*) who, being a British subject, quits or goes on board any vessel with a view of quitting the Colony, with intent to accept any commission or engagement in the military or naval service of any foreign state at war with a friendly state, or, whether a British subject or not, induces any other person to quit or to go on board any vessel with a view of quitting the Colony with the like intent; or

(*d*) who, being the master or owner of any vessel, knowingly either takes on board, or engages to take on board, or has on board such vessel, any illegally enlisted person; or

(*e*) who, with intent or knowledge, or having reasonable cause to believe that the same will be employed in the military or naval service of any foreign state at war with any friendly state, builds, agrees to build, causes to be built, equips, despatches, or causes or allows to be despatched, any vessel, or issues or delivers any commission for any vessel:

Provided that a person building, causing to be built, or equipping a vessel in any of the cases aforesaid, in pursuance of a contract made before the commencement of such war as aforesaid, is not liable to any of the penalties specified in this section in respect of such building or equipping if—

(i) upon a proclamation of neutrality being issued by His Majesty he forthwith gives notice to the Governor or the Secretary of State that he is so building, causing to be built, or equipping such vessel, and furnishes such particulars of the contract and of any matters relating to, or done, or to be done under the contract as may be required by the Governor or the Secretary of State; and

(ii) he gives such security, and takes and permits to be taken such other measures, if any, as the Governor or the Secretary of State may prescribe for ensuring that such vessel shall not be despatched, delivered, or removed without the licence of His Majesty until the termination of such war as aforesaid.

63. Any person who is guilty of piracy or any crime connected with or relating or akin to piracy shall be liable to be tried and punished according to the law of England for the time being in force. **Piracy.**

CHAPTER IX.

UNLAWFUL ASSEMBLIES, RIOTS AND OTHER OFFENCES AGAINST PUBLIC TRANQUILLITY.

64. (1) A society includes any combination of ten or more persons whether the society be known by any name or not. **Unlawful society.**

(2) A society is an unlawful society—

(i) if formed for any of the following purposes :—

(*a*) levying war or encouraging or assisting any person to levy war on the Government or the inhabitants of any part of the Colony; or

(*b*) killing or injuring or inciting to the killing or injuring of any person; or

(*c*) destroying or injuring or inciting to the destruction or injuring of any property; or

(*d*) subverting or promoting the subversion of the Government or of its officials; or

(*e*) committing or inciting to acts of violence or intimidation; or

(*f*) interfering with, or resisting, or inciting to interference with or resistance to the administration of the law; or

(*g*) disturbing or inciting to the disturbance of peace and order in any part of the Colony; or

(ii) if declared by an order of the Governor in Council to be a society dangerous to the good government of the Colony.

65. Any person who manages or assists in the management of an unlawful society is guilty of a felony and is liable to imprisonment for seven years. **Managing unlawful society.**

66. Any person who— **Being member of unlawful society.**

(*a*) is a member of an unlawful society; or

(*b*) knowingly allows a meeting of an unlawful society, or of members of an unlawful society, to be held in any house, building or place belonging to or occupied by him, or over which he has control,

is guilty of a felony, and is liable to imprisonment for three years.

67. (1) A prosecution for an offence under the two last preceding sections shall not be instituted except with the consent of the Governor: **Prosecutions under sections 65 and 66.**

Provided that a person charged with such an offence may be arrested, or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody or on bail, notwithstanding that the consent of the Governor

to the institution of a prosecution for the offence has not been obtained, but no further or other proceedings shall be taken until that consent has been obtained.

(2) In any prosecution for an offence under the two last preceding sections it shall not be necessary to prove that the society consisted of ten or more members; but it shall be sufficient to prove the existence of a combination of persons, and the onus shall then rest with the accused to prove that the number of members of such combination did not amount to ten.

(3) Any person who attends a meeting of an unlawful society shall be presumed, until and unless the contrary is proved, to be a member of the society.

(4) Any person who has in his possession or custody or under his control any of the insignia, banners, arms, books, papers, documents or other property belonging to an unlawful society, or wears any of the insignia, or is marked with any mark of the society, shall be presumed, unless and until the contrary is proved, to be a member of the society.

Power of entry, arrest, search, etc.

68. Any peace officer, and any police officer authorised in writing by a peace officer, may enter with or without assistance any house or building or into any place in which he has reason to believe that a meeting of an unlawful society, or of persons who are members of an unlawful society, is being held, and to arrest or cause to be arrested all persons found therein and to search such house, building or place, and seize or cause to be seized all insignia, banners, arms, books, papers, documents and other property which he may have reasonable cause to believe to belong to any unlawful society, or to be in any way connected with the purpose of the meeting.

For the purposes of this section the expression " peace officer " means any magistrate or any police officer not below the rank of Assistant Superintendent.

Declaration by Governor in Council.

69. (1) When a society is declared to be an unlawful society by an order of the Governor in Council, the following consequences shall ensue :—

(*a*) the property of the society within the Colony shall forthwith vest in an officer appointed by the Governor;

(*b*) the officer appointed by the Governor shall proceed to wind up the affairs of the society, and after satisfying and providing for all debts and liabilities of the society and the cost of the winding up, if there shall then be any surplus assets shall prepare and submit to the Governor a scheme for the application of such surplus assets;

(*c*) such scheme, when submitted for approval, may be amended by the Governor in such way as he shall think proper in the circumstances of the case;

(*d*) the approval of the Governor to such scheme shall be denoted by the endorsement thereon of a memorandum of such approval signed by the Governor, and, upon this being done, the surplus assets, the subject of the scheme, shall be held by such officer upon the terms and to the purposes thereby prescribed;

(*e*) for the purpose of the winding up, the officer appointed by the Governor shall have all the powers vested in the Official Receiver for the purpose of the discovering of the property of a debtor and the realisation thereof.

(2) The Governor may, for the purpose of enabling a society to wind up its own affairs, suspend the operation of this section for such period as to him shall seem expedient.

(3) The provisions of sub-section (1) shall not apply to any property seized at any time under section 68.

Forfeiture of insignia, etc.

70. Subject to the provisions of the last preceding section, the insignia, banners, arms, books, papers, documents and other property belonging to an unlawful society shall be forfeited to His Majesty, and shall be dealt with in such manner as the Governor may direct.

Definitions—

Unlawful assembly.

71. When three or more persons assemble with intent to commit an offence, or, being assembled with intent to carry out some common purpose, conduct themselves in such a manner as to cause persons in the neighbourhood reasonably to fear that the persons so assembled will commit a breach of the peace, or will by such assembly needlessly and without any reasonable occasion provoke other persons to commit a breach of the peace, they are an unlawful assembly.

It is immaterial that the original assembling was lawful if, being assembled, they conduct themselves with a common purpose in such a manner as aforesaid.

Riot.

When an unlawful assembly has begun to execute the purpose for which it assembled by a breach of the peace and to the terror of the public, the assembly is called a riot, and the persons assembled are said to be riotously assembled.

Punishment of unlawful assembly.

72. Any person who takes part in an unlawful assembly is guilty of a misdemeanour, and is liable to imprisonment without hard labour for one year.

Punishment of riot.

73. Any person who takes part in a riot is guilty of a misdemeanour.

Making proclamation for rioters to disperse.

74. Any magistrate or, in his absence, any commissioned or non-commissioned officer of police not below the rank of European constable, or any commissioned officer in the military forces of the Colony, in whose view twelve or more persons are riotously assembled, or who apprehends that a riot is about to be committed by twelve or more persons assembled within his view, may make or cause to be made a proclamation in the King's name, in such form as he thinks fit, commanding the rioters or persons so assembled to disperse peaceably.

Dispersion of rioters after proclamation made.

75. If upon the expiration of a reasonable time after such proclamation made, or after the making of such proclamation has been prevented by force, twelve or more persons continue riotously assembled together, any person authorised to make proclamation, or any police officer, or any other person acting in aid of such person or police officer, may do all things necessary for dispersing the persons so continuing assembled, or for apprehending them or any of them, and, if any person makes resistance, may use all such force as is

reasonably necessary for overcoming such resistance, and shall not be liable in any criminal or civil proceeding for having, by the use of such force, caused harm or death to any person.

Rioting after proclamation.

76. If proclamation is made, commanding the persons engaged in a riot, or assembled with the purpose of committing a riot, to disperse, every person who, at or after the expiration of a reasonable time from the making of such proclamation, takes or continues to take part in the riot or assembly, is guilty of a felony, and is liable to imprisonment for five years.

Preventing or obstructing the making of proclamation.

77. Any person who forcibly prevents or obstructs the making of such proclamation as is in section 74 mentioned, is guilty of a felony, and is liable to imprisonment for ten years; and if the making of the proclamation is so prevented, every person who, knowing that it has been so prevented, takes or continues to take part in the riot or assembly, is liable to imprisonment for five years.

Rioters demolishing buildings, etc.

78. Any persons who, being riotously assembled together, unlawfully pull down or destroy, or begin to pull down or destroy any building, railway, machinery or structures are guilty of a felony, and each of them is liable to imprisonment for life.

Rioters injuring buildings, machinery, etc.

79. Any persons who, being riotously assembled together, unlawfully damage any of the things in the last preceding section mentioned, are guilty of a felony, and each of them is liable to imprisonment for seven years.

Riotously interfering with railway, vehicle or vessel.

80. All persons are guilty of a misdemeanour who, being riotously assembled, unlawfully and with force prevent, hinder or obstruct the loading or unloading of any railway, vehicle or vessel, or the starting or transit of any railway or vehicle, or the sailing or navigation of any vessel, or unlawfully and with force board any railway, vehicle or vessel with intent to do so.

Going armed in public.

81. Any person who goes armed in public without lawful occasion in such a manner as to cause terror to any person is guilty of a misdemeanour, and his arms may be forfeited.

Forcible entry.

82. Any person who, in order to take possession thereof, enters on any lands or tenements in a violent manner, whether such violence consists in actual force applied to any other person or in threats or in breaking open any house or in collecting an unusual number of people, is guilty of the misdemeanour termed forcible entry.

It is immaterial whether he is entitled to enter on the land or not, provided that a person who enters upon lands or tenements of his own, but which are in the custody of his servant or bailiff, does not commit the offence of forcible entry.

Forcible detainer.

83. Any person who, being in actual possession of land without colour of right, holds possession of it, in a manner likely to cause a breach of the peace or reasonable apprehension of a breach of the peace, against a person entitled by law to the possession of the land is guilty of the misdemeanour termed forcible detainer.

84. Any person who takes part in a fight in a public place is guilty of a misdemeanour, and is liable to imprisonment for one year. **Affray.**

85. Any person who challenges another to fight a duel, or attempts to provoke another to fight a duel, or attempts to provoke any person to challenge another to fight a duel, is guilty of a misdemeanour. **Challenge to fight a duel.**

86. Any person who— **Threatening violence.**

(1) with intent to intimidate or annoy any person, threatens to break or injure a dwelling-house; or

(2) with intent to alarm any person in a dwelling-house, discharges loaded firearms or commits any other breach of the peace,

is guilty of a misdemeanour, and is liable to imprisonment for one year.

If the offence is committed in the night the offender is liable to imprisonment for two years.

87. Any persons who assemble together, to the number of two or more, for the purpose of unshipping, carrying or concealing any goods subject to customs duty and liable to forfeiture under any law relating to the customs, are guilty of a misdemeanour, and each of them is liable to a fine not exceeding one hundred pounds or to imprisonment for six months. **Assembling for the purpose of smuggling.**

Division II.—Offences Against the Administration of Lawful Authority.

CHAPTER X.

Corruption and the Abuse of Office.

88. Any person who— **Official corruption.**

(1) being employed in the public service, and being charged with the performance of any duty by virtue of such employment, corruptly asks, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by him in the discharge of the duties of his office; or

(2) corruptly gives, confers, or procures, or promises or offers to give or confer, or to procure, or attempt to procure, to, upon, or for any person employed in the public service, or to, upon, or for any other person, any property or benefit of any kind on account of any such act or omission on the part of the person so employed,

is guilty of a felony, and is liable to imprisonment for seven years.

89. Any person who, being employed in the public service, takes or accepts from any person for the performance of his duty as such officer, any reward beyond his proper pay and emoluments, or any promise of such reward, is guilty of a misdemeanour, and is liable to imprisonment for three years. **Extortion by public officers.**

Public officers receiving property to show favour.

90. Any person who, being employed in the public service, receives any property or benefit of any kind for himself, on the understanding, express or implied, that he shall favour the person giving the property or conferring the benefit, or any one in whom that person is interested, in any transaction then pending, or likely to take place, between the person giving the property or conferring the benefit, or any one in whom he is interested, and any person employed in the public service, is guilty of a misdemeanour, and is liable to imprisonment for six months.

Officers charged with administration of property of a special character or with special duties.

91. Any person who, being employed in the public service, and being charged by virtue of his employment with any judicial or administrative duties respecting property of a special character, or respecting the carrying on of any manufacture, trade or business of a special character, and having acquired or holding, directly or indirectly, a private interest in any such property, manufacture, trade or business, discharges any such duties with respect to the property, manufacture, trade or business in which he has such interest or with respect to the conduct of any person in relation thereto, is guilty of a misdemeanour, and is liable to imprisonment for one year.

False claims by officials.

92. Any person who, being employed in the public service in such a capacity as to require him or to enable him to furnish returns or statements touching any sum payable or claimed to be payable to himself or to any other person, or touching any other matter required to be certified for the purpose of any payment of money or delivery of goods to be made to any person, makes a return or statement touching any such matter which is, to his knowledge, false in any material particular, is guilty of a misdemeanour.

Abuse of office.

93. Any person who, being employed in the public service, does or directs to be done, in abuse of the authority of his office, any arbitrary act prejudicial to the rights of another, is guilty of a misdemeanour.

If the act is done or directed to be done for purposes of gain, he is guilty of a felony, and is liable to imprisonment for three years.

A prosecution for any offence under this or either of the two last preceding sections shall not be instituted except by or with the sanction of the Attorney General.

False certificates by public officers.

94. Any person who, being authorised or required by law to give any certificate touching any matter by virtue whereof the rights of any person may be prejudicially affected, gives a certificate which is, to his knowledge, false in any material particular is guilty of a misdemeanour.

False assumption of authority.

95. Any person who—

(1) not being a judicial officer, assumes to act as a judicial officer; or

(2) without authority assumes to act as a person having authority by law to administer an oath or take a solemn declaration or affirmation or affidavit or to do any other act of a public nature which can only be done by persons authorised by law to do so; or

(3) represents himself to be a person authorised by law to sign a document testifying to the contents of any register or record kept by lawful authority, or testifying to any fact or event, and signs such document as being so authorised, when he is not, and knows that he is not, in fact, so authorised,

is guilty of a misdemeanour.

Personating public officers.

96. Any person who—

(1) personates any person employed in the public service on an occasion when the latter is required to do any act or attend in any place by virtue of his employment; or

(2) falsely represents himself to be a person employed in the public service, and assumes to do any act or to attend in any place for the purpose of doing any act by virtue of such employment,

is guilty of a misdemeanour, and is liable to imprisonment for three years.

CHAPTER XI.

Offences Relating to the Administration of Justice.

Perjury and subornation of perjury.

97. (1) Any person who, in any judicial proceeding, or for the purpose of instituting any judicial proceeding, knowingly gives false testimony touching any matter which is material to any question then depending in that proceeding or intended to be raised in that proceeding, is guilty of the misdemeanour termed perjury.

It is immaterial whether the testimony is given on oath or under any other sanction authorised by law.

The forms and ceremonies used in administering the oath or in otherwise binding the person giving the testimony to speak the truth are immaterial, if he assent to the forms and ceremonies actually used.

It is immaterial whether the false testimony is given orally or in writing.

It is immaterial whether the court or tribunal is properly constituted, or is held in the proper place, or not, if it actually acts as a court or tribunal in the proceeding in which the testimony is given.

It is immaterial whether the person who gives the testimony is a competent witness or not, or whether the testimony is admissible in the proceeding or not.

Subornation.

(2) Any person who aids, abets, counsels, procures or suborns another person to commit perjury is guilty of the misdemeanour termed subornation of perjury.

Punishment of perjury.

98. Any person who commits perjury or suborns perjury is liable to imprisonment for seven years.

Evidence on charge of perjury.

99. A person cannot be convicted of committing perjury or of subornation of perjury solely upon the evidence of one witness as to the falsity of any statement alleged to be false.

Fabricating evidence.

100. Any person who, with intent to mislead any tribunal in any judicial proceeding—

(1) fabricates evidence by any means other than perjury or subornation of perjury; or

(2) knowingly makes use of such fabricated evidence,

is guilty of a misdemeanour, and is liable to imprisonment for seven years.

False swearing.

101. Any person who swears falsely or makes a false affirmation or declaration before any person authorised to administer an oath or take a declaration upon a matter of public concern under such circumstances that the false swearing or declaration if committed in a judicial proceeding would have amounted to perjury, is guilty of a misdemeanour.

Deceiving witnesses.

102. Any person who practises any fraud or deceit, or knowingly makes or exhibits any false statement, representation, token, or writing, to any person called or to be called as a witness in any judicial proceeding, with intent to affect the testimony of such person as a witness, is guilty of a misdemeanour.

Destroying evidence.

103. Any person who, knowing that any book, document or other thing of any kind is or may be required in evidence in a judicial proceeding, wilfully destroys it or renders it illegible or undecipherable or incapable of identification, with intent thereby to prevent it from being used in evidence, is guilty of a misdemeanour.

Conspiracy to defeat justice and interference with witnesses.

104. Any person commits a misdemeanour who—

(*a*) conspires with any other person to accuse any person falsely of any crime or to do anything to obstruct, prevent, pervert or defeat the course of justice; or

(*b*) in order to obstruct the due course of justice, dissuades, hinders or prevents any person lawfully bound to appear and give evidence as a witness from so appearing and giving evidence, or endeavours to do so; or

(*c*) obstructs or in any way interferes with or knowingly prevents the execution of any legal process, civil or criminal.

Compounding felonies.

105. Any person who asks, receives, or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person upon any agreement or understanding that he will compound or conceal a felony, or will abstain from, discontinue or delay a prosecution for a felony, or will withhold any evidence thereof, is guilty of a misdemeanour.

Compounding penal actions.

106. Any person who, having brought, or under pretence of bringing, an action against another person upon a penal Ordinance or Statute in order to obtain from him a penalty for any offence committed or alleged to have been committed by him, compounds the action without the order or consent of the court in which the action is brought or is to be brought, is guilty of a misdemeanour.

Advertisements for stolen property.

107. Any person who—

(1) publicly offers a reward for the return of any property which has been stolen or lost, and in the offer makes use of any words purporting that no questions will be asked, or that the person producing such property will not be seized or molested; or

(2) publicly offers to return to any person who may have bought or advanced money by way of loan upon any stolen or lost property the money so paid or advanced, or any other sum of money or reward for the return of such property; or

Offences relating to judicial proceedings.

(3) prints or publishes any such offer,

is guilty of a misdemeanour.

108. (1) Any person who—

(*a*) within the premises in which any judicial proceeding is being had or taken, or within the precincts of the same, shows disrespect, in speech or manner, to or with reference to such proceeding, or any person before whom such proceeding is being had or taken; or

(*b*) having been called upon to give evidence in a judicial proceeding, fails to attend, or having attended, refuses to be sworn or to make an affirmation or, having been sworn or affirmed, refuses without lawful excuse to answer a question or to produce a document, or remains in the room in which such proceeding is being had or taken, after the witnesses have been ordered to leave such room; or

(*c*) causes an obstruction or disturbance in the course of a judicial proceeding; or

(*d*) while a judicial proceeding is pending, makes use of any speech or writing misrepresenting such proceeding or capable of prejudicing any person in favour of or against any parties to such proceeding, or calculated to lower the authority of any person before whom such proceeding is being had or taken; or

(*e*) publishes a report of the evidence taken in any judicial proceeding which has been directed to be held in private; or

(*f*) attempts wrongfully to interfere with or influence a witness in a judicial proceeding, either before or after he has given evidence, in connexion with such evidence; or

(*g*) dismisses a servant because he has given evidence on behalf of a certain party to a judicial proceeding; or

(*h*) wrongfully retakes possession of land from any person who has recently obtained possession by a writ of court; or

(*i*) commits any other act of intentional disrespect to any judicial proceeding, or to any person before whom such proceeding is being had or taken,

is guilty of an offence, and is liable to imprisonment for three months.

(2) The provisions of this section shall be deemed to be in addition to and not in derogation from the power of the Supreme Court to punish for contempt of court.

CHAPTER XII.

Rescues and Escapes and Obstructing Officers of Court of Law.

Rescue.

109. Any person, who by force rescues or attempts to rescue from lawful custody any other person—

(*a*) is, if such last-named person is under sentence of death or imprisonment for life, or charged with an offence punishable with death or imprisonment for life, guilty of a felony, and is liable to imprisonment for life; and

(*b*) is, if such other person is imprisoned on a charge or under sentence for any offence other than those specified above, guilty of a felony, and is liable to imprisonment for seven years; and

(*c*) is, in any other case, guilty of a misdemeanour.

If the person rescued is in the custody of a private person, the offender must have notice of the fact that the person rescued is in such custody.

Escape.

110. Any person who, being in lawful custody, escapes from such custody, is guilty of a misdemeanour.

Aiding prisoners to escape.

111. Any person who—

(1) aids a prisoner in escaping or attempting to escape from lawful custody; or

(2) conveys anything or causes anything to be conveyed into a prison with intent to facilitate the escape of a prisoner,

is guilty of a felony, and is liable to imprisonment for seven years.

Removal, etc., of property under lawful seizure.

112. Any person who, when any property has been attached or taken under the process of authority of any court, knowingly, and with intent to hinder or defeat the attachment or process, receives, removes, retains, conceals, or disposes of such property, is guilty of a felony, and is liable to imprisonment for three years.

Obstructing court officers.

113. Any person who wilfully obstructs or resists any person lawfully charged with the execution of an order or warrant of any court, is guilty of a misdemeanour, and is liable to imprisonment for one year.

CHAPTER XIII.

Miscellaneous Offences Against Public Authority.

Frauds and breaches of trust by persons employed in the public service.

114. Any person employed in the public service who, in the the discharge of the duties of his office, commits any fraud or breach of trust affecting the public, whether such fraud or breach of trust would have been criminal or not if committed against a private person, is guilty of a misdemeanour.

Neglect of official duty.

115. Every person employed in the public service who wilfully neglects to perform any duty which he is bound either by common law or by Statute or Ordinance to perform, provided that the discharge of such duty is not attended with greater danger than a man of ordinary courage might be expected to face, is guilty of a misdemeanour.

116. Everyone who wilfully disobeys any Statute or Ordinance by doing any act which it forbids, or by omitting to do any act which it requires to be done, and which concerns the public or any part of the public, is guilty of a misdemeanour, and is liable, unless it appears from the Statute or Ordinance that it was the intention of the Legislature to provide some other penalty for such disobedience, to imprisonment for two years.

Disobedience of statutory duty.

117. Everyone who disobeys any order, warrant or command duly made, issued or given by any court, officer or person acting in any public capacity and duly authorised in that behalf, is guilty of a misdemeanour, and is liable, unless any other penalty or mode of proceeding is expressly prescribed in respect of such disobedience, to imprisonment for two years.

Disobedience of lawful orders.

Division III.—Offences Injurious to the Public in General.

CHAPTER XIV.

Offences Relating to Religion.

118. Any person who destroys, damages or defiles any place of worship or any object which is held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, is guilty of a misdemeanour.

Insult to religion of any class.

119. Any person who voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship or religious ceremony, is guilty of a misdemeanour.

Disturbing religious assemblies.

120. Every person who, with the intention of wounding the feelings of any person or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby, commits any trespass in any place of worship or in any place of sepulture, or in any place set apart for the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the purpose of funeral ceremonies, is guilty of a misdemeanour.

Trespassing on burial places.

121. Any person who, with the deliberate intention of wounding the religious feelings of any person, utters any word, or makes any sound in the hearing of that person, or makes any gesture in the sight of that person, or places any object in the sight of that person, is guilty of a misdemeanour, and is liable to imprisonment for one year.

Uttering words with the intent to wound religious feelings.

CHAPTER XV.

Offences Against Morality.

122. Any person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of bodily harm, or by means of false representations as to the nature of the act, or, in the case of a married woman, by personating her husband, is guilty of the felony termed rape.

Definition of rape.

Punishment of rape.

123. Any person who commits the offence of rape is liable to be punished with death or with imprisonment for life, or for any term not less than three years, with or without corporal punishment.

Attempt.

124. Any person who attempts to commit rape is guilty of a felony, and is liable to imprisonment for life, with or without corporal punishment.

Abduction.

125. Any person who, with intent to marry or carnally know a woman of any age, or to cause her to be married or carnally known by any other person, takes her away, or detains her, against her will, is guilty of a felony, and is liable to imprisonment for seven years.

Abduction of girls under sixteen.

126. Any person who unlawfully takes an unmarried girl under the age of sixteen years out of the custody or protection of her father or mother, or other person having the lawful care or charge of her, and against the will of such father or mother or other person, is guilty of a misdemeanour.

Indecent assaults on females.

127. (1) Any person who unlawfully and indecently assaults any woman or girl is guilty of a felony, and is liable to imprisonment for fourteen years, with or without corporal punishment.

(2) It shall be no defence to a charge for an indecent assault on a girl under the age of sixteen years to prove that she consented to the act of indecency :

Provided that it shall be a sufficient defence to any charge under this sub-section if it shall be made to appear to the court or jury before whom the charge shall be brought that the person so charged had reasonable cause to believe and did in fact believe that the girl was of or above the age of sixteen years.

Indecently insulting or annoying females.

(3) Any person who is found in any dwelling-house or in any verandah or passage attached thereto or in any yard, garden or other land adjacent to or within the curtilage of such dwelling-house with intent indecently to insult or annoy any female inmate of such dwelling-house is guilty of a misdemeanour, and is liable to imprisonment for one year.

Defilement of girls under 16 years of age.

128. (1) Any person who unlawfully and carnally knows any girl under the age of sixteen years is guilty of a felony, and is liable to imprisonment for life, with or without corporal punishment.

Attempt.

(2) Any person who attempts to have unlawful carnal knowledge of any girl under the age of sixteen years is guilty of a felony, and is liable to imprisonment for fourteen years, with or without corporal punishment :

Provided that it shall be a sufficient defence to any charge under this section if it shall be made to appear to the court or jury before whom the charge shall be brought that the person so charged had reasonable cause to believe and did in fact believe that the girl was of or above the age of sixteen years.

Defilement of idiots or imbeciles.

129. Any person who, knowing a woman or girl to be an idiot or imbecile, has or attempts to have unlawful carnal knowledge of her under circumstances not amounting to rape, but which prove that the offender knew at the time of the

commission of the offence that the woman or girl was an idiot or imbecile, is guilty of a felony, and is liable to imprisonment for fourteen years, with or without corporal punishment.

Procuration.

130. Any person who—

(1) procures or attempts to procure any girl or woman under the age of twenty-one years, not being a common prostitute or of known immoral character, to have unlawful carnal connexion, either in the Colony or elsewhere, with any person or persons; or

(2) procures or attempts to procure any woman or girl to become, either in the Colony or elsewhere, a common prostitute; or

(3) procures or attempts to procure any woman or girl to leave the Colony, with intent that she may become an inmate of or frequent a brothel elsewhere; or

(4) procures or attempts to procure any woman or girl to leave her usual place of abode in the Colony (such place not being a brothel), with intent that she may for the purposes of prostitution become an inmate of or frequent a brothel either in the Colony or elsewhere,

is guilty of a misdemeanour, and, subject to the provisions of section 27, may, at the discretion of the court, and in addition to any term of imprisonment awarded in respect of the said offence, be sentenced to corporal punishment:

Provided that no person shall be convicted of any offence under this section upon the evidence of one witness only, unless such witness be corroborated in some material particular by evidence implicating the accused.

Procuring defilement of woman by threats or fraud or administering drugs.

131. Any person who—

(1) by threats or intimidation procures or attempts to procure any woman or girl to have any unlawful carnal connexion, either in the Colony or elsewhere; or

(2) by false pretences or false representations procures any woman or girl, not being a common prostitute or of known immoral character, to have any unlawful carnal connexion, either in the Colony or elsewhere; or

(3) applies, administers to, or causes to be taken by any woman or girl any drug, matter or thing, with intent to stupefy or overpower so as thereby to enable any person to have unlawful carnal connexion with such woman or girl,

is guilty of a misdemeanour: Provided that no person shall be convicted of an offence under this section upon the evidence of one witness only, unless such witness be corroborated in some material particular by evidence implicating the accused.

Householder, etc., permitting defilement of girl under 13 years on his premises.

132. Any person who, being the owner or occupier of premises or having or acting or assisting in the management or control thereof, induces or knowingly suffers any girl under the age of thirteen years to resort to or be upon such premises for the purpose of being unlawfully and carnally known by

any man, whether such carnal knowledge is intended to be with any particular man or generally, is guilty of a felony, and is liable to imprisonment for five years :

Provided that it shall be a sufficient defence to any charge under this section if it shall be made to appear to the court or jury before whom the charge shall be brought that the person so charged had reasonable cause to believe and did in fact believe that the girl was of or above the age of sixteen years.

Householder permitting defilement of girl under 16 years of age on his premises.

133. Any person who, being the owner or occupier of premises, or having or acting or assisting in the management or control thereof, induces or knowingly suffers any girl above the age of thirteen years and under the age of sixteen years to resort to or be upon such premises for the purpose of being unlawfully and carnally known by any man, whether such carnal knowledge is intended to be with any particular man or generally, is guilty of a misdemeanour :

Provided that it shall be a sufficient defence to any charge under this section if it shall be made to appear to the court or jury before whom the charge shall be brought that the person so charged had reasonable cause to believe and did in fact believe that the girl was of or above the age of sixteen years.

Detention with intent or in brothel.

134. Any person who detains any woman or girl against her will—

(1) in or upon any premises with intent that she may be unlawfully and carnally known by any man, whether any particular man or generally ; or

(2) in any brothel,

is guilty of a misdemeanour.

Constructive detention by withholding clothes.

When a woman or girl is in or upon any premises for the purpose of having any unlawful carnal connexion, or is in any brothel, a person shall be deemed to detain such woman or girl in or upon such premises or in such brothel if, with intent to compel or induce her to remain in or upon such premises or in such brothel, such person withholds from such woman or girl any wearing apparel or other property belonging to her, or where wearing apparel has been lent or otherwise supplied to such woman or girl by or by the directions of such person, such person threatens such woman or girl with legal proceedings if she takes away with her the wearing apparel so lent or supplied.

No legal proceedings, whether civil or criminal, shall be taken against any such woman or girl for taking away or being found in possession of any such wearing apparel as was necessary to enable her to leave such premises or brothel.

Power of search.

135. If it appears to any magistrate, on information made before him on oath by any parent, relative or guardian of any woman or girl or other person who, in the opinion of the magistrate, is acting bona fide in the interests of any woman or girl, that there is reasonable cause to suspect that such woman or girl is unlawfully detained for immoral purposes by any person in any place within the jurisdiction of such magistrate, such magistrate may issue a warrant authorising the person named therein to search for, and, when found, to take to and detain in a place of safety such woman or girl until she can be brought before a magistrate ; and the magis-

trate before whom such woman or girl is brought may cause her to be delivered up to her parents or guardians, or otherwise dealt with as circumstances may permit and require.

A magistrate issuing such warrant may, by the same or any other warrant, cause any person accused of so unlawfully detaining such woman or girl to be apprehended and brought before a magistrate and proceedings to be taken for punishing such person according to law.

A woman or girl shall be deemed to be unlawfully detained for immoral purposes if she is so detained for the purpose of being unlawfully and carnally known by any man, whether any particular man or generally; and—

(*a*) either is under the age of sixteen years; or

(*b*) if she is of or over the age of sixteen years and under the age of eighteen years, is so detained against her will or against the will of her father or mother or of any person having the lawful care or charge of her; or

(*c*) if she is of or over the age of eighteen years and is so detained against her will.

Any person authorised by warrant under this section to search for any woman or girl so detained as aforesaid may enter (if need be, by force) any house, building or other place mentioned in the warrant, and may remove such woman therefrom :

Provided always that every warrant issued under this section authorising the search for any woman or girl in any house, building or other place occupied by a non-native shall be addressed to and executed by a European police officer.

Male person living on earnings of prostitution or persistently soliciting.

136. (1) Every male person who—

(*a*) knowingly lives wholly or in part on the earnings of prostitution; or

(*b*) in any public place persistently solicits or importunes for immoral purposes,

is guilty of a misdemeanour. In the case of a second or subsequent conviction under this section the court may, in addition to any term of imprisonment awarded, sentence the offender to corporal punishment.

(2) Where a male person is proved to live with or to be habitually in the company of a prostitute or is proved to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that he is aiding, abetting or compelling her prostitution with any other person, or generally, he shall unless he shall satisfy the court to the contrary be deemed to be knowingly living on the earnings of prostitution.

Woman living on earnings of prostitution or aiding, etc., for gain prostitution of another woman.

137. Every woman who knowingly lives wholly or in part on the earnings of prostitution, or who is proved to have, for the purpose of gain, exercised control, direction or influence over the movements of a prostitute in such a manner as to show that she is aiding, abetting or compelling her prostitution with any person, or generally, is guilty of a misdemeanour.

Suspicious premises.

138. If it is made to appear to a magistrate by information on oath that there is reason to suspect that any house or any part of a house is used by a woman or girl for purposes of prostitution, and that any person residing in or frequenting the house is living wholly or in part on the earnings of the prostitute, or is exercising control, direction or influence over the movements of the prostitute, the magistrate may issue a warrant authorising any police officer to enter and search the house and to arrest such person.

Brothels.

139. Any person who keeps a house, room, set of rooms, or place of any kind whatsoever for purposes of prostitution is guilty of a misdemeanour.

Conspiracy to defile.

140. Any person who conspires with another to induce any woman or girl, by means of any false pretence or other fraudulent means, to permit any man to have unlawful carnal knowledge of her is guilty of a felony, and is liable to imprisonment for three years, with or without corporal punishment.

Attempts to procure abortion.

141. Any person who, with intent to procure miscarriage of a woman, whether she is or is not with child, unlawfully administers to her or causes her to take any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, is guilty of a felony, and is liable to imprisonment for fourteen years.

The like by woman with child.

142. Any woman who, being with child, with intent to procure her own miscarriage, unlawfully administers to herself any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, or permits any such thing or means to be administered or used to her, is guilty of a felony, and is liable to imprisonment for seven years.

Supplying drugs or instruments to procure abortion.

143. Any person who unlawfully supplies to or procures for any person any thing whatever, knowing that it is intended to be unlawfully used to procure the miscarriage of a woman, whether she is or is not with child, is guilty of a felony, and is liable to imprisonment for three years.

Knowledge of age of female immaterial.

144. Except as otherwise expressly stated, it is immaterial in the case of any of the offences committed with respect to a woman or girl under a specified age, that the accused person did not know that the woman or girl was under that age, or believed that she was not under that age.

Unnatural offences.

145. Any person who—

(1) has carnal knowledge of any person against the order of nature; or

(2) has carnal knowledge of an animal; or

(3) permits a male person to have carnal knowledge of him or her against the order of nature,

is guilty of a felony, and is liable to imprisonment for fourteen years, with or without corporal punishment.

Attempt to commit unnatural offences.

146. Any person who attempts to commit any of the offences specified in the last preceding section is guilty of a felony, and is liable to imprisonment for seven years, with or without corporal punishment.

147. (1) Any white woman who voluntarily permits any native to have unlawful carnal connexion with her is guilty of a misdemeanour, and is liable to imprisonment for five years. White woman having connexion with natives

(2) Any white woman who entices or solicits by words, signs, or in any other way whatsoever, any native to have unlawful carnal connexion with her is guilty of a misdemeanour.

(3) Any native having or attempting to have unlawful carnal connexion with any white woman under circumstances not amounting to rape or attempted rape is guilty of a misdemeanour, and is liable to imprisonment for five years, with or without corporal punishment.

(4) Any person who procures or attempts to procure any white woman for the purpose of having unlawful carnal connexion with any native is guilty of a felony, and is liable to imprisonment for ten years, with or without corporal punishment.

(5) The owner or occupier of any house or place who knowingly permits unlawful carnal connexion in contravention of this section to take place therein is guilty of a misdemeanour, and is liable to imprisonment for five years.

(6) For the purposes of this section—

the term " white woman " means a female of any age of European origin or descent;

the term " native " means any native of Africa not being of European or Asiatic origin or descent, and includes an Arab and a Somali.

148. (1) Any male person who has carnal knowledge of a female person, who is to his knowledge his granddaughter, daughter, sister or mother, is guilty of a felony, and is liable to imprisonment for five years: Incest by males.

Provided that if it is alleged in the information or charge and proved that the female person is under the age of thirteen years, the offender shall be liable to imprisonment for life.

(2) It is immaterial that the carnal knowledge was had with the consent of the female person. Consent immaterial.

(3) If any male person attempts to commit any such offence as aforesaid he is guilty of a misdemeanour. Attempt.

(4) On the conviction before any court of any male person of an offence under this section, or of an attempt to commit the same, against any female under the age of twenty-one years, it shall be in the power of the court to divest the offender of all authority over such female, and, if the offender is the guardian of such female, to remove the offender from such guardianship, and in any such case to appoint any person or persons to be the guardian or guardians of such female during her minority or any less period: Order for guardianship.

Provided that the Supreme Court may at any time vary or rescind the order by the appointment of any other person as such guardian, or in any other respect.

149. Any female person of or above the age of sixteen years who with consent permits her grandfather, father, brother or son to have carnal knowledge of her (knowing him Incest by females.

to be her grandfather, father, brother or son, as the case may be) is guilty of a felony, and is liable to imprisonment for five years.

Test of relationship.

150. In the two last preceding sections the expressions "brother" and "sister" respectively include half-brother and half-sister, and the provisions of the said sections shall apply whether the relationship between the person charged with an offence and the person with whom the offence is alleged to have been committed is or is not traced through lawful wedlock.

Conviction of incest lawful on charge of rape.

151. (1) If, on the trial of any information or charge for rape, the court or jury is or are satisfied that the defendant is guilty of an offence under section 148 of this Code, but is or are not satisfied that the defendant is guilty of rape, the court or jury, as the case may be, may acquit the defendant of rape, and find him guilty of an offence under section 148, and he shall be liable to be punished accordingly.

Conviction of unlawful carnal knowledge on charge of incest.

(2) If, on the trial of any information or charge for an offence under section 148 of this Code, the court or jury is or are satisfied that the defendant is guilty of any offence under sections 128 or 129, but is or are not satisfied that the defendant is guilty of an offence under section 148, the court or jury may acquit the defendant of an offence under section 148 and find him guilty of an offence under sections 128 or 129, and he shall be liable to be punished accordingly.

Sanction of Attorney General.

152. No prosecution for an offence under sections 148 or 149 of this Code shall be commenced without the sanction of the Attorney General.

CHAPTER XVI.

Offences Relating to Marriage and Domestic Obligations.

Fraudulent pretence of marriage.

153. Any person who wilfully and by fraud causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, is guilty of a felony, and is liable to imprisonment for ten years.

Bigamy.

154. Any person who, having a husband or wife living, goes through a ceremony of marriage which is void by reason of its taking place during the life of such husband or wife, is guilty of a felony, and is liable to imprisonment for five years: Provided that this section shall not extend to any person whose marriage with such husband or wife has been declared void by a court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time.

Marriage ceremony fraudulently gone through without lawful marriage.

155. Any person who dishonestly or with a fraudulent intention goes through the ceremony of marriage, knowing that he is not thereby lawfully married, is guilty of a felony, and is liable to imprisonment for five years.

156. Any person who being the parent, guardian or other person having the lawful care or charge of a child under the age of fourteen years, and being able to maintain such child, wilfully and without lawful or reasonable cause deserts the child and leaves it without means of support, is guilty of a misdemeanour. **Desertion of children.**

157. Any person who, being the parent or guardian or other person having the lawful care or charge of any child of tender years and unable to provide for itself, refuses or neglects (being able to do so) to provide sufficient food, clothes, bedding and other necessaries for such child, so as thereby to injure the health of such child, is guilty of a misdemeanour. **Neglecting to provide food, etc., for children.**

158. Any person who, being legally liable, either as master or mistress, to provide for any apprentice or servant necessary food, clothing or lodging, wilfully and without lawful excuse refuses or neglects to provide the same, or unlawfully and maliciously does or causes to be done any bodily harm to such apprentice or servant so that the life of such apprentice or servant is endangered or that his health has been or is likely to be permanently injured, is guilty of a misdemeanour. **Master not providing for servants or apprentices.**

159. Any person who, with intent to deprive any parent, guardian, or other person who has the lawful care or charge of a child under the age of fourteen years, of the possession of such child, **Child stealing.**

(1) forcibly or fraudulently takes or entices away, or detains the child; or

(2) receives or harbours the child, knowing it to have been so taken or enticed away or detained,

is guilty of a felony, and is liable to imprisonment for seven years.

It is a defence to a charge of any of the offences defined in this section to prove that the accused person claimed in good faith a right to the possession of the child, or, in the case of an illegitimate child, is its mother or claimed to be its father.

CHAPTER XVII.

Nuisances and Offences Against Health and Convenience.

160. Any person who does an act not authorised by law or omits to discharge a legal duty and thereby causes any common injury, or danger or annoyance, or obstructs or causes inconvenience to the public in the exercise of common rights, commits the misdemeanour termed a common nuisance, and is liable to imprisonment for one year. **Common nuisance.**

It is immaterial that the act or omission complained of is convenient to a larger number of the public than it inconveniences, but the fact that it facilitates the lawful exercise of their rights by a part of the public may show that it is not a nuisance to any of the public.

161. (1) Any person being the owner or occupier, or having the use of, any house, room or place, who shall open, keep or use the same for the purpose of unlawful gaming being carried on therein, and any person who, being the owner or **Gaming houses.**

occupier of any house, room or place, shall knowingly and wilfully permit the same to be opened, kept or used by any other person for the purpose aforesaid, and any person having the care or management of or in any manner assisting in conducting the business of any house, room or place opened, kept or used for the purpose aforesaid, is said to keep a common gaming house.

(2) In this section " unlawful gaming " means any game the chances of which are not alike favourable to all the players, including the banker or other person or persons by whom the game is managed, or against whom the other players stake, play or bet.

(3) Any person who keeps a common gaming house is guilty of a misdemeanour.

(4) Any person other than the persons mentioned in sub-section (1) who is found in a common gaming house shall be deemed, unless the contrary is proved, to be there for the purpose of unlawful gaming, and is guilty of a misdemeanour, and is liable to a fine of five pounds for the first offence, and for each subsequent offence to a fine of twenty pounds or imprisonment for three months, or to both such fine and imprisonment.

Betting houses.

162. Any house, room or place which is used for any of the purposes following, that is to say—

(1) for the purpose of bets being made therein between persons resorting to the place and—

(*a*) the owner, occupier, or keeper of the place, or any person using the place; or

(*b*) any person procured or employed by or acting for or on behalf of any such owner, occupier or keeper, or person using the place; or

(*c*) any person having the care or management, or in any manner conducting the business of the place; or

(2) for the purpose of any money or other property being paid or received therein by or on behalf of any such owner, occupier, or keeper, or person using the place, as, or for the consideration—

(*a*) for an assurance, undertaking, promise, or agreement, express or implied, to pay or give thereafter any money or other property on any event or contingency of or relating to any horse race, or other race, fight, game, sport or exercise; or

(*b*) for securing the paying or giving by some other person of any money or other property on any such event or contingency,

is called a common betting house.

Any person who, being the owner or occupier of any house, room or place, knowingly and wilfully permits it to be opened, kept or used as a common betting house by another person, or who has the use or management, or assists in conducting the business, of a common betting house, is guilty of a misdemeanour, and is liable to imprisonment for one year:

Totalisator.

Provided always that nothing herein contained shall make illegal the use of a totalisator by a race club, gymkhana club or sports club recognised by the Government at any public meet-

ing, with the approval in each case of the Commissioner of Police. In this proviso, "totalisator" means and includes the instrument, machine or contrivance commonly known as the totalisator, and any other instrument, machine or contrivance of a like nature, or any scheme for enabling any number of persons to make bets with one another on the like principles.

Lotteries.

163. (1) Any person who opens, keeps, or uses any place for carrying on a lottery not authorised by the Commissioner of Police is guilty of a misdemeanour.

(2) Any person who prints or publishes or causes to be printed or published, any advertisement or other notice of or relating to any lottery not so authorised, or of or relating to the sale of any ticket or chance or of any share in any ticket or chance in any lottery not so authorised, is liable to a fine of fifty pounds.

(3) In this section the term "lottery" includes any scheme or device for the sale, gift, disposal or distribution of any property depending upon or to be determined by lot or chance, whether by the throwing or casting of dice, or by the drawing of tickets, cards, lots, numbers or figures, or by means of a wheel or trained animal, or otherwise howsoever.

(4) When any person is convicted of an offence under this section the court may, in addition to, or in lieu of, any penalty which may be imposed, order the forfeiture to His Majesty of any instrument or thing used in connexion with the lottery concerning which the conviction has taken place.

Keeper of premises defined.

164. Any person who appears, acts, or behaves as master or mistress, or as the person having the care or management of any such house, room, set of rooms, or place as is mentioned in sections 161, 162 and 163 is to be taken to be the keeper thereof, whether he is or is not the real keeper.

Traffic in obscene publications.

165. Any person who—

(1) sells, lets to hire, distributes or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation makes, produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever; or

(2) imports, exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that any such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation; or

(3) takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are, for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited, or in any manner put into circulation; or

(4) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be procured from or through any person; or

(5) exhibits any indecent show or performance in any public place,

is guilty of a misdemeanour.

Every person committing any such misdemeanour as aforesaid forfeits to His Majesty all obscene books, pamphlets, papers, drawings, paintings, representations or figures or any other obscene objects whatsoever connected with the committing of such misdemeanour.

Idle and disorderly persons.

166. The following persons—

(1) every common prostitute behaving in a disorderly or indecent manner in any public place;

(2) every person wandering or placing himself in any public place to beg or gather alms, or causing or procuring or encouraging any child or children so to do;

(3) every person playing at any game of chance for money or money's worth in any public place;

(4) every person who in any public place conducts himself in a manner likely to cause a breach of the peace; and

(5) every person who without lawful excuse does any indecent act in any public place,

shall be deemed idle and disorderly persons, and shall be liable to imprisonment for one month or to a fine not exceeding two pounds or to both.

Rogues and vagabonds.

167. The following persons—

(1) every person convicted of an offence under the last preceding section after having been previously convicted as an idle and disorderly person;

(2) every person wandering abroad and endeavouring by the exposure of wounds or deformation to obtain or gather alms;

(3) every person going about as a gatherer or collector of alms, or endeavouring to procure charitable contributions of any nature or kind, under any false or fraudulent pretence;

(4) every suspected person or reputed thief who has no visible means of subsistence and cannot give a good account of himself;

(5) every person found wandering in or upon or near any premises or in any road or highway or any place adjacent thereto or in any public place at such time and under such circumstances as to lead to the conclusion that such person is there for an illegal or disorderly purpose;

shall be deemed to be a rogue and vagabond, and shall be guilty of a misdemeanour, and shall be liable for the first offence to imprisonment for three months, and for every subsequent offence to imprisonment for one year, with or without corporal punishment.

Wearing of uniform without authority prohibited.

168. (1) Any person who, not being a person serving in His Majesty's naval, military or air forces, or in any constabulary or police force in the United Kingdom, or in any British possession, or in any country under the protection of His Majesty, or in respect of which His Majesty has accepted a mandate, wears without the permission of the Governor the uniform of any of those forces, or any dress having the appearance or bearing any of the regimental or other distinctive

marks of such uniform, is guilty of a misdemeanour, and is liable to imprisonment for one month or to a fine of ten pounds :

Provided that nothing in this section shall prevent any person from wearing any uniform or dress in the course of a stage play performed in any place in which stage plays may lawfully be publicly performed, or in the course of a music-hall or circus performance, or in the course of any bona fide military representation.

Bringing contempt on uniform.

(2) Any person who unlawfully wears the uniform of any of the forces aforesaid, or any dress having the appearance or bearing any of the regimental or other distinctive marks of any such uniform, in such a manner or in such circumstances as to be likely to bring contempt on that uniform, or employs any other person so to wear such uniform or dress, is guilty of a misdemeanour, and is liable to imprisonment for three months or to a fine of twenty pounds.

Importation and sale of uniform, etc., without authority prohibited.

(3) Any person who, not being in the service of the Colony or having previously received the written permission of the Governor so to do, imports or sells or has in his possession for sale any such uniform as aforesaid, or the buttons or badges appropriate thereto, is guilty of a misdemeanour, and is liable to imprisonment for six months, or to a fine of one hundred pounds.

Forfeiture of uniform, etc., on conviction.

(4) When any person shall have been convicted of any offence under this section, the uniform, dress, button, badge or other thing in respect of which the offence has been committed shall be forfeited unless the Governor shall otherwise order.

Offences against public health—Negligent act likely to spread infection of disease dangerous to life.

169. Any person who unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, is guilty of a misdemeanour.

Adulteration of food or drink intended for sale.

170. Any person who subjects any article of food or drink to such treatment as to make such article noxious as food or drink or of less nutritive value, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, is guilty of a misdemeanour.

Sale of noxious food or drink.

171. Any person who sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, is guilty of a misdemeanour.

Adulteration of drugs.

172. Any person who adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for, any medicinal purpose, as if it had not undergone such adulteration, is guilty of a misdemeanour.

Sale of adulterated drugs.

173. Any person who, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as un-

adulterated, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, is guilty of a misdemeanour.

Fouling water.

174. Any person who voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, is guilty of a misdemeanour.

Fouling air.

175. Any person who voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, is guilty of a misdemeanour.

Offensive trades.

176. Any person who, for the purposes of trade or otherwise, makes loud noises or offensive or unwholesome smells in such places and circumstances as to annoy any considerable number of persons in the exercise of their common rights, commits and is liable to be punished as for a common nuisance.

CHAPTER XVIII.

DEFAMATION.

Definition of libel.

177. Any person who, by print, writing, painting, effigy, or by any means otherwise than solely by gestures, spoken words, or other sounds, unlawfully publishes any defamatory matter concerning another person, with intent to defame that other person, is guilty of the misdemeanour termed "libel."

Definition of defamatory matter.

178. Defamatory matter is matter likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule, or likely to damage any person in his profession or trade by an injury to his reputation. It is immaterial whether at the time of the publication of the defamatory matter the person concerning whom such matter is published is living or dead :

Provided that no prosecution for the publication of defamatory matter concerning a dead person shall be instituted without the consent of the Attorney General.

Definition of publication.

179. (1) A person publishes a libel if he causes the print, writing, painting, effigy or other means by which the defamatory matter is conveyed, to be so dealt with, either by exhibition, reading, recitation, description, delivery, or otherwise, as that the defamatory meaning thereof becomes known or is likely to become known to either the person defamed or any other person.

(2) It is not necessary for libel that a defamatory meaning should be directly or completely expressed; and it suffices if such meaning and its application to the person alleged to be defamed can be collected either from the alleged libel itself or from any extrinsic circumstances, or partly by the one and partly by the other means.

Definition of unlawful publication.

180. Any publication of defamatory matter concerning a person is unlawful within the meaning of this chapter, unless (*a*) the matter is true and it was for the public benefit that it should be published, or (*b*) it is privileged on one of the grounds hereafter mentioned in this chapter.

181. (1) The publication of defamatory matter is absolutely privileged, and no person shall under any circumstances be liable to punishment under this Code in respect thereof, in any of the following cases, namely—

Cases in which publication of defamatory matter is absolutely privileged.

(*a*) if the matter is published by the Governor, or by the Executive Council or the Legislative Council, in any official document or proceeding; or

(*b*) if the matter is published in the Executive Council or the Legislative Council by the Governor or by any Member of such Councils; or

(*c*) if the matter is published by order of the Governor in Council; or

(*d*) if the matter is published concerning a person subject to military or naval discipline for the time being, and relates to his conduct as a person subject to such discipline, and is published by some person having authority over him in respect of such conduct, and to some person having authority over him in respect of such conduct; or

(*e*) if the matter is published in the course of any judicial proceedings by a person taking part therein as a judge or magistrate or commissioner or counsel or solicitor or juror or witness or party thereto; or

(*f*) if the matter published is in fact a fair report of anything said, done or published in the Executive Council or the Legislative Council; or

(*g*) if the person publishing the matter is legally bound to publish it.

(2) Where a publication is absolutely privileged, it is immaterial for the purposes of this chapter whether the matter be true or false, and whether it be or be not known or believed to be false, and whether it be or be not published in good faith: Provided that nothing in this section shall exempt a person from any liability to punishment under any other chapter of this Code or under any other Ordinance or Statute in force within the Colony.

182. A publication of defamatory matter is privileged, on condition that it was published in good faith, if the relation between the parties by and to whom the publication is made is such that the person publishing the matter is under some legal, moral or social duty to publish it to the person to whom the publication is made or has a legitimate personal interest in so publishing it, provided that the publication does not exceed either in extent or matter what is reasonably sufficient for the occasion, and in any of the following cases, namely—

Cases in which publication of defamatory matter is conditionally privileged.

(1) if the matter published is in fact a fair report of anything said, done or shown in a civil or criminal inquiry or proceeding before any court: Provided that if the court prohibits the publication of anything said or shown before it, on the ground that it is seditious, immoral, or blasphemous, the publication thereof shall not be privileged; or

(2) if the matter published is a copy or reproduction, or in fact a fair abstract, of any matter which has been previously published, and the previous publication of which was or would have been privileged under the last preceding section; or

(3) if the matter is an expression of opinion in good faith as to the conduct of a person in a judicial, official or other public capacity, or as to his personal character so far as it appears in such conduct; or

(4) if the matter is an expression of opinion in good faith as to the conduct of a person in relation to any public question or matter, or as to his personal character so far as it appears in such conduct; or

(5) if the matter is an expression of opinion in good faith as to the conduct of any person as disclosed by evidence given in a public legal proceeding, whether civil or criminal, or as to the conduct of any person as a party, witness or otherwise in any such proceeding, or as to the character of any person so far as it appears in any such conduct as in this paragraph mentioned; or

(6) if the matter is an expression of opinion in good faith as to the merits of any book, writing, painting, speech, or other work, performance or act published or publicly done or made or submitted by a person to the judgment of the public, or as to the character of the person so far as it appears therein; or

(7) if the matter is a censure passed by a person in good faith on the conduct of another person in any matter in respect of which he has authority, by contract or otherwise, over the other person, or on the character of the other person so far as it appears in such conduct; or

(8) if the matter is a complaint or accusation made by a person in good faith against another person in respect of his conduct in any matter, or in respect of his character so far as it appears in such conduct, to any person having authority, by contract or otherwise, over that other person in respect of such conduct or matter, or having authority by law to inquire into or receive complaints respecting such conduct or matter; or

(9) if the matter is published in good faith for the protection of the rights or interests of the person who publishes it, or of the person to whom it is published, or of some person in whom the person to whom it is published is interested.

Explanation as to good faith.

183. A publication of defamatory matter shall not be deemed to have been made in good faith by a person, within the meaning of the last preceding section, if it is made to appear either—

(*a*) that the matter was untrue, and that he did not believe it to be true; or

(*b*) that the matter was untrue, and that he published it without having taken reasonable care to ascertain whether it was true or false; or

(*c*) that, in publishing the matter, he acted with intent to injure the person defamed in a substantially greater degree or substantially otherwise than was reasonably necessary for the interest of the public or for the protection of the private right or interest in respect of which he claims to be privileged.

184. If it is proved, on behalf of the accused person, that the defamatory matter was published under such circumstances that the publication would have been justified if made in good faith, the publication shall be presumed to have been made in good faith until the contrary is made to appear, either from the libel itself, or from the evidence given on behalf of the accused person, or from evidence given on the part of the prosecution. **Presumption as to good faith.**

Division IV.—Offences Against the Person.

CHAPTER XIX.

MURDER AND MANSLAUGHTER.

185. Any person who by an unlawful act or omission causes the death of another person is guilty of the felony termed manslaughter. An unlawful omission is an omission amounting to culpable negligence to discharge a duty tending to the preservation of life or health, whether such omission is or is not accompanied by an intention to cause death or bodily harm. **Manslaughter.**

186. Any person who of malice aforethought causes the death of another person by an unlawful act or omission is guilty of murder. **Murder.**

187. Any person convicted of murder shall be sentenced to death. **Punishment of murder.**

188. Any person who commits the felony of manslaughter is liable to imprisonment for life. **Punishment of manslaughter.**

189. Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances— **Malice aforethought.**

(*a*) an intention to cause the death of or to do grievous harm to any person, whether such person is the person actually killed or not;

(*b*) knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether such person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;

(*c*) an intent to commit a felony;

(*d*) an intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.

190. Any person who is shown to have caused the death of another is presumed to have wilfully murdered him unless the circumstances are such as to raise a contrary presumption. **Presumption that killing is murder.**

The burden of proving circumstances of excuse, justification, or extenuation is upon the person who is shown to have caused the death of another.

191. When a person who unlawfully kills another under circumstances which, but for the provisions of this section, would constitute murder, does the act which causes death in the heat of passion caused by sudden provocation as hereinafter defined, and before there is time for his passion to cool, he is guilty of manslaughter only. **Killing on provocation.**

Provocation defined.

192. The term " provocation " means and includes, except as hereinafter stated, any wrongful act or insult of such a nature as to be likely, when done to an ordinary person, or in the presence of an ordinary person to another person who is under his immediate care, or to whom he stands in a conjugal, parental, filial, or fraternal relation, or in the relation of master or servant, to deprive him of the power of self-control and to induce him to assault the person by whom the act or insult is done or offered.

When such an act or insult is done or offered by one person to another, or in the presence of another to a person who is under the immediate care of that other, or to whom the latter stands in any such relation as aforesaid, the former is said to give to the latter provocation for an assault.

A lawful act is not provocation to any person for an assault.

An act which a person does in consequence of incitement given by another person in order to induce him to do the act and thereby to furnish an excuse for committing an assault is not provocation to that other person for an assault.

An arrest which is unlawful is not necessarily provocation for an assault, but it may be evidence of provocation to a person who knows of the illegality.

Causing death defined.

193. A person is deemed to have caused the death of another person although his act is not the immediate or the sole cause of death in any of the following cases—

(*a*) if he inflicts bodily injury on another person in consequence of which that other person undergoes surgical or medical treatment which causes death. In this case it is immaterial whether the treatment was proper or mistaken, if it was employed in good faith and with common knowledge and skill; but the person inflicting the injury is not deemed to have caused the death if the treatment which was its immediate cause was not employed in good faith or was so employed without common knowledge or skill;

(*b*) if he inflicts bodily injury on another which would not have caused death if the injured person had submitted to proper surgical or medical treatment or had observed proper precautions as to his mode of living;

(*c*) if by actual or threatened violence he causes such other person to perform an act which causes the death of such person, such act being a means of avoiding such violence which in the circumstances would appear natural to the person whose death is so caused;

(*d*) if by any act or omission he hastened the death of a person suffering under any disease or injury which apart from such act or omission would have caused death;

(*e*) if his act or omission would not have caused death unless it had been accompanied by an act or omission of the person killed or of other persons.

194. A child becomes a person capable of being killed when it has completely proceeded in a living state from the body of its mother, whether it has breathed or not, and whether it has an independent circulation or not, and whether the navel-string is severed or not.

Wh n child deemed to be a person.

195. A person is not deemed to have killed another if the death of that person does not take place within a year and a day of the cause of death.

Limitation as to time of death.

Such period is reckoned inclusive of the day on which the last unlawful act contributing to the cause of death was done.

When the cause of death is an omission to observe or perform a duty, the period is reckoned inclusive of the day on which the omission ceased.

When the cause of death is in part an unlawful act, and in part an omission to observe or perform a duty, the period is reckoned inclusive of the day on which the last unlawful act was done or the day on which the omission ceased, whichever is the later.

CHAPTER XX.

Duties Relating to the Preservation of Life and Health.

196. It is the duty of every person having charge of another who is unable by reason of age, sickness, unsoundness of mind, detention or any other cause to withdraw himself from such charge, and who is unable to provide himself with the necessaries of life, whether the charge is undertaken under a contract or is imposed by law, or arises by reason of any act, whether lawful or unlawful, of the person who has such charge, to provide for that other person the necessaries of life; and he shall be deemed to have caused any consequences which adversely affect the life or health of the other person by reason of any omission to perform that duty.

Responsibility of person who has charge of another.

197. It is the duty of every person who, as head of a family, has charge of a child under the age of fourteen years, being a member of his household, to provide the necessaries of life for such child; and he shall be deemed to have caused any consequences which adversely affect the life or health of the child by reason of any omission to perform that duty, whether the child is helpless or not.

Duty of head of family.

198. It is the duty of every person who as master or mistress has contracted to provide necessary food, clothing or lodging for any servant or apprentice under the age of sixteen years to provide the same; and he or she shall be deemed to have caused any consequences which adversely affect the life or health of the servant or apprentice by reason of any omission to perform that duty.

Duty of masters.

199. It is the duty of every person who, except in a case of necessity, undertakes to administer surgical or medical treatment to any other person, or to do any other lawful act which is or may be dangerous to human life or health, to have reasonable skill and to use reasonable care in doing such act; and he shall be deemed to have caused any consequences which adversely affect the life or health of any person by reason of any omission to observe or perform that duty.

Duty of persons doing dangerous acts.

Duty of persons in charge of dangerous things.

200. It is the duty of every person who has in his charge or under his control anything, whether living or inanimate, and whether moving or stationary, of such a nature that, in the absence of care or precaution in its use or management, the life, safety or health of any person may be endangered, to use reasonable care and take reasonable precautions to avoid such danger; and he shall be deemed to have caused any consequences which adversely affect the life or health of any person by reason of any omission to perform that duty.

CHAPTER XXI.

Offences Connected with Murder and Suicide.

Attempt to murder.

201. Any person who—

(1) attempts unlawfully to cause the death of another; or

(2) with intent unlawfully to cause the death of another does any act, or omits to do any act which it is his duty to do, such act or omission being of such a nature as to be likely to endanger human life,

is guilty of a felony, and is liable to imprisonment for life.

Attempt to murder by convict.

202. Any person who, being under sentence of imprisonment for three years or more, attempts to commit murder, is liable to imprisonment for life, with or without corporal punishment.

Accessory after the fact to murder.

203. Any person who becomes an accessory after the fact to murder is guilty of a felony, and is liable to imprisonment for seven years.

Written threats to murder.

204. Any person who, knowing the contents thereof, directly or indirectly causes any person to receive any writing threatening to kill any person is guilty of a felony, and is liable to imprisonment for seven years.

Conspiracy to murder.

205. Any person who conspires with any other person to kill any person, whether such person is in the Colony or elsewhere, is guilty of a felony, and is liable to imprisonment for fourteen years.

Aiding suicide.

206. Any person who—

(1) procures another to kill himself; or

(2) counsels another to kill himself and thereby induces him to do so; or

(3) aids another in killing himself,

is guilty of a felony, and is liable to imprisonment for life.

Attempting suicide.

207. Any person who attempts to kill himself is guilty of a misdemeanour.

Concealing the birth of children.

208. Any person who, when a woman is delivered of a child, endeavours by any secret disposition of the dead body of the child, to conceal the birth, whether the child died before, at, or after its birth, is guilty of a misdemeanour.

CHAPTER XXII.

Offences Endangering Life and Health.

Disabling in order to commit felony or misdemeanour.

209. Any person who, by any means calculated to choke, suffocate or strangle, and with intent to commit or to facilitate the commission of a felony or misdemeanour, or to facilitate the flight of an offender after the commission or attempted commission of a felony or misdemeanour, renders or attempts to render any person incapable of resistance, is guilty of a felony, and is liable to imprisonment for life, with or without corporal punishment.

Stupefying in order to commit felony or misdemeanour.

210. Any person who, with intent to commit or to facilitate the commission of a felony or misdemeanour, or to facilitate the flight of an offender after the commission or attempted commission of a felony or misdemeanour, administers or attempts to administer any stupefying or overpowering drug or thing to any person, is guilty of a felony, and is liable to imprisonment for life.

Acts intended to cause grievous harm or prevent arrest.

211. Any person who, with intent to maim, disfigure or disable any person, or to do some grievous harm to any person, or to resist or prevent the lawful arrest or detention of any person—

(1) unlawfully wounds or does any grievous harm to any person by any means whatever; or

(2) unlawfully attempts in any manner to strike any person with any kind of projectile or with a spear, sword, knife, or other dangerous or offensive weapon; or

(3) unlawfully causes any explosive substance to explode; or

(4) sends or delivers any explosive substance or other dangerous or noxious thing to any person; or

(5) causes any such substance or thing to be taken or received by any person; or

(6) puts any corrosive fluid or any destructive or explosive substance in any place; or

(7) unlawfully casts or throws any such fluid or substance at or upon any person, or otherwise applies any such fluid or substance to the person of any person,

is guilty of a felony, and is liable to imprisonment for life.

Preventing escape from wreck.

212. Any person who unlawfully—

(1) prevents or obstructs any person who is on board of, or is escaping from, a vessel which is in distress or wrecked, in his endeavours to save his life; or

(2) obstructs any person in his endeavours to save the life of any person so situated,

is guilty of a felony and is liable to imprisonment for life.

Intentionally endangering safety of persons travelling by railway.

213. Any person who, with intent to injure or to endanger the safety of any person travelling by any railway, whether a particular person or not—

(1) places anything on the railway; or

(2) deals with the railway, or with anything whatever upon or near the railway, in such a manner as to affect or endanger the free and safe use of the railway or the safety of any such person; or

(3) shoots or throws anything at, into, or upon or causes anything to come into contact with any person or thing on the railway; or

(4) shows any light or signal, or in any way deals with any existing light or signal, upon or near the railway; or

(5) by any omission to do any act which it is his duty to do causes the safety of any such person to be endangered,

is guilty of a felony, and is liable to imprisonment for life, with or without corporal punishment.

Grievous harm.

214. Any person who unlawfully does grievous harm to another is guilty of a felony, and is liable to imprisonment for seven years.

Attempting to injure by explosive substances.

215. Any person who unlawfully, and with intent to do any harm to another, puts any explosive substance in any place whatever, is guilty of a felony, and is liable to imprisonment for fourteen years.

Maliciously administering poison with intent to harm.

216. Any person who unlawfully, and with intent to injure or annoy another, causes any poison or noxious thing to be administered to, or taken by, any person, and thereby endangers his life, or does him grievous harm, is guilty of a felony, and is liable to imprisonment for fourteen years.

Wounding and similar acts.

217. Any person who—

(1) unlawfully wounds another; or

(2) unlawfully, and with intent to injure or annoy any person, causes any poison or other noxious thing to be administered to, or taken by, any person,

is guilty of a felony and is liable to imprisonment for three years.

Failure to supply necessaries.

218. Any person who, being charged with the duty of providing for another the necessaries of life, without lawful excuse fails to do so, whereby the life of that other person is or is likely to be endangered, or his health is or is likely to be permanently injured, is guilty of a felony, and is liable to imprisonment for three years.

Surgical operation.

219. A person is not criminally responsible for performing in good faith and with reasonable care and skill a surgical operation upon any person for his benefit, or upon an unborn child for the preservation of the mother's life, if the performance of the operation is reasonable, having regard to the patient's state at the time, and to all the circumstances of the case.

Excess of force.

220. Any person authorised by law or by the consent of the person injured by him to use force is criminally responsible for any excess, according to the nature and quality of the act which constitutes the excess.

221. Notwithstanding anything contained in section 220, consent by a person to the causing of his own death or his own maim does not affect the criminal responsibility of any person by whom such death or maim is caused. Consent.

CHAPTER XXIII.

Criminal Recklessness and Negligence.

222. Any person who, in a manner so rash or negligent as to endanger human life or to be likely to cause harm to any other person— Reckless and negligent acts.

(*a*) drives any vehicle or rides on any public way; or

(*b*) navigates, or takes part in the navigation or working of, any vessel; or

(*c*) does any act with fire or any combustible matter, or omits to take precautions against any probable danger from any fire or any combustible matter in his possession; or

(*d*) omits to take precautions against any probable danger from any animal in his possession; or

(*e*) gives medical or surgical treatment to any person whom he has undertaken to treat; or

(*f*) dispenses, supplies, sells, administers, or gives away any medicine or poisonous or dangerous matter; or

(*g*) does any act with respect to, or omits to take proper precautions against any probable danger from, any machinery of which he is solely or partly in charge; or

(*h*) does any act with respect to, or omits to take proper precautions against any probable danger from, any explosive in his possession,

is guilty of a misdemeanour.

223. Any person who unlawfully does any act, or omits to do any act which it is his duty to do, not being an act or omission specified in the preceding section, by which act or omission harm is caused to any person, is guilty of a misdemeanour, and is liable to imprisonment for six months. Other negligent acts causing harm.

224. Any person who, by any unlawful act or omission not specified in section 213 of this Code, causes the safety of any person travelling by any railway to be endangered, is guilty of a misdemeanour. Endangering safety of persons travelling by railway.

225. Any person who exhibits any false light, mark or buoy, intending or knowing it to be likely that such exhibition will mislead any navigator, is liable to imprisonment for seven years. Exhibition of false light, mark or buoy.

226. Any person who knowingly or negligently conveys, or causes to be conveyed for hire, any person by water in any vessel, when that vessel is in such a state or so loaded as to be unsafe, is guilty of a misdemeanour. Conveying person by water for hire in unsafe or overloaded vessel.

227. Any person who by doing any act, or by omitting to take reasonable care with any property in his possession or under his charge, causes danger, obstruction or injury to any person in any public way or public line of navigation, is liable to a fine. Danger or obstruction in public way or line of navigation.

CHAPTER XXIV.

ASSAULTS.

Common assault.

228. Any person who unlawfully assaults another is guilty of a misdemeanour, and, if the assault is not committed in circumstances for which a greater punishment is provided in this Code, is liable to imprisonment for one year.

Assaults causing actual bodily harm.

229. Any person who commits an assault occasioning actual bodily harm is guilty of a misdemeanour, and is liable to imprisonment for five years.

Assaults on persons protecting wreck.

230. Any person who assaults and strikes or wounds any magistrate, officer, or other person lawfully authorised in or on account of the execution of his duty in or concerning the preservation of any vessel in distress, or of any vessel or goods or effects wrecked, stranded, or cast on shore, or lying under water, is guilty of a misdemeanour, and is liable to imprisonment for seven years.

Assaults punishable with five years' imprisonment.

231. Any person who—

(*a*) assaults any person with intent to commit a felony or to resist or prevent the lawful apprehension or detainer of himself or of any other person for any offence; or

(*b*) assaults, resists, or wilfully obstructs any police officer in the due execution of his duty, or any person acting in aid of such officer; or

(*c*) assaults any person in pursuance of any unlawful combination or conspiracy to raise the rate of wages, or respecting any trade, business, or manufacture or respecting any person concerned or employed therein; or

(*d*) assaults, resists or obstructs any person engaged in lawful execution of process, or in making a lawful distress, with intent to rescue any property lawfully taken under such process or distress; or

(*e*) assaults any person on account of any act done by him in the execution of any duty imposed on him by law,

is guilty of a misdemeanour, and is liable to imprisonment for five years.

CHAPTER XXV.

OFFENCES AGAINST LIBERTY.

Definition of kidnapping from the Colony.

232. Any person who conveys any person beyond the limits of the Colony without the consent of that person, or of some person legally authorised to consent on behalf of that person, is said to kidnap that person from the Colony.

Definition of kidnapping from lawful guardianship.

233. Any person who takes or entices any minor under fourteen years of age if a male, or under sixteen years of age if a female, or any person of unsound mind, out of the keeping of a lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Definition of abduction.

234. Any person who by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

235. Any person who kidnaps any person from the Colony or from lawful guardianship, is guilty of a felony, and is liable to imprisonment for seven years.

Punishment for kidnapping.

236. Any person who kidnaps or abducts any person in order that such person may be murdered, or may be so disposed of as to be put in danger of being murdered, is guilty of a felony, and is liable to imprisonment for ten years.

Kidnapping or abducting in order to murder.

237. Any person who kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, is guilty of a felony, and is liable to imprisonment for seven years.

Kidnapping or abducting with intent to confine person.

238. Any person who kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected, to grievous harm, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, is guilty of a felony, and is liable to imprisonment for ten years.

Kidnapping or abducting in order to subject person to grievous harm, slavery, etc.

239. Any person who, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, is guilty of a felony, and shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose, as that with or for which he conceals or detains such person in confinement.

Wrongfully concealing or keeping in confinement kidnapped or abducted person.

240. Any person who kidnaps or abducts any child under the age of fourteen years with the intention of taking dishonestly any movable property from the person of such child, is guilty of a felony, and is liable to imprisonment for seven years.

Kidnapping or abducting child under fourteen years with intent to steal from its person.

241. Any person who imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives, or detains against his will any person as a slave, is guilty of a felony, and is liable to imprisonment for seven years.

Buying or disposing of any person as a slave.

242. Any person who habitually imports, exports, removes, buys, sells, traffics or deals in slaves is guilty of a felony, and is liable to imprisonment for ten years.

Habitual dealing in slaves.

243. Any person who unlawfully compels any person to labour against the will of that person is guilty of a misdemeanour.

Unlawful compulsory labour.

Division V.—Offences Relating to Property.

CHAPTER XXVI.

THEFT.

244. Every inanimate thing whatever which is the property of any person, and which is movable, is capable of being stolen.

Things capable of being stolen.

Every inanimate thing which is the property of any person, and which is capable of being made movable, is capable of being stolen as soon as it becomes movable, although it is made movable in order to steal it.

Every tame animal, whether tame by nature or wild by nature and subsequently tamed, which is the property of any person, is capable of being stolen.

Animals wild by nature, of a kind which is not ordinarily found in a condition of natural liberty in the Colony, which are the property of any person, and which are usually kept in a state of confinement, are capable of being stolen, whether they are actually in confinement or have escaped from confinement.

Animals wild by nature, of a kind which is ordinarily found in a condition of natural liberty in the Colony, which are the property of any person, are capable of being stolen while they are in confinement, and while they are being actually pursued after escaping from confinement, but not at any other time.

An animal wild by nature is deemed to be in a state of confinement so long as it is in a den, cage, sty, tank, or other small enclosure, or is otherwise so placed that it cannot escape, and that its owner can take possession of it at pleasure.

Wild animals in the enjoyment of their natural liberty are not capable of being stolen, but their dead bodies are capable of being stolen.

Everything produced by or forming part of the body of an animal capable of being stolen is capable of being stolen.

Definition of theft.

245. (1) A person who fraudulently and without claim of right takes anything capable of being stolen, or fraudulently converts to the use of any person other than the general or special owner thereof anything capable of being stolen, is said to steal that thing.

(2) A person who takes or converts anything capable of being stolen is deemed to do so fraudulently if he does so with any of the following intents, that is to say—

(*a*) an intent permanently to deprive the general or special owner of the thing of it;

(*b*) an intent to use the thing as a pledge or security;

(*c*) an intent to part with it on a condition as to its return which the person taking or converting it may be unable to perform;

(*d*) an intent to deal with it in such a manner that it cannot be returned in the condition in which it was at the time of the taking or conversion;

(*e*) in the case of money, an intent to use it at the will of the person who takes or converts it, although he may intend afterwards to repay the amount to the owner.

The term "special owner" includes any person who has any charge or lien upon the thing in question, or any right arising from or dependent upon holding possession of the thing in question.

(3) When a thing stolen is converted, it is immaterial whether it is taken for the purpose of conversion, or whether it is at the time of the conversion in the possession of the person who converts it. It is also immaterial that the person who converts the thing in question is the holder of a power of attorney for the disposition of it, or is otherwise authorised to dispose of it.

(4) When a thing converted has been lost by the owner and found by the person who converts it, the conversion is not deemed to be fraudulent if at the time of the conversion the person taking or converting the thing does not know who is the owner, and believes on reasonable grounds that the owner cannot be discovered.

(5) A person shall not be deemed to take a thing unless he moves the thing or causes it to move.

Special cases.

246. (1) When a factor or agent pledges or gives a lien on any goods or document of title to goods entrusted to him for the purpose of sale or otherwise for any sum of money not greater than the amount due to him from his principal at the time of pledging or giving the lien, together with the amount of any bill of exchange or promissory note accepted or made by him for or on account of his principal, such dealing with the goods or document of title is not deemed to be theft.

(2) When a servant, contrary to his master's orders, takes from his possession any food in order that it may be given to an animal belonging to or in the possession of his master, such taking is not deemed to be theft.

Funds, etc., held under direction.

247. When a person receives, either alone or jointly with another person, any money or valuable security or a power of attorney for the sale, mortgage, pledge, or other disposition of any property, whether capable of being stolen or not, with a direction in either case that such money or any part thereof, or any other money received in exchange for it, or any part thereof, or the proceeds or any part of the proceeds of such security, or of such mortgage, pledge or other disposition, shall be applied to any purpose or paid to any person specified in the direction, such money and proceeds are deemed to be the property of the person for whom the money, security or power of attorney was received until the direction has been complied with.

Funds, etc., received by agents for sale.

248. When a person receives, either alone or jointly with another person, any property from another on terms authorising or requiring him to sell it or otherwise dispose of it, and requiring him to pay or account for the proceeds of the property, or any part of such proceeds, or to deliver anything received in exchange for the property, to the person from whom it is received, or some other person, then the proceeds of the property, and anything so received in exchange for it, are deemed to be the property of the person from whom the property was so received, until they have been disposed of in accordance with the terms on which the property was received, unless it is a part of those terms that proceeds, if any, shall form an item in a debtor and creditor account between him and the person to whom he is to pay them or account for them, and that the relation of debtor and creditor only shall exist between them in respect thereof.

Money received for another.

249. When a person receives, either alone or jointly with another person, any money on behalf of another, the money is deemed to be the property of the person on whose behalf it is received, unless the money is received on the terms that it shall form an item in a debtor and creditor account, and that the relation of debtor and creditor only shall exist between the parties in respect of it.

Theft by person having an interest in the thing stolen.

250. When any person takes or converts anything capable of being stolen, under such circumstances as would otherwise amount to theft, it is immaterial that he himself has a special property or interest therein, or that he himself is the owner of the thing taken or converted subject to some special property or interest of some other person therein, or that he is lessee of the thing, or that he himself is one of two or more joint owners of the thing, or that he is a director or officer of a corporation or company or society who are the owners of it.

Husband and wife.

251. A person who, while a man and his wife are living together, procures either of them to deal with anything which is, to his knowledge, the property of the other in a manner which would be theft if they were not married, is deemed to have stolen the thing, and may be charged with theft.

General punishment for theft.

252. Any person who steals anything capable of being stolen is guilty of the felony termed theft, and is liable, unless owing to the circumstances of the theft or the nature of the thing stolen, some other punishment is provided, to imprisonment for three years.

Stealing wills.

253. If the thing stolen is a testamentary instrument, whether the testator is living or dead, the offender is liable to imprisonment for ten years.

Stealing postal matter, etc.

254. If the thing stolen is postal matter or any chattel, money or valuable security contained in any postal matter, the offender is liable to imprisonment for ten years.

Stealing cattle.

255. If the thing stolen is any of the things following, that is to say: a horse, mare, gelding, ass, mule, camel, ostrich, bull, cow, ox, ram, ewe, wether, goat or pig, the offender is liable to imprisonment for ten years.

Stealing from the person; stealing goods in transit, etc.

256. If a theft is committed under any of the circumstances following, that is to say—

(*a*) if the thing is stolen from the person of another;

(*b*) if the thing is stolen in a dwelling-house, and its value exceeds five pounds, or the offender at or immediately before or after the time of stealing uses or threatens to use violence to any person in the dwelling-house;

(*c*) if the thing is stolen from any kind of vessel or vehicle or place of deposit used for the conveyance or custody of goods in transit from one place to another;

(*d*) if the thing stolen is attached to or forms part of a railway;

(*e*) if the thing is stolen from a vessel which is in distress or wrecked or stranded;

(*f*) if the thing is stolen from a public office in which it is deposited or kept;

(*g*) if the offender, in order to commit the offence, opens any locked room, box, or other receptacle, by means of a key or other instrument,

the offender is liable to imprisonment for seven years.

257. If the offender is a person employed in the public service and the thing stolen is the property of His Majesty, or came into the possession of the offender by virtue of his employment, he is liable to imprisonment for seven years.

Stealing by persons in public service.

258. If the offender is a clerk or servant, and the thing stolen is the property of his employer, or came into the possession of the offender on account of his employer, he is liable to imprisonment for seven years.

Stealing by clerks and servants.

259. If the offender is a director or officer of a corporation or company, and the thing stolen is the property of the corporation or company, he is liable to imprisonment for seven years.

Stealing by directors or officers of companies.

260. If the thing stolen is any of the things following, that is to say—

Stealing by agents, etc.

(*a*) property which has been received by the offender with a power of attorney for the disposition thereof;

(*b*) property which has been entrusted to the offender either alone or jointly with any other person for him to retain in safe custody or to apply, pay, or deliver for any purpose or to any person the same or any part thereof or any proceeds thereof;

(*c*) property which has been received by the offender either alone or jointly with any other person for or on account of any other person;

(*d*) the whole or part of the proceeds of any valuable security which has been received by the offender with a direction that the proceeds thereof should be applied to any purpose or paid to any person specified in the direction;

(*e*) the whole or part of the proceeds arising from any disposition of any property which have been received by the offender by virtue of a power of attorney for such disposition, such power of attorney having been received by the offender with a direction that such proceeds should be applied to any purpose or paid to any person specified in the direction,

the offender is liable to imprisonment for seven years.

261. If the thing stolen is a fixture or chattel let to the offender to be used by him with a house or lodging, and its value exceeds five pounds, he is liable to imprisonment for seven years.

Stealing by tenants or lodgers.

262. If the offender, before committing the theft, had been convicted of a theft punishable under section 252, he is liable to imprisonment for seven years.

Stealing after previous conviction.

CHAPTER XXVII.

Offences Allied to Stealing.

263. Any person who, with intent to defraud, conceals or takes from its place of deposit any register which is authorised or required by law to be kept for authenticating or recording the title to any property, or for recording births, baptisms, marriages, deaths or burials, or a copy of any part of any such register which is required by law to be sent to any public office, is guilty of a felony, and is liable to imprisonment for ten years.

Concealing registers.

Concealing wills.

264. Any person who, with intent to defraud, conceals any testamentary instrument, whether the testator is living or dead, is guilty of a felony, and is liable to imprisonment for ten years.

Concealing deeds.

265. Any person who, with intent to defraud, conceals the whole or part of any document which is evidence of title to any land or estate in land, is guilty of a felony, and is liable to imprisonment for three years.

Killing animals with intent to steal.

266. Any person who kills any animal capable of being stolen with intent to steal the skin or carcass, or any part of the skin or carcass, is guilty of an offence, and is liable to the same punishment as if he had stolen the animal.

Severing with intent to steal.

267. Any person who makes anything movable with intent to steal it is guilty of an offence, and is liable to the same punishment as if he had stolen the thing after it had become movable.

Fraudulently dealing with minerals in mines.

268. Any person who takes, conceals, or otherwise disposes of any ore or any metal or mineral in or about a mine, with intent to defraud any person, is guilty of a felony, and is liable to imprisonment for five years.

Fraudulent appropriation of power.

269. Any person who fraudulently abstracts or diverts to his own use or to the use of any other person any mechanical, illuminating, or electrical power derived from any machine, apparatus or substance, the property of another person, is guilty of a felony, and is liable to imprisonment for five years.

Unlawful use of vehicles, animals, etc.

270. Any person who unlawfully and without colour of right, but not so as to be guilty of stealing, takes or converts to his own use or to the use of any other person, any draught or riding animal or any vehicle or cycle, however propelled, or any vessel, shall be guilty of a misdemeanour, and shall be liable to imprisonment for six months, or to a fine of fifty pounds, or to both such imprisonment and such fine.

CHAPTER XXVIII.

Robbery and Extortion.

Definition of robbery.

271. Any person who steals anything, and, at or immediately before or immediately after the time of stealing it, uses or threatens to use actual violence to any person or property in order to obtain or retain the thing stolen or to prevent or overcome resistance to its being stolen or retained, is guilty of the felony termed robbery.

Punishment of robbery.

272. Any person who commits the felony of robbery is liable to imprisonment for fourteen years.

If the offender is armed with any dangerous or offensive weapon or instrument, or is in company with one or more other person or persons, or if, at or immediately before or immediately after the time of the robbery, he wounds, beats, strikes, or uses any other personal violence to any person, he is liable to imprisonment for life, with or without corporal punishment.

Attempted robbery.

273. Any person who assaults any person with intent to steal anything, and, at or immediately before or immediately after the time of the assault, uses or threatens to use actual

violence to any person or property in order to obtain the thing intended to be stolen, or to prevent or overcome resistance to its being stolen, is guilty of a felony, and is liable to imprisonment for seven years.

If the offender is armed with any dangerous or offensive weapon or instrument, or is in company with one or more other person or persons, or if, at or immediately before or immediately after the time of the assault, he wounds, beats, strikes, or uses any other personal violence to any person, he is liable to imprisonment for life, with or without corporal punishment.

Assault with intent to steal..

274. Any person who assaults any person with intent to steal anything is guilty of a felony, and is liable to imprisonment for three years.

Demanding property by written threats.

275. Any person who, with intent to extort or gain anything from any person, and knowing the contents of the writing, causes any person to receive any writing demanding anything from any person without reasonable or probable cause, and containing threats of any injury or detriment of any kind to be caused to any person, either by the offender or any other person, if the demand is not complied with, is guilty of a felony, and is liable to imprisonment for fourteen years.

Attempts at extortion by threats.

276. Any person who, with intent to extort or gain anything from any person—

(1) accuses or threatens to accuse any person of committing any felony or misdemeanour, or of offering or making any solicitation or threat to any person as an inducement to commit or permit the commission of any felony or misdemeanour; or

(2) threatens that any person shall be accused by any other person of any felony or misdemeanour, or of any such act; or

(3) knowing the contents of the writing, causes any person to receive any writing containing any such accusation or threat as aforesaid,

is guilty of a felony, and if the accusation or threat of accusation is of—

(*a*) an offence for which the punishment of death or imprisonment for life may be inflicted; or

(*b*) any of the offences defined in Chapter XV, or an attempt to commit any of such offences; or

(*c*) an assault with intent to have carnal knowledge of any person against the order of nature, or an unlawful and indecent assault upon a male person; or

(*d*) a solicitation or threat offered or made to any person as an inducement to commit or permit the commission of any of the offences aforesaid,

the offender is liable to imprisonment for fourteen years.

In any other case the offender is liable to imprisonment for three years.

It is immaterial whether the person accused or threatened to be accused has or has not committed the offence or act of which he is accused or threatened to be accused.

Procuring execution of deeds, etc., by threats.

277. Any person who, with intent to defraud, and by means of any unlawful violence to, or restraint of, the person of another, or by means of any threat of violence or restraint to be used to the person of another, or by means of accusing or threatening to accuse any person of committing any felony or misdemeanour, or by offering or making any solicitation or threat to any person as an inducement to commit or permit the commission of any offence, compels or induces any person—

(*a*) to execute, make, accept, indorse, alter, or destroy the whole or any part of any valuable security; or

(*b*) to write any name or impress or affix any seal upon or to any paper or parchment, in order that it may be afterwards made or converted into or used or dealt with as a valuable security,

is guilty of a felony, and is liable to imprisonment for fourteen years.

Demanding property with menaces with intent to steal.

278. Any person who, with intent to steal any valuable thing, demands it from any person with menaces or force, is guilty of a felony, and is liable to imprisonment for five years.

CHAPTER XXIX.

Burglary, Housebreaking and Similar Offences.

Definitions.

279. A person who breaks any part, whether external or internal, of a building, or opens by unlocking, pulling, pushing, lifting, or any other means whatever, any door, window, shutter, cellar flap, or other thing intended to close or cover an opening in a building, or an opening giving passage from one part of a building to another, is deemed to break the building.

A person is deemed to enter a building as soon as any part of his body or any part of any instrument used by him is within the building.

A person who obtains entrance into a building by means of any threat or artifice used for that purpose, or by collusion with any person in the building, or who enters any chimney or other aperture of the building permanently left open for any necessary purpose, but not intended to be ordinarily used as a means of entrance, is deemed to have broken and entered the building.

Housebreaking and burglary.

280. Any person who—

(1) breaks and enters any building, tent or vessel used as a human dwelling with intent to commit a felony therein; or

(2) having entered any building, tent or vessel used as a human dwelling with intent to commit a felony therein, or having committed a felony in any such building, tent or vessel, breaks out thereof,

is guilty of the felony termed housebreaking, and is liable to imprisonment for seven years.

If the offence is committed in the night, it is termed burglary, and the offender is liable to imprisonment for ten years.

Entering dwelling-house with intent to commit felony.

281. Any person who enters or is in any building, tent or vessel used as a human dwelling with intent to commit a felony therein, is guilty of a felony, and is liable to imprisonment for five years.

If the offence is committed in the night, the offender is liable to imprisonment for seven years.

282. Any person who—

Breaking into building and committing felony.

(1) breaks and enters a schoolhouse, shop, warehouse, store, office, or counting-house, or a building which is adjacent to a dwelling-house and occupied with it, but is no part of it, or any building used as a place of worship, and commits a felony therein; or

(2) having committed a felony in a schoolhouse, shop, warehouse, store, office, or counting-house, or in any such other building as last mentioned, breaks out of the building,

is guilty of a felony, and is liable to imprisonment for seven years.

283. Any person who breaks and enters a schoolhouse, shop, warehouse, store, office, or counting-house, or a building which is adjacent to a dwelling-house and occupied with it, but is no part of it, or any building used as a place of worship, with intent to commit a felony therein, is guilty of a felony, and is liable to imprisonment for five years.

Breaking into building with intent to commit felony.

284. Any person who is found under any of the circumstances following, that is to say—

Persons found armed, etc., with intent to commit felony.

(*a*) being armed with any dangerous or offensive weapon or instrument, and being so armed with intent to break or enter a dwelling-house and to commit a felony therein;

(*b*) being armed as aforesaid by night, and being so armed with intent to break or enter any building whatever, and to commit a felony therein;

(*c*) having in his possession by night without lawful excuse, the proof of which lies on him, any instrument of housebreaking;

(*d*) having in his possession by day any such instrument with intent to commit a felony;

(*e*) having his face masked or blackened or being otherwise disguised, with intent to commit a felony;

(*f*) being in any building whatever by night with intent to commit a felony therein;

(*g*) being in any building whatever by day with intent to commit a felony therein, and having taken precautions to conceal his presence,

is guilty of a felony, and is liable to imprisonment for three years.

If the offender has been previously convicted of a felony relating to property, he is liable to imprisonment for seven years.

285. When any person is convicted of an offence under this chapter the court may order that any instrument of housebreaking used in connexion with any such offence shall be forfeited to His Majesty.

Forfeiture of housebreaking instruments.

CHAPTER XXX.

False Pretences.

Definition of false pretence.

286. Any representation made by words, writing or conduct, of a matter of fact, either past or present, which representation is false in fact, and which the person making it knows to be false or does not believe to be true, is a false pretence.

Obtaining goods by false pretences.

287. Any person who by any false pretence, and with intent to defraud, obtains from any other person anything capable of being stolen, or induces any other person to deliver to any person anything capable of being stolen, is guilty of a misdemeanour, and is liable to imprisonment for three years.

Obtaining execution of a security by false pretences.

288. Any person who by any false pretence, and with intent to defraud, induces any person to execute, make, accept, indorse, alter or destroy the whole or any part of any valuable security, or to write any name or impress or affix seal upon or to any paper or parchment in order that it may be afterwards made or converted into or used or dealt with as a valuable security, is guilty of a misdemeanour, and is liable to imprisonment for three years.

Cheating.

289. Any person who by means of any fraudulent trick or device obtains from any other person anything capable of being stolen, or induces any other person to deliver to any person anything capable of being stolen or to pay or deliver to any person any money or goods or any greater sum of money or greater quantity of goods than he would have paid or delivered but for such trick or device, is guilty of a misdemeanour, and is liable to imprisonment for three years.

Obtaining credit, etc., by false pretences.

290. Any person who—

(1) in incurring any debt or liability obtains credit by any false pretence or by means of any other fraud; or

(2) with intent to defraud his creditors or any of them, makes or causes to be made any gift, delivery or transfer of or any charge on his property; or

(3) with intent to defraud his creditors or any of them, conceals, sells or removes any part of his property, after or within two months before the date of any unsatisfied judgment or order for payment of money obtained against him,

is guilty of a misdemeanour, and is liable to imprisonment for one year.

Conspiracy to defraud.

291. Any person who conspires with another by deceit or any fraudulent means to affect the market price of anything publicly sold, or to defraud the public, or any person, whether a particular person or not, or to extort any property from any person, is guilty of a misdemeanour, and is liable to imprisonment for three years.

Frauds on sale or mortgage of property.

292. Any person who, being a seller or mortgagor of any property, or being the advocate or agent of any such seller or mortgagor, with intent to induce the purchaser or mortgagee to accept the title offered or produced to him, and with intent to defraud—

(1) conceals from the purchaser or mortgagee any instrument material to the title, or any incumbrance; or

(2) falsifies any pedigree on which the title depends or may depend; or

(3) makes any false statement as to the title offered or conceals any fact material thereto,

is guilty of a misdemeanour, and is liable to imprisonment for two years.

293. Any person who for gain or reward pretends to exercise or use any kind of witchcraft, sorcery, enchantment, or conjuration, or undertakes to tell fortunes, or pretends from his skill or knowledge in any occult science to discover where or in what manner anything supposed to have been stolen or lost may be found, is guilty of a misdemeanour, and is liable to imprisonment for one year.

Pretending to exercise witchcraft or tell fortunes.

294. Any person who wilfully procures or attempts to procure for himself or any other person any registration, licence or certificate under any Ordinance by any false pretence, is guilty of a misdemeanour, and is liable to imprisonment for one year.

Obtaining registration, etc., by false pretence.

CHAPTER XXXI.

Receiving Property Stolen or Unlawfully Obtained and Like Offences.

295. (1) Any person who receives or retains any chattel, money, valuable security or other property whatsoever, knowing or having reason to believe the same to have been feloniously stolen, taken, extorted, obtained or disposed of, is guilty of a felony, and is liable to imprisonment for seven years.

Receiving stolen property, etc.

(2) Any person who receives or retains any chattel, money, valuable security or other property whatsoever, knowing the same to have been unlawfully taken, obtained, converted or disposed of in a manner which constitutes a misdemeanour, is guilty of a misdemeanour, and is liable to the same punishment as the offender by whom the property was unlawfully obtained, converted or disposed of.

Receiving property unlawfully obtained.

296. Any person who shall be brought before a court charged with having in his possession or conveying in any manner anything which may be reasonably suspected of having been stolen or unlawfully obtained, and who shall not give an account to the satisfaction of such court of how he came by the same, is guilty of a misdemeanour.

Person suspected of having or conveying stolen property.

297. When a thing has been obtained by means of any act constituting a felony or misdemeanour, or by means of an act done at a place not in the Colony, which if it had been done in the Colony would have constituted an offence, and which is an offence under the laws in force in the place where it was done, and another person has acquired a lawful title to it, a subsequent receiving of the thing is not an offence although the receiver knows that the thing had previously been so obtained.

Receiving after change of ownership.

CHAPTER XXXII.

Frauds by Trustees and Persons in a Position of Trust, and False Accounting.

298. Any person who, being a trustee of any property, destroys the property with intent to defraud, or, with intent to defraud, converts the property to any use not authorised by the trust, is guilty of a felony, and is liable to imprisonment for seven years.

Trustees fraudulently disposing of trust property.

For the purposes of this section the term "trustee" includes the following persons and no others, that is to say—

(*a*) trustees upon express trusts created by a deed, will, or instrument in writing, whether for a public or private or charitable purpose;

(*b*) trustees appointed by or under the authority of an Ordinance or Statute for any such purpose;

(*c*) persons upon whom the duties of any such trust as aforesaid devolve;

(*d*) executors and administrators.

Directors and officers of corporations or companies fraudulently appropriating property, or keeping fraudulent accounts or falsifying books or accounts.

299. Any person who—

(1) being a director or officer of a corporation or company, receives or possesses himself as such of any of the property of the corporation or company otherwise than in payment of a just debt or demand, and, with intent to defraud, omits either to make a full and true entry thereof in the books and accounts of the corporation or company, or to cause or direct such an entry to be made therein; or

(2) being a director, officer, or member of a corporation or company, does any of the following acts with intent to defraud, that is to say—

(*a*) destroys, alters, mutilates or falsifies any book, document, valuable security or account, which belongs to the corporation or company, or any entry in any such book, document or account, or is privy to any such act; or

(*b*) makes, or is privy to making, any false entry in any such book, document or account; or

(*c*) omits, or is privy to omitting, any material particular from any such book, document or account,

is guilty of a felony, and is liable to imprisonment for seven years.

False statements by officials of companies.

300. Any person who, being a promoter, director, officer or auditor of a corporation or company, either existing or intended to be formed, makes, circulates or publishes, or concurs in making, circulating or publishing, any written statement or account which, in any material particular, is to his knowledge false, with intent thereby to effect any of the purposes following, that is to say—

(*a*) to deceive or to defraud any member, shareholder, or creditor of the corporation or company, whether a particular person or not;

(*b*) to induce any person, whether a particular person or not, to become a member of, or to entrust or advance any property to, the corporation or company, or to enter into any security for the benefit thereof,

is guilty of a felony, and is liable to imprisonment for seven years.

301. Any person who, being a clerk or servant, or being employed or acting in the capacity of a clerk or servant, does any of the acts following with intent to defraud, that is to say— Fraudulent false accounting.

(*a*) destroys, alters, mutilates, or falsifies any book, document, valuable security or account which belongs to or is in the possession of his employer, or has been received by him on account of his employer, or any entry in any such book, document or account, or is privy to any such act; or

(*b*) makes, or is privy to making, any false entry in any such book, document or account; or

(*c*) omits, or is privy to omitting, any material particular from any such book, document or account,

is guilty of a felony, and is liable to imprisonment for seven years.

302. Any person who, being an officer charged with the receipt, custody or management of any part of the public revenue or property, knowingly furnishes any false statement or return of any money or property received by him or entrusted to his care, or of any balance of money or property in his possession or under his control, is guilty of a misdemeanour. False accounting by public officer.

Division VI.—Malicious Injuries to Property.

CHAPTER XXXIII.

OFFENCES CAUSING INJURY TO PROPERTY.

303. Any person who wilfully and unlawfully sets fire to— Arson.

(*a*) any building or structure whatever, whether completed or not; or

(*b*) any vessel, whether completed or not; or

(*c*) any stack of cultivated vegetable produce, or of mineral or vegetable fuel; or

(*d*) a mine, or the workings, fittings or appliances of a mine,

is guilty of a felony, and is liable to imprisonment for life.

304. Any person who— Attempts to commit arson.

(1) attempts unlawfully to set fire to any such thing as is mentioned in the last preceding section; or

(2) wilfully and unlawfully sets fire to anything which is so situated that any such thing as is mentioned in the last preceding section is likely to catch fire from it,

is guilty of a felony, and is liable to imprisonment for fourteen years.

305. Any person who wilfully and unlawfully sets fire to— Setting fire to crops and growing plants.

(*a*) a crop of cultivated vegetable produce, whether standing or cut; or

(*b*) a crop of hay or grass under cultivation, whether the natural or indigenous product of the soil or not, and whether standing or cut; or

(c) any standing trees, saplings, or shrubs, whether indigenous or not, under cultivation,

is guilty of a felony, and is liable to imprisonment for fourteen years.

Attempting to set fire to crops, etc.

306. Any person who—

(1) attempts unlawfully to set fire to any such thing as is mentioned in the last preceding section; or

(2) wilfully and unlawfully sets fire to anything which is so situated that any such thing as is mentioned in the last preceding section is likely to catch fire from it,

is guilty of a felony, and is liable to imprisonment for seven years.

Casting away vessels.

307. Any person who—

(1) wilfully and unlawfully casts away or destroys any vessel, whether completed or not; or

(2) wilfully and unlawfully does any act which tends to the immediate loss or destruction of a vessel in distress; or

(3) with intent to bring a vessel into danger, interferes with any light, beacon, buoy, mark or signal used for purposes of navigation, or exhibits any false light or signal,

is guilty of a felony, and is liable to imprisonment for fourteen years, with or without corporal punishment.

Attempts to cast away vessels.

308. Any person who attempts unlawfully to cast away or destroy a vessel, whether completed or not, or attempts unlawfully to do any act tending to the immediate loss or destruction of a vessel in distress, is guilty of a felony, and is liable to imprisonment for seven years, with or without corporal punishment.

Injuring animals.

309. Any person who wilfully and unlawfully kills, maims, or wounds any animal capable of being stolen is guilty of a misdemeanour.

Punishment for malicious injuries in general.

310. (1) Any person who wilfully and unlawfully destroys or damages any property is guilty of an offence, which, unless otherwise stated, is a misdemeanour, and he is liable, if no other punishment is provided, to imprisonment for two years.

In special cases: Destroying or damaging an inhabited house or a vessel with explosives.

(2) If the property in question is a dwelling-house or a vessel, and the injury is caused by the explosion of any explosive substance, and if—

(a) any person is in the dwelling-house or vessel; or

(b) the destruction or damage actually endangers the life of any person,

the offender is guilty of a felony, and is liable to imprisonment for life, with or without corporal punishment.

River bank or wall, or navigation works or bridges.

(3) (a) If the property in question is a bank or wall of a river, canal, aqueduct, reservoir, or inland water, or work which appertains to a dock, reservoir, or inland water, and the injury causes actual danger of inundation or damage to any land or building; or

(*b*) if the property in question is a railway or is a bridge, viaduct, or aqueduct which is constructed over a highway, railway, or canal, or over which a railway, highway or canal passes, and the property is destroyed; or

(*c*) if the property in question, being a railway, or being any such bridge, viaduct, or aqueduct, is damaged, and the damage is done with intent to render the railway, bridge, viaduct or aqueduct, or the highway, railway or canal passing over or under the same, or any part thereof, dangerous or impassable, and the same or any part thereof is thereby rendered dangerous or impassable,

the offender is guilty of a felony, and is liable to imprisonment for life.

Wills and registers.

(4) If the property in question is a testamentary instrument, whether the testator is living or dead, or a register which is authorised or required by law to be kept for authenticating or recording the title to any property, or for recording births, baptisms, marriages, deaths or burials, or a copy of any part of any such register which is required by law to be sent to any public officer, the offender is guilty of a felony, and is liable to imprisonment for fourteen years.

Wrecks.

(5) If the property in question is a vessel in distress or wrecked, or stranded, or anything which belongs to such vessel, the offender is guilty of a felony, and is liable to imprisonment for seven years.

Railways.

(6) If the property in question is any part of a railway, or any work connected with a railway, the offender is guilty of a felony, and is liable to imprisonment for fourteen years.

Other things of special value.

(7) (*a*) If the property in question, being a vessel, whether completed or not, is destroyed; or

(*b*) if the property in question, being a vessel, whether completed or not, is damaged, and the damage is done with intent to destroy it or render it useless; or

(*c*) if the property in question is a light, beacon, buoy, mark, or signal used for the purposes of navigation, or for the guidance of persons engaged in navigation; or

(*d*) if the property in question is a bank or wall of a river, canal, aqueduct, reservoir or inland water, or a work which appertains to a dock, canal, aqueduct, reservoir or inland water, or which is used for the purposes of lading or unlading goods; or

(*e*) if the property in question, being a railway, or being a bridge, viaduct, or aqueduct which is constructed over a highway, railway or canal, or over which a highway, railway or canal passes, is damaged, and the damage is done with intent to render the railway, bridge, viaduct, or aqueduct, or the highway, railway or canal passing over or under the same, or any part thereof, dangerous or impassable; or

(*f*) if the property in question, being anything in process of manufacture, or an agricultural or manufacturing machine, or a manufacturing implement, or a machine or appliance used or intended to be used for performing any process connected with the preparation of any agricultural or pastoral produce, is destroyed; or

(*g*) if the property in question, being any such thing, machine, implement or appliance as last aforesaid, is damaged, and the damage is done with intent to destroy the thing in question, or to render it useless; or

(*h*) if the property in question is a shaft or a passage of a mine, and the injury is done with intent to damage the mine or to obstruct its working; or

(*i*) if the property in question is a machine, appliance, apparatus, building, erection, bridge, or road, appertaining to or used with a mine, whether the thing in question is completed or not; or

(*j*) if the property in question, being a rope, chain, or tackle of whatever material, which is used in a mine, or upon any way or work appertaining to or used with a mine, is destroyed; or

(*k*) if the property in question, being any such rope, chain or tackle, as last aforesaid, is damaged, and the damage is done with intent to destroy the thing in question or to render it useless; or

(*l*) if the property in question is a well, or bore for water, or the dam, bank, wall or floodgate of a millpond or pool,

the offender is guilty of a felony, and is liable to imprisonment for seven years.

Deeds and records.

(8) If the property in question is a document which is deposited or kept in a public office, or which is evidence of title to any land or estate in land, the offender is guilty of a felony, and is liable to imprisonment for seven years.

Attempts to destroy property by explosives.

311. Any person who, unlawfully and with intent to destroy or damage any property, puts any explosive substance in any place whatever, is guilty of a felony, and is liable to imprisonment for fourteen years.

Communicating infectious diseases to animals.

312. Any person who wilfully and unlawfully causes, or is concerned in causing, or attempts to cause, any infectious disease to be communicated to or among any animal or animals capable of being stolen, is guilty of a felony, and is liable to imprisonment for seven years.

Removing boundary marks with intent to defraud.

313. Any person who wilfully and unlawfully, and with intent to defraud, removes or defaces any object or mark which has been lawfully erected or made as an indication of the boundary of any land, is guilty of a felony, and is liable to imprisonment for three years.

Wilful damage, etc., to survey and boundary marks.

314. Any person who—

(1) wilfully removes, defaces or injures any survey mark or boundary mark which shall have been made or erected by or under the direction of any Government department or in the course of or for the purposes of a Government survey; or

(2) being under an obligation to maintain in repair any boundary mark made or erected as aforesaid, neglects or refuses to repair the same; or

(3) wilfully removes, defaces or injures any mark erected by an intending applicant for any lease, licence or right under an Ordinance relating to mines or minerals,

is guilty of a misdemeanour, and is liable to imprisonment for three months or to a fine of twenty pounds, and may further be ordered by the court to pay the cost of repairing or replacing the survey mark or boundary mark and of making any survey rendered necessary by the offender's act or neglect.

Penalties for damage, etc., to railway works.

315. Any person who—

(1) wilfully damages, injures, or obstructs any work, way, road, building, turnstile, gate, toll bar, fence, weighing machine, engine, tender, carriage, wagon, truck, material, or plant, acquired for or belonging to any railway works; or

(2) pulls up, removes, defaces, or destroys, or in any way interferes with, any poles, stakes, pegs, lines, marks, or anything driven or placed in or upon the ground, trees, stones or buildings, or any other material, belonging to any railway works; or

(3) commits any nuisance or trespass in or upon any land, buildings, or premises, acquired for or belonging to any railway works; or

(4) wilfully molests, hinders, or obstructs the officer in charge of any railway or his assistants or workmen in the execution of any work done or to be done in reference to the construction or maintenance of any such railway,

is guilty of a misdemeanour, and is liable to imprisonment for three months, or to a fine of twenty pounds.

Threats to burn, etc.

316. Any person who, knowing the contents thereof, sends, delivers, utters, or directly or indirectly causes to be received, any letter or writing threatening to burn or destroy any house, barn or other building, or any rick or stack of grain, hay or straw, or other agricultural produce, whether in or under any building or not, or any vessel, or to kill, maim, or wound any cattle, is guilty of a felony, and is liable to imprisonment for seven years.

Division VII.—Forgery, Coining, Counterfeiting and Similar Offences.

CHAPTER XXXIV.

DEFINITIONS.

Definition of forgery.

317. Forgery is the making of a false document with intent to defraud.

Document.

318. The term "document" in this division of this Code does not include a trade mark or any other sign used in connexion with articles of commerce though they may be written or printed.

Making a false document.

319. Any person makes a false document who—

(*a*) makes a document purporting to be what in fact it is not;

(*b*) alters a document without authority in such a manner that if the alteration had been authorised it would have altered the effect of the document;

(*c*) introduces into a document without authority whilst it is being drawn up matter which if it had been authorised would have altered the effect of the document;

(*d*) signs a document—

(i) in the name of any person without his authority, whether such name is or is not the same as that of the person signing;

(ii) in the name of any fictitious person alleged to exist, whether the fictitious person is or is not alleged to be of the same name as the person signing;

(iii) in the name represented as being the name of a different person from that of the person signing it and intended to be mistaken for the name of that person;

(iv) in the name of a person personated by the person signing the document, provided that the effect of the instrument depends upon the identity between the person signing the document and the person whom he professes to be.

Intent to defraud.

320. An intent to defraud is presumed to exist if it appears that at the time when the false document was made there was in existence a specific person ascertained or unascertained capable of being defrauded thereby, and this presumption is not rebutted by proof that the offender took or intended to take measures to prevent such person from being defrauded in fact, nor by the fact that he had or thought he had a right to the thing to be obtained by the false document.

CHAPTER XXXV.

Punishment for Forgery.

General punishment for forgery.

321. Any person who forges any document is guilty of an offence which, unless otherwise stated, is a felony, and he is liable, unless owing to the circumstances of the forgery or the nature of the thing forged some other punishment is provided, to imprisonment for three years.

Imprisonment for life.

322. Any person who forges any will, document of title to land, judicial record, power of attorney, bank note, currency note, bill of exchange, promissory note or other negotiable instrument, policy of insurance, cheque or other authority for the payment of money by a person carrying on business as a banker, is liable to imprisonment for life, and the court may in addition order that any such document as aforesaid shall be forfeited to His Majesty.

Forgery of judicial or official document.

323. Any person who forges any judicial or official document is liable to imprisonment for seven years.

Imprisonment for seven years.

324. Any person who—

(1) forges any stamp, whether impressed or adhesive, used for the purposes of revenue or accounting by any Government Department; or

(2) without lawful excuse, the proof whereof shall lie upon him, makes or has knowingly in his possession any dye or instrument capable of making the impression of any such stamp; or

(3) fraudulently cuts, tears in any way, or removes from any material any stamp used for purposes of revenue or accounting by the Colonial Government, with intent that another use shall be made of such stamp or any part thereof; or

(4) fraudulently mutilates any such stamp as last aforesaid, with intent that another use shall be made of such stamp; or

(5) fraudulently fixes or places upon any material or upon any such stamp as last aforesaid any stamp or part of a stamp which, whether fraudulently or not, has been cut, torn or in any way removed from any other material or out of or from any other stamp; or

(6) fraudulently erases or otherwise either really or apparently removes from any stamped material any name, sum, date or other matter or thing whatsoever written thereon with the intent that another use shall be made of the stamp upon such material; or

(7) knowingly and without lawful excuse, the proof whereof shall lie upon him, has in his possession any stamp or part of a stamp which has been fraudulently cut, torn, or otherwise removed from any material, or any stamp which has been fraudulently mutilated, or any stamped material out of which any name, sum, date or other matter or thing has been fraudulently erased or otherwise really or apparently removed,

is liable to imprisonment for seven years.

Uttering false documents

325. Any person who knowingly and fraudulently utters a false document is guilty of an offence of the same kind and is liable to the same punishment as if he had forged the thing in question.

Uttering cancelled or exhausted documents.

326. Any person who knowingly utters as and for a subsisting and effectual document, any document which has by any lawful authority been ordered to be revoked, cancelled or suspended, or the operation of which has ceased by effluxion of time, or by death, or by the happening of any other event, is guilty of an offence of the same kind, and is liable to the same punishment, as if he had forged the document.

Procuring execution of documents by false pretences.

327. Any person who, by means of any false and fraudulent representations as to the nature, contents or operation of a document, procures another to sign or execute the document, is guilty of an offence of the same kind, and is liable to the same punishment, as if he had forged the document.

Obliterating crossings on cheques.

328. Any person who, with intent to defraud—

(1) obliterates, adds to, or alters the crossing on a cheque; or

(2) knowingly utters a crossed cheque, the crossing on which has been obliterated, added to, or altered,

is guilty of a felony, and is liable to imprisonment for seven years.

Making documents without authority.

329. Any person who, with intent to defraud—

(1) without lawful authority or excuse, makes, signs or executes for or in the name or on account of another person, whether by procuration or otherwise, any document or writing; or

(2) knowingly utters any document or writing so made, signed, or executed by another person,

is guilty of a felony, and is liable to imprisonment for seven years.

Demanding property upon forged testamentary instruments.

330. Any person who procures the delivery or payment to himself or any other person of any property or money by virtue of any probate or letters of administration granted upon a forged testamentary instrument, knowing the testamentary instrument to have been forged, or upon or by virtue of any probate or letters of administration obtained by false evidence, knowing the grant to have been so obtained, is guilty of an offence of the same kind, and is liable to the same punishment, as if he had forged the document or thing by virtue whereof he procures the delivery or payment.

Purchasing forged notes.

331. Any person who, without lawful authority or excuse, the proof of which lies on him, purchases or receives from any person, or has in his possession, a forged bank note or currency note, whether filled up or in blank, knowing it to be forged, is guilty of a felony, and is liable to imprisonment for seven years.

Falsifying warrants for money payable under public authority.

332. Any person who, being employed in the public service, knowingly and with intent to defraud makes out or delivers to any person a warrant for the payment of any money payable by public authority, for a greater or less amount than that to which the person on whose behalf the warrant is made out is entitled, is guilty of a felony, and is liable to imprisonment for seven years.

Falsification of register.

333. Any person who, having the actual custody of any register or record kept by lawful authority, knowingly permits any entry which in any material particular is to his knowledge false, to be made in the register or record, is guilty of a felony, and is liable to imprisonment for seven years.

Sending false certificate of marriage to registrar.

334. Any person who signs or transmits to a person authorised by law to register marriages a certificate of marriage or any document purporting to be a certificate of marriage, which in any material particular is to his knowledge false, is guilty of a felony, and is liable to imprisonment for seven years.

False statements for registers of births, deaths, and marriages.

335. Any person who knowingly, and with intent to procure the same to be inserted in a register of births, deaths or marriages, makes any false statement, touching any matter required by law to be registered in any such register, is guilty of a felony, and is liable to imprisonment for three years.

CHAPTER XXXVI.

Offences Relating to Coin.

Definitions.

336. In this chapter—

the term " coin " includes any coin coined in any of His Majesty's mints, or lawfully current by virtue of any Order in Council, Ordinance, Proclamation or otherwise in the Colony or in any part of His Majesty's dominions or in any country under the protection of His Majesty or in respect of which His Majesty has accepted a mandate, and any coin of a foreign Sovereign or State;

the term " counterfeit coin " means coin not genuine but resembling or apparently intended to resemble or pass for genuine coin; and includes genuine coin prepared or altered so as to pass for coin of a higher denomination.

337. Any person who makes or begins to make any counterfeit coin is guilty of a felony, and is liable to imprisonment for life. Counterfeiting coin.

338. Any person who— Preparations for coining.

(1) gilds or silvers any piece of metal of a fit size or figure to be coined, with intent that it shall be coined into counterfeit coin; or

(2) makes any piece of metal into a fit size or figure to facilitate the coining from it of any counterfeit coin, with intent that such counterfeit coin shall be made from it; or

(3) without lawful authority or excuse, the proof of which lies on him—

(*a*) buys, sells, receives, pays, or disposes of any counterfeit coin at a lower rate than it imports or is apparently intended to import, or offers to do any such thing; or

(*b*) brings or receives into the Colony any counterfeit coin knowing it to be counterfeit; or

(*c*) makes or mends, or begins or prepares to make or mend, or has in his possession, or disposes of any stamp or mould which is adapted to make the resemblance of both or either of the sides of any coin, or any part of either side thereof, knowing the same to be a stamp or mould, or to be so adapted; or

(*d*) makes or mends, or begins or prepares to make or mend, or has in his possession, or disposes of any tool, instrument or machine which is adapted and intended to be used for marking coin round the edges with marks or figures apparently resembling those on the edges of any coin, knowing the same to be so adapted and intended; or

(*e*) makes or mends, or begins or prepares to make or mend, or has in his possession, or disposes of any press for coinage, or any tool, instrument or machine which is adapted for cutting round blanks out of gold, silver or other metal, knowing such press, tool, instrument, or machine to have been used or to be intended to be used for making any counterfeit coin,

is guilty of a felony, and is liable to imprisonment for life.

339. Any person who deals with any coin in such a manner as to diminish its weight with intent that when so dealt with it may pass as coin, is guilty of a felony, and is liable to imprisonment for seven years. Clipping.

340. Any person who unlawfully has in his possession or disposes of any filings, or clipping of gold or silver, or any gold or silver in bullion, dust, solution, or any other state, Possession of clippings.

obtained by dealing with gold or silver coin in such a manner as to diminish its weight, knowing the same to have been so obtained, is guilty of a felony, and is liable to imprisonment for seven years.

Uttering counterfeit coin.

341. Any person who utters any counterfeit coin, knowing it to be counterfeit, is guilty of a misdemeanour.

Repeated uttering.

342. Any person who—

(1) utters any counterfeit coin knowing it to be counterfeit, and at the time of such uttering has in his possession any other counterfeit coin; or

(2) utters any counterfeit coin knowing it to be counterfeit, and either on the same day or on any of the ten days next ensuing, utters any other counterfeit coin knowing it to be counterfeit; or

(3) has in his possession three or more pieces of counterfeit coin, knowing them to be counterfeit and with intent to utter any of them,

is guilty of a felony, and is liable to imprisonment for three years.

Uttering metal as coin.

343. Any person who, with intent to defraud, utters as and for coin any metal or piece of metal, whether a coin or not, which is of less value than the coin as and for which it is uttered, is guilty of a misdemeanour, and is liable to imprisonment for one year.

Exporting counterfeit coin.

344. Any person who, without lawful authority or excuse, the proof of which lies on him, exports or puts on board of a vessel or vehicle of any kind for the purpose of being exported from the Colony, any counterfeit coin whatever, knowing it to be counterfeit, is guilty of a misdemeanour.

Forfeiture.

345. When any person is convicted of an offence under this chapter, or the preceding chapter, the court may order the forfeiture to His Majesty of any forged bank note or currency note or of any counterfeit coin or any stamp, mould, tool, instrument, machine, press, or any coin, bullion or metal used or employed in the commission of any such offence.

CHAPTER XXXVII.

Counterfeit Stamps.

Possession of die used for purpose of making stamps.

346. Any person who, without lawful authority or excuse, the proof of which lies on him—

(1) makes or mends, or begins or prepares to make or mend, or uses, or knowingly has in his possession or disposes of any die, plate or instrument capable of making an impression resembling that made by any die, plate or instrument used for the purpose of making any stamp, whether impressed or adhesive, which is used for the purposes of the public revenue or of the Posts and Telegraphs Department in the Colony or in any part of His Majesty's dominions, or in any country under the protection of His Majesty, or in respect of which His Majesty has accepted a mandate, or in any foreign country, or capable of producing in or on paper any words,

figures, letters, marks, or lines resembling any words, figures, letters, marks or lines used in or on any paper specially provided by the proper authority for any such purpose; or

(2) knowingly has in his possession or disposes of any paper or other material which has on it the impression of any such die, plate or instrument, or any paper which has on it or in it any such words, figures, letters, marks or lines as aforesaid; or

(3) fraudulently, and with intent that use may be made of any such stamp as aforesaid, or of any part of it, removes the stamp from any material in any way whatever; or

(4) fraudulently, and with intent that use may be made of any part of such stamp, mutilates the stamp; or

(5) fraudulently fixes or places upon any material or upon any such stamp, any stamp or part of a stamp which has been in any way removed from any other material, or out of or from any other stamp; or

(6) fraudulently, and with intent that use may be made of any such stamp which has been already impressed upon or attached to any material, erases or otherwise removes, either really or apparently, from such material anything whatever written on it; or

(7) knowingly has in his possession or disposes of anything obtained or prepared by any such unlawful act as aforesaid,

is guilty of a felony, and is liable to imprisonment for seven years, and any die, plate, instrument, paper or other thing as aforesaid which are found in his possession shall be forfeited to His Majesty.

Paper and dies for postage stamps.

347. Any person who, without lawful authority or excuse, the proof of which lies on him—

(1) makes, or begins or prepares to make, or uses for any postal purpose, or has in his possession, or disposes of any imitation or representation on paper or any other material, of any stamp used for denoting any rate of postage of the Colony, or of any part of His Majesty's dominions, or of any country under the protection of His Majesty or in respect of which His Majesty has accepted a mandate, or of any foreign country; or

(2) makes or mends, or begins or prepares to make or mend, or uses, or has in his possession, or disposes of any die, plate, instrument, or material for making any such imitation or representation,

is guilty of a misdemeanour, and is liable to imprisonment for one year, or to a fine of fifty pounds. And any stamps, and any other such things as aforesaid, which are found in his possession, shall be forfeited to His Majesty.

For the purposes of this section a stamp purporting to denote a rate of postage of any country is to be taken to be a stamp used for postal purposes in that country until the contrary is shown.

CHAPTER XXXVIII.

COUNTERFEITING TRADE MARKS.

Trade marks defined.

348. A trade mark is—

(*a*) a mark lawfully used by any person to denote any chattel to be an article or thing of the manufacture, workmanship, production or merchandise of such person or to be an article or thing of any peculiar or particular description made or sold by such person;

(*b*) any mark or sign which in pursuance of any law in force for the time being relating to registered designs is to be put or placed upon or attached to any chattel or article during the existence or continuance of any copyright or other sole right acquired under the provision of such law.

Counterfeiting trade marks misdemeanour.

349. Any person who does any of the following things with intent to defraud or to enable another to defraud any person, that is to say—

(*a*) forges or counterfeits any trade mark;

(*b*) applies any trade mark, or any forged or counterfeit trade mark, to any chattel or article, not being the merchandise of any person whose trade mark is so forged or counterfeited;

(*c*) applies any trade mark or any forged or counterfeited trade mark to any chattel or article not being the particular or peculiar description of merchandise denoted or intended to be denoted by such trade mark or by such forged or counterfeited trade mark;

(*d*) applies any trade mark or any forged or counterfeited trade mark to any thing intended for any purpose of trade or manufacture, or in, on or with which any chattel or article is intended to be sold, or is sold or offered or exposed for sale;

(*e*) encloses or places any chattel or article in, upon, under or with any thing to which any trade mark has been falsely applied, or to which any forged or counterfeit trade mark has been applied;

(*f*) applies or attaches any chattel or article to any case, cover, reel, ticket, label or other thing to which any trade mark has been falsely applied, or to which any false or counterfeit trade mark has been applied;

(*g*) encloses, places or attaches any chattel or article in, upon, under, with, or to any thing having thereon any trade mark of any other person,

is guilty of a misdemeanour.

Every person committing any such misdemeanour as aforesaid shall forfeit to His Majesty—

all chattels and articles to which any such trade mark or counterfeit trade mark is applied or caused or procured to be applied;

every instrument for applying any such trade mark or counterfeit trade mark in his possession or power;

the chattels and articles and the things mentioned in paragraphs (*d*), (*e*) and (*g*), and all similar things made to be used in like manner in his possession or power.

CHAPTER XXXIX.

PERSONATION.

350. Any person who, with intent to defraud any person, falsely represents himself to be some other person, living or dead, is guilty of a misdemeanour. **Personation in general.**

If the representation is that the offender is a person entitled by will or operation of law to any specific property and he commits the offence to obtain such property or possession thereof, he is liable to imprisonment for seven years.

351. Any person who, without lawful authority or excuse, the proof of which lies on him, makes, in the name of any other person, before any court or person lawfully authorised to take such an acknowledgment, an acknowledgment of liability of any kind, or an acknowledgment of a deed or other instrument, is guilty of a misdemeanour. **Falsely acknowledging deeds, recognizances, etc.**

352. Any person who utters any document which has been issued by lawful authority to another person, and whereby that other person is certified to be a person possessed of any qualification recognised by law for any purpose, or to be the holder of any office, or to be entitled to exercise any profession, trade, or business, or to be entitled to any right or privilege, or to enjoy any rank or status, and falsely represents himself to be the person named in the document, is guilty of an offence of the same kind and is liable to the same punishment as if he had forged the document. **Personation of a person named in a certificate.**

353. Any person who, being a person to whom any document has been issued by lawful authority whereby he is certified to be a person possessed of any qualification recognised by law for any purpose, or to be the holder of any office or to be entitled to exercise any profession, trade or business, or to be entitled to any right or privilege, or to enjoy any rank or status, sells, gives, or lends the document to another person with intent that that other may represent himself to be the person named therein, is guilty of a misdemeanour. **Lending, etc., certificate for personation.**

354. Any person who, for the purpose of obtaining any employment, utters any document of the nature of a testimonial of character given to another person, is guilty of a misdemeanour, and is liable to imprisonment for one year. **Personation of person named in a testimonial of character.**

355. Any person who, being a person to whom any such document as is mentioned in the last preceding section has been given, gives, sells, or lends such document to another person with the intent that that other person may utter such document for the purpose of obtaining any employment, is guilty of a misdemeanour. **Lending, etc., testimonial for personation.**

CHAPTER XL.

SECRET COMMISSIONS AND CORRUPT PRACTICES.

356. (1) For the purpose of this chapter, the expression "consideration" includes valuable consideration of any kind; the expression "agent" includes any person employed by or acting for another; and the expression "principal" includes an employer. **Interpretation.**

(2) A person serving under the Crown or under any municipal council or board or under any other public body having power to impose rates or entrusted with the expenditure of any Government funds or grants, and a member of any such municipal council or board or other public body is an agent within the meaning of this chapter.

Corrupt practices.

357. If any agent corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gift or consideration as an inducement or reward for doing or forbearing to do or for having done or forborne to do, any act in relation to his principal's affairs or business or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or

If any person corruptly gives or agrees to give or offers any gift or consideration to any agent as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or

If any person knowingly gives to any agent, or if any agent knowingly uses with intent to deceive his principal, any receipt, account or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particulars, and which to his knowledge is intended to mislead the principal,

he shall be guilty of a misdemeanour, and shall be liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding three hundred pounds, or to both such imprisonment and such fine.

Secret commission on Government contracts.

358. Any person convicted of an offence under this chapter shall, where the matter of transaction in relation to which the offence was committed was a contract or a proposal for a contract with the Government or any Government department or a municipal council or board or other public body having power to impose rates or entrusted with the expenditure of any Government funds or grants, or a sub-contract to execute any work comprised in such contract, be liable to imprisonment for seven years, or to a fine of five hundred pounds, or to both such fine and such imprisonment.

Presumption as to corrupt practices.

359. Where in any proceedings against a person for an offence under this chapter it is proved that any money, gift or other consideration has been paid or given to or received by a person in the employment of the Crown or any Government department or a municipal council or board or other public body having power to impose rates or entrusted with the expenditure of any Government funds or grants, by or from a person or agent of a person holding or seeking to obtain a contract from the Crown or any Government department or municipal council or board or other public body having power to impose rates or entrusted with the expenditure of any Government funds or grants, the money, gift or consideration shall be deemed to have been paid or given and received corruptly as such inducement or reward as is mentioned in this chapter, unless the contrary is proved.

360. A prosecution for an offence under this chapter shall not be instituted without the consent of the Attorney General or Solicitor General. **Consent to prosecution.**

Division VIII.—Attempts and Conspiracies to Commit Crimes and Accessories After the Fact.

CHAPTER XLI.

ATTEMPTS.

361. When a person, intending to commit an offence, begins to put his intention into execution by means adapted to its fulfilment, and manifests his intention by some overt act, but does not fufil his intention to such an extent as to commit the offence, he is deemed to attempt to commit the offence. **Attempt defined.**

It is immaterial, except so far as regards punishment, whether the offender does all that is necessary on his part for completing the commission of the offence, or whether the complete fulfilment of his intention is prevented by circumstances independent of his will, or whether he desists of his own motion from the further prosecution of his intention.

It is immaterial that by reason of circumstances not known to the offender it is impossible in fact to commit the offence.

362. Any person who attempts to commit a felony or misdemeanour is guilty of an offence, which, unless otherwise stated, is a misdemeanour. **Attempts to commit offences.**

363. Any person who attempts to commit a felony of such a kind that a person convicted of it is liable to the punishment of death or imprisonment for a term of fourteen years or upwards, with or without other punishment, is guilty of a felony, and is liable, if no other punishment is provided, to imprisonment for seven years. **Punishment of attempts to commit certain felonies.**

364. Any person who solicits or incites or attempts to procure another to do any act or make any omission, whether in the Colony or elsewhere, of such a nature that, if the act were done or the omission were made, an offence would thereby be committed, under the laws of the Colony, or the laws in force in the place where the act or omission is proposed to be done or made, whether by himself or by that other person, is guilty of an offence of the same kind and is liable to the same punishment as if he had himself attempted to do the same act or make the same omission in the Colony : **Soliciting or inciting others to commit offence in Colony or elsewhere.**

Provided that if the act or omission is proposed to be done or made at a place not in the Colony, the punishment shall not exceed that which he would have incurred under the laws in force where the act or omission was proposed to be done or made, if he had himself attempted to do the proposed act or make the proposed omission :

Provided also that, in the last-mentioned case, a prosecution shall not be instituted except at the request of the Government of the State having jurisdiction in the place where the act or omission was proposed to be done or made.

365. Every person who, knowing that a person designs to commit or is committing a felony, fails to use all reasonable means to prevent the commission or completion thereof, is guilty of a misdemeanour. **Neglect to prevent felony.**

CHAPTER XLII.

CONSPIRACIES.

Conspiracy to commit felony.

366. Any person who conspires with another to commit any felony, or to do any act in any part of the world which if done in the Colony would be a felony, and which is an offence under the laws in force in the place where it is proposed to be done, is guilty of a felony, and is liable, if no other punishment is provided, to imprisonment for seven years, or, if the greatest punishment to which a person convicted of the felony in question is liable is less than imprisonment for seven years, then to such lesser punishment.

Conspiracy to commit misdemeanour.

367. Any person who conspires with another to commit a misdemeanour, or to do any act in any part of the world which if done in the Colony would be a misdemeanour, and which is an offence under the laws in force in the place where it is proposed to be done, is guilty of a misdemeanour.

Other conspiracies.

368. Any person who conspires with another to effect any of the purposes following, that is to say—

(1) to prevent or defeat the execution or enforcement of any Ordinance, Statute or Order in Council; or

(2) to cause any injury to the person or reputation of any person or to depreciate the value of any property of any person; or

(3) to prevent or obstruct the free and lawful disposition of any property by the owner thereof for its fair value; or

(4) to injure any person in his trade or profession; or

(5) to prevent or obstruct, by means of any act or acts which if done by an individual person would constitute an offence on his part, the free and lawful exercise by any person of his trade, profession, or occupation; or

(6) to effect any unlawful purpose; or

(7) to effect any unlawful purpose by any unlawful means,

is guilty of a misdemeanour.

CHAPTER XLIII.

ACCESSORIES AFTER THE FACT.

Definition of accessories after the fact.

369. A person who receives or assists another who is, to his knowledge, guilty of an offence, in order to enable him to escape punishment, is said to become an accessory after the fact to the offence.

A wife does not become an accessory after the fact to an offence of which her husband is guilty by receiving or assisting him in order to enable him to escape punishment; or by receiving or assisting in her husband's presence and by his authority another person who is guilty of an offence in the commission of which her husband has taken part, in order to enable that other person to escape punishment; nor does a husband become an accessory after the fact to an offence of which his wife is guilty by receiving or assisting her in order to enable her to escape punishment.

370. Any person who becomes an accessory after the fact to a felony is guilty of a felony, and is liable, if no other punishment is provided, to imprisonment for three years.

Punishment of accesories after the fact to felonies.

371. Any person who becomes an accessory after the fact to a misdemeanour is guilty of a misdemeanour.

Punishment of accesories after the fact to misdemeanours.

372. The Uniforms Ordinance (Chapter 65 of the Revised Edition) and the Criminal Law Amendment Ordinance (Chapter 78 of the Revised Edition) are hereby repealed.

Repeal.

THE CRIMINAL PROCEDURE CODE.

ARRANGEMENT OF SECTIONS

Part I.—Preliminary.

Part II.—Powers of Courts.

SPECIAL DISTRICTS.

Part III.—General Provisions.

ARREST, ESCAPE AND RETAKING.

Arrest generally.

Arrest without warrant.

Escape and Retaking.

PREVENTION OF OFFENCES.

Security for keeping the Peace and for Good Behaviour.

Proceedings subsequent to Order to furnish Security.

PREVENTIVE ACTION OF THE POLICE.

Part IV.—Provisions relating to all Criminal Investigations.

PLACE OF INQUIRY OR TRIAL.

Transfer of Cases.

COSTS AND COMPENSATION.

RESTITUTION OF PROPERTY.

MISCELLANEOUS PROVISIONS.

Part V.—Mode of Taking and Recording Evidence in Inquiries and Trials.

GENERAL.

SUBORDINATE COURTS.

SUPREME COURT.

Part VI.—Procedure in Trials before Subordinate Courts.

PROVISIONS RELATING TO THE HEARING AND DETERMINATION OF CASES.

LIMITATIONS AND EXCEPTIONS RELATING TO TRIALS BEFORE SUBORDINATE COURTS.

Part VII.—Special Provisions relating to the Trial of Europeans.

Part VIII.—Provisions relating to the Committal of Accused Persons for Trial before the Supreme Court.

Part IX.—Procedure in Trials before the Supreme Court.

GENERAL.

CLOSE OF HEARING.

In Trials by Jury.

In Trials with Assessors.

PASSING SENTENCE.

Part X.—Sentences and their Execution.

SENTENCE OF DEATH.

OTHER SENTENCES.

FIRST OFFENDERS.

PREVIOUSLY CONVICTED OFFENDERS.

DEFECTS IN ORDER OR WARRANT.

Part XI.—Appeals.

APPEALS FROM SUBORDINATE COURTS.

Appeals.

SECTION.

AN ORDINANCE.

No. 11 OF 1930.

Assented to in His Majesty's name this twenty-eighth day of May, 1930.

EDWARD GRIGG,
Governor.

[28TH MAY, 1930.] **Date of assent.**

An Ordinance to make Provision for the Procedure to be followed in Criminal Cases.

By Proclamation. **Date of commencement.**

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

PART I.—PRELIMINARY.

1. This Ordinance may be cited as " the Criminal Procedure Code " (hereinafter referred to as " this Code "), and shall commence and come into operation on such date as the Governor may, by proclamation in the Gazette, appoint. **Short title and commencement.**

2. In this Code, unless the context otherwise requires— **Interpretation**

" cognizable offence " means an offence for which a police officer may, in accordance with the First Schedule or under any law for the time being in force, arrest without warrant;

" European " means a person of European origin or descent and includes an American who is not of origin or descent other than European;

" native " means any native of Africa not of European or Asiatic extraction, but includes an Arab and a Somali, and also any Beluchi born in Africa;

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

"officer in charge of a police station" includes, when the officer in charge of the police station is absent from the station-house, or unable from illness or other cause to perform his duties, the police officer present at the station-house who is next in rank to such officer, and is above the rank of constable, or, when the Governor so directs, any other police officer so present. For the purpose of this definition a European constable shall be deemed to be above the rank of constable;

"police officer" includes any member of the Police Force;

"police station" means a post or place appointed by the Commissioner of Police to be a police station, and includes any local area policed from such station;

"preliminary investigation" means an investigation of a criminal charge held by a subordinate court with a view to the committal of the accused person for trial before the Supreme Court;

"public prosecutor" means any person appointed under section 83, and includes the Attorney General, the Solicitor General, a Crown Counsel, and any person acting under the directions of the Attorney General;

"subordinate court" includes a subordinate native court;

"summary trial" means a trial held by a subordinate court under Part VI.

Trial of offences under Penal Code.

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

Trial of offences under other laws.

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

Saving power of Supreme Court.

(3) Provided, however, and notwithstanding anything in this Code contained, the Supreme Court may, subject to the provisions of any law for the time being in force in the Colony, in exercising its criminal jurisdiction in respect of any matter or thing to which the procedure prescribed by this Code is inapplicable, exercise such jurisdiction according to the course of procedure and practice observed by and before His Majesty's High Court of Justice in England at the date of the coming into operation of this Code.

PART II.—POWERS OF COURTS.

Offences under Penal Code.

4. Subject to the other provisions of this Code, any offence under the Penal Code may be tried by the Supreme Court, or by any subordinate court by which such offence is shown in the fifth column of the First Schedule to be triable.

Offences under other laws.

5. (1) Any offence under any law other than the Penal Code shall, when any court is mentioned in that behalf in such law, be tried by such court.

(2) When no court is so mentioned, it may, subject to the other provisions of this Code, be tried by the Supreme Court, or by any subordinate court by which such offence is shown in the fifth column of the First Schedule to be triable.

Sentences which Supreme Court may pass.

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

Sentences which subordinate courts may pass.

7. Subject to the provisions of Part VII of this Code, subordinate courts of the first, second and third class may, when the accused is a non-native, pass the following sentences, namely :—

Subordinate courts of the first class.	Imprisonment for a term not exceeding two years. Fine not exceeding £300. Corporal punishment.
Subordinate courts of the second class.	Imprisonment for a term not exceeding six months. Fine not exceeding £75. Corporal punishment.
Subordinate courts of the third class.	Imprisonment for a term not exceeding one month. Fine not exceeding £15.

Combination of sentences.

8. Any court may pass any lawful sentence combining any of the sentences which it is authorised by law to pass.

Powers of subordinate native courts.

9. (1) Liwalis' and Cadis' courts shall have the same powers in all matters with respect to natives only as a subordinate court of the second class with respect to non-natives.

(2) Mudirs' courts shall have the same powers in all matters with respect to natives only as a subordinate court of the third class with respect to non-natives.

Powers of subordinate courts over natives.

10. (1) Subordinate courts of the first, second and third class may try natives for any offence under the Penal Code or any other law other than offences under sections 36, 37 and 38 of the Penal Code, murder, manslaughter, rape, or attempts to commit or aiding, abetting, counselling or procuring the commission of any such offences.

(2) Subordinate courts of the first and second class may pass on any native so tried any sentence authorised by the Penal Code or any other law.

(3) Subordinate courts of the third class may pass on any native so tried a sentence of imprisonment for a term not exceeding six months or a fine not exceeding twenty pounds or both.

Sentences requiring confirmation by Supreme Court.

11. (1) No sentence imposed on a native by any subordinate court exceeding six months' imprisonment (whether such sentence shall be a substantive sentence of imprisonment or a sentence of imprisonment in default of payment of a fine or a combination of such sentences) or twelve strokes shall be carried into effect, and no fine exceeding fifty pounds shall be levied, until the record of the case or a certified copy thereof has been transmitted to and the sentence has been confirmed by the Supreme Court.

(2) The Supreme Court may exercise the same powers in confirmation as are conferred upon it in revision by Part XI of this Code.

Release on bail pending order of Supreme Court.

12. (1) Whenever a subordinate court shall pass a sentence which requires confirmation by the Supreme Court under the last preceding section, the court imposing such sentence may in its discretion release the person sentenced on bail pending the order of the Supreme Court.

(2) If the person sentenced is so released on bail as aforesaid, the term of imprisonment shall run from the date upon which such person begins to serve his sentence after confirmation by or other order of the Supreme Court :

Provided, however, that the person sentenced may, pending the order of the Supreme Court, elect to serve his sentence from the date upon which he is sentenced by the subordinate court, in which case the term of imprisonment shall run from such date.

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

13. (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 the 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 as follows :—

(*a*) In no case shall such person be sentenced to imprisonment for a longer period than fourteen years.

(*b*) If the case is tried by a subordinate court the aggregate punishment shall not exceed twice the amount of punishment which the court is, in the exercise of its ordinary jurisdiction, competent to impose.

(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.

SPECIAL DISTRICTS.

Appointment of special districts.

14. The Governor in Council if satisfied that the necessity exists may, by order, direct that any area in the Colony shall be a special district for the purposes of this Code.

Special powers to magistrates in special districts to try certain offences.

15. The Governor may, by appointment in the Gazette, confer upon any officer in charge of a special district, holding a subordinate court of the first or second class, power to try natives for offences under sections 36, 37 and 38 of the Penal Code, and for the offences of murder, manslaughter and rape, and for attempts to commit or aiding, abetting, counselling or procuring the commission of any of such offences :

Provided that all such offences shall be tried with the aid of assessors, and shall be inquired into and tried in the manner prescribed for the trial of such offences by the Supreme Court.

16. No sentence of death or sentence of imprisonment exceeding six months or sentence of corporal punishment exceeding twelve strokes imposed under the powers conferred by the last preceding section shall be carried into effect, and no fine exceeding fifty pounds imposed under such powers shall be levied, until the record of the case or a certified copy thereof has been transmitted to and the sentence has been confirmed by the Supreme Court : **Confirmation of sentences.**

Provided that no sentence of death shall be carried into effect until, in addition to the confirmation by the Supreme Court, such sentence has been confirmed by the Governor.

17. Whenever a sentence of death shall be confirmed by the Supreme Court under the last preceding section, such court shall forthwith transmit the record of the case or a certified copy thereof to the Governor for his confirmation. **Sentence of death to be confirmed by Governor.**

18. When an accused person has been sentenced to death by a subordinate court exercising powers conferred on it under section 15, such court shall, on the receipt of the confirmation of such sentence by the Supreme Court, inform him that he may appeal to His Majesty's Court of Appeal for Eastern Africa as if he had been convicted on a trial held by the Supreme Court and, if he wishes to appeal, inform him that his appeal must be preferred within thirty days from the date on which he is given such information. **Provisions as to appeal from death sentence.**

19. When a sentence of death has been passed by a subordinate court exercising powers conferred on it under section 15, such court shall, on receiving the order in appeal, if any, thereon and the order of confirmation of sentence or other order by the Supreme Court and the Governor, issue a warrant or take such other steps as may be necessary to carry such order or orders into effect. **Execution of death sentence.**

PART III.—GENERAL PROVISIONS.

ARREST, ESCAPE AND RETAKING.

Arrest generally.

20. (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. **Arrest, how made.**

(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.

(3) Nothing in this section shall give a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.

21. (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. **Search of place entered by person sought to be arrested.**

(2) If ingress to such place cannot be obtained under the preceding sub-section, 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 :

Provided that if any such place is an apartment in the actual occupancy of a woman (not being the person to be arrested) who, according to custom, does not appear in public, such person or police officer shall, before entering such apartment, give notice to the woman that she is at liberty to withdraw, and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.

Power to break out of house, etc., for purposes of liberation.

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

No unnecesary restraint.

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

Search of arrested persons.

24. Whenever a person is arrested—

(*a*) by a police officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail but the person arrested cannot furnish bail; or

(*b*) without warrant, or by a private person under a warrant, and the person arrested cannot legally be admitted to bail or is unable to furnish bail,

the police officer making the arrest or, when the arrest is made by a private person, the police officer to whom he makes over the person arrested may search such person and place in safe custody all articles, other than necessary wearing apparel, found upon him.

Mode of searching women.

25. 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.

26. The officer or other person making any arrest may take from the person arrested any offensive weapons which he has about his person, and shall deliver all weapons 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 without warrant.

27. Any police officer may, without an order from a magistrate and without a warrant, arrest— **Arrest by police officer without warrant.**

(*a*) any person whom he suspects upon reasonable grounds of having committed a cognizable offence;

(*b*) any person who commits a breach of the peace 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 His 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 the Colony which, if committed in the Colony, would have been punishable as an offence, and for which he is, under the Fugitive Criminals Surrender Ordinance or the Fugitive Offenders Act, 1881, or otherwise, liable to be apprehended and detained in the Colony; ***Cap.* 11.**

(*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 released convict committing a breach of any provision prescribed by section 330 or of any rule made thereunder.

28. Any officer in charge of a police station may in like manner arrest or cause to be arrested— **Arrest of vagabonds, habitual robbers, etc.**

(*a*) any person found taking precautions to conceal his presence within the limits of such station under circumstances which afford reason to believe that he is taking such precautions with a view to committing a cognizable offence;

(*b*) any person within the limits of such station who has no ostensible means of subsistence or who cannot give a satisfactory account of himself;

(*c*) any person who is by repute an habitual robber, housebreaker, or thief, or an habitual receiver of stolen property knowing it to be stolen, or who by repute habitually commits extortion or in order to the committing of extortion habitually puts or attempts to put persons in fear of injury.

Procedure when police officer deputes subordinate to arrest without warrant.

29. When any officer in charge of a police station requires any officer subordinate to him to arrest without a warrant (otherwise than in such officer's presence) any person who may lawfully be arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing specifying the person to be arrested and the offence or other cause for which the arrest is to be made.

Refusal to give name and residence.

30. (1) When any person who in the presence of a police officer has committed or has been accused of committing a non-cognizable offence refuses on the demand of such officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer 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 the Colony the bond shall be secured by a surety or sureties resident in the Colony.

(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.

31. A police officer making an arrest without a warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a magistrate having jurisdiction in the case or before an officer in charge of a police station.

Arrest by private person.

32. (1) Any private person may arrest any person who in his view commits a cognizable offence, or whom he reasonably suspects of having committed a felony.

(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.

33. (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 27, a police officer shall re-arrest him.

(3) If there is reason to believe that he has committed a non-cognizable 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 30. If there is no sufficient reason to believe that he has committed any offence he shall be at once released.

34. When any person has been taken into custody without a warrant for an offence other than murder, treason or rape, the officer in charge of the police station to which 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 subordinate 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 executing a bond, with or without sureties, for a reasonable amount to appear before a subordinate court at a time and place to be named in the bond, but where such person is retained in custody he shall be brought before a subordinate court as soon as practicable.

Detention of persons arrested without warrant.

35. Officers in charge of police stations shall report to the nearest magistrate the cases of all persons arrested without warrant within the limits of their respective stations, whether such persons have been admitted to bail or not.

Police to report apprehensions.

36. 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.

Offence committed in magistrate's presence.

37. 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.

Arrest by magistrate.

Escape and Retaking.

38. 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 the Colony.

Recapture of person escaping.

39. The provisions of sections 21 and 22 shall apply to arrests under the last preceding section, although the person making any such arrest is not acting under a warrant and is not a police officer having authority to arrest.

Provision of sections 21 and 22 to apply to arrests under section 38.

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

Assistance to magistrate or police officer.

(*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.

PREVENTION OF OFFENCES.

Security for keeping the Peace and for Good Behaviour.

41. (1) Whenever a magistrate empowered to hold a subordinate court of the first class is informed on oath that any person is likely to commit a breach of the peace or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity, the magistrate may, in manner hereinafter

Security for keeping the peace.

provided, require such person to show cause why he should not be ordered to execute a bond, 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.

(3) When any magistrate not empowered to proceed under sub-section (1) has reason to believe that any person is likely to commit a breach of the peace or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity, and that such breach of the peace or disturbance cannot be prevented otherwise than by detaining such person in custody, such magistrate may, after recording his reasons, issue a warrant for his arrest (if he is not already in custody or before the court), and may send him before a magistrate empowered to deal with the case, with a copy of his reasons.

(4) A magistrate before whom a person is sent under this section may in his discretion detain such person in custody until the completion of the inquiry hereinafter prescribed.

Security for good behaviour from vagrants and suspected persons.

42. Whenever a magistrate empowered to hold a subordinate court of the first class 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 execute a bond, 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.

43. Whenever a magistrate empowered to hold a subordinate court of the first class 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 Chapters XXX, XXXIII or XXXVI of the Penal Code; or

(*e*) habitually commits or attempts to commit, or aids or abets in the commission of, offences involving a breach of the peace; or

(*f*) is so desperate and dangerous as to render his being at large without security hazardous to the community,

such magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the magistrate thinks fit.

44. The provisions of the two last preceding sections shall not apply to Europeans in cases where they may be dealt with under the Vagrancy Ordinance or any Ordinance amending or substituted for such Ordinance.

Proviso as to European vagrants.
Cap. 63.

45. When a magistrate acting under section 41, section 42 or section 43 deems it necessary to require any person to show cause under such section, he shall make an order in writing setting forth—

Order to be made.

(*a*) the substance of the information received;

(*b*) the amount of the bond to be executed;

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

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

46. 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.

Procedure in respect of person present in court.

47. 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:

Summons or warrant in case of person not so present.

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.

48. Every summons or warrant issued under the last preceding section shall be accompanied by a copy of the order made under section 45, 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.

Copy of order under section 45 to accompany summons or warrant.

49. 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 execute a bond for keeping the peace, and may permit him to appear by an advocate.

Power to dispense with personal attendance.

50. (1) When an order under section 45 has been read or explained under section 46 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 47, 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.

Inquiry as to truth of information.

(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 subordinate courts.

(3) For the purposes of this section the fact that a person comes within the provisions of section 43 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.

51. (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 execute a bond, 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 45 ;

(*b*) the amount of every bond 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 bond shall be executed only by his sureties.

(2) Any person ordered to give security for good behaviour under this section may appeal to the Supreme Court, and the provisions of Part XI (relating to appeals) shall apply to every such appeal.

Discharge of person informed against.

52. If on an inquiry under section 50 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 execute a bond, 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.

Proceedings in all cases subsequent to Order to furnish Security.

Commencement of period for which security is required.

53. (1) If any person in respect of whom an order requiring security is made under section 45 or section 51 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 bond.

54. The bond to be executed 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 bond.

Power to reject sureties.

55. 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

56. (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 the next succeeding sub-section, be committed to prison, or, if he is already in prison, be detained in prison until such period expires or until within such period he gives the security to the court or magistrate who made the order requiring it.

(2) When such person has been ordered by a magistrate to give security for a period exceeding 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 Supreme Court, and the proceedings shall be laid as soon as conveniently may be before such court.

(3) The Supreme Court, after examining such 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 three 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.

(6) Imprisonment for failure to give security for keeping the peace shall be without hard labour.

(7) Imprisonment for failure to give security for good behaviour may be with or without hard labour as the court or magistrate in each case directs.

Power to release persons imprisoned for failure to give security.

57. Whenever a magistrate empowered to hold a subordinate court of the first class 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 Supreme Court, and such court may, if it thinks fit, order such person to be discharged.

Power of Supreme Court to cancel bond.

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

Discharge of sureties.

59. (1) Any surety for the peaceable conduct or good behaviour of another person may at any time apply to a magistrate empowered to hold a subordinate court of the first class to cancel any bond executed 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 bond and shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same description as the original security. Every such order shall for the purposes of sections 54, 55, 56 and 57 be deemed to be an order made under section 51.

PREVENTIVE ACTION OF THE POLICE.

Police to prevent cognizable offences.

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

Information of design to commit such offences

61. Every police officer receiving information of a design to commit any cognizable offence shall communicate such information to the police officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence.

Arrest to prevent such offences.

62. A police officer knowing of a design to commit any cognizable 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.

63. 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.

Place of Inquiry or Trial.

General authority of courts of the Colony.

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

Accused person to be sent to district where offence committed.

65. Where a person accused of having committed an offence within the Colony has escaped or removed from the province or district within which the offence was committed and is found within another province or district, the court within whose jurisdiction he is found shall 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.

66. 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 tried.

Powers of Supreme Court.

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

Provided that, except under section 82, no criminal case shall be brought under the cognizance of the Supreme Court unless the same shall have been previously investigated by a subordinate court and the accused person shall have been committed for trial before the Supreme Court.

Place and date of sessions of the Supreme Court.

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

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

69. Subject to the provisions of section 67 and to the powers of transfer conferred by sections 77 and 79, every offence shall ordinarily be inquired into and tried by a court within the local limits of whose jurisdiction it was committed.

Ordinary place of inquiry and trial.

70. 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 at place where act done or where consequence of offence ensues.

71. 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 offence is connected with another offence.

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

when an offence is committed partly in one local area and partly in another; or

when an offence is a continuing one, and continues to be committed in more local areas than one; or

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.

Trial where place of offence is uncertain.

73. 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.

Offence committed on a journey.

74. Whenever any doubt arises as to the court by which any offence should be inquired into or tried, the Supreme Court may decide by which court the offence shall be inquired into or tried.

Supreme Court to decide in cases of doubt.

75. 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.

Court to be open.

Transfer of Cases.

76. (1) If upon the hearing of any complaint it appears that the cause of 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.

Transfer of case where offence committed outside jurisdiction.

(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 recognizances, 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 recognizances, 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 sub-section respecting the transmission and validity of the documents in the case shall apply.

Transfer of cases between magistrates.

77. Any magistrate holding a subordinate court of the first class—

(*a*) may transfer any case of which he has taken cognizance for inquiry or trial to any magistrate holding a subordinate court empowered to inquire into or try such case within the local limits of such first class subordinate court's jurisdiction; and

(*b*) may direct or empower any magistrate holding a subordinate court of the second or third class or any magistrate holding a native subordinate court who has taken cognizance of any case, and whether evidence has been taken in such case or not, to transfer it for inquiry or trial to himself or to any other specified magistrate within the local limits of his jurisdiction who is competent to try the accused or commit him for trial, and such magistrate may dispose of the case accordingly.

Procedure when after commencement of inquiry or trial magistrate finds case should be transferred to another magistrate.

78. 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 a magistrate holding a subordinate court of the first class, empowered to direct the transfer of the case under the last preceding section.

Power of Supreme Court to change venue.

79. (1) Whenever it is made to appear to the Supreme Court—

(*a*) that a fair and impartial inquiry or trial cannot be had in any criminal court subordinate thereto; 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;

(ii) that any particular criminal case or class of cases be transferred from a criminal court subordinate to its authority to any other such criminal court of equal or superior jurisdiction;

(iii) that an accused person be committed for trial to itself.

(2) The Supreme 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 for the exercise of the power conferred by this section shall be made by motion, which shall, except when the applicant is the Attorney General, be supported by affidavit.

(4) Every accused person making any such application shall give to the Attorney General notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least 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 Supreme Court may direct him to execute a bond, with or without sureties, conditioned that he will, if convicted, pay the costs of the prosecutor.

CONTROL OF CROWN IN CRIMINAL PROCEEDINGS.

Power of Attorney General to enter *nolle prosequi*.

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

(2) If the accused shall not be before the court when such *nolle prosequi* is entered, the registrar or clerk of such court shall forthwith cause notice in writing of the entry of such *nolle prosequi* to be given to the keeper of the prison in which such accused may be detained, and also, if the accused person has been committed for trial, to the subordinate court by which he was so committed, and such subordinate court shall forthwith cause a similar notice in writing to be given to any witnesses bound over to prosecute and give evidence and to their sureties (if any) and also to the accused and his sureties in case he shall have been admitted to bail.

Delegation of powers by Attorney-General.

81. The Attorney General may order in writing that all or any of the powers vested in him by the last preceding section and by Part VIII of this Code be vested for the time being in the Solicitor General or a Crown Counsel, and the exercise of these powers by the Solicitor General or a Crown Counsel shall then operate as if they had been exercised by the Attorney General:

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

Criminal informations by the Attorney-General.

82. (1) Notwithstanding anything in this Code contained the Attorney General may, with the previous sanction of the Governor in Council, exhibit to the Supreme Court, against persons subject to the jurisdiction of the Supreme Court, informations for all purposes for which His Majesty's Attorney General for England may exhibit informations on behalf of the Crown in the High Court of Justice in England.

(2) Such proceedings may be taken upon every such information as may lawfully be taken in the case of similar informations filed by His Majesty's Attorney General for England so far as the circumstances of the case and the practice and procedure of the Supreme Court will admit.

(3) The Supreme Court may make rules for carrying into effect the provisions of this section.

APPOINTMENT OF PUBLIC PROSECUTORS AND CONDUCT OF PROSECUTIONS.

Power to appoint public prosecutors.

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

(2) In any case committed for trial to the Supreme Court the Attorney General may appoint any advocate of the Supreme Court, or officer of the administration, not being an officer of police below the rank of inspector of police, to be a public prosecutor for the purpose of such case.

(3) Every public prosecutor shall be subject to the express directions of the Attorney General.

Powers of public prosecutors.

84. 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.

Withdrawal from prosecution in trials before subordinate courts.

85. In any trial before a subordinate court any public prosecutor may, with the consent of the court or on the instructions of the Attorney General, at any time before judgment is pronounced, withdraw from the prosecution of any person, and upon such withdrawal—

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

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

Permission to conduct prosecution.

86. (1) Any magistrate inquiring into or trying any case may permit the prosecution to be conducted by any person, but no person other than a public prosecutor or other officer generally or specially authorised by the Governor in this behalf shall be entitled to do so without permission.

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

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

INSTITUTION OF PROCEEDINGS.

Making of Complaint.

Complaint or charge.

87. (1) Any person who believes from a reasonable and probable cause that an offence has been committed by any person may make a complaint or charge thereof to a magistrate within the local limits of whose jurisdiction either the offence alleged to have been committed is triable or the person accused is alleged to reside or be.

(2) Every complaint or charge shall be in writing, or the substance thereof shall be reduced to writing by the magistrate, and shall be signed by the complainant and also by the magistrate.

Issue of summons or warrant.

88. (1) The magistrate upon receiving any such complaint or charge may in his discretion issue either a summons or a warrant to compel the attendance of the accused person before a subordinate 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 or charge 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.

PROCESSES TO COMPEL THE APPEARANCE OF ACCUSED PERSONS.

Summons.

Form and contents of summons.

89. (1) Every summons issued by a court under this Code shall be in writing, in duplicate, signed and sealed by the presiding officer of such court or by such other officer as the Supreme Court may from time to time by rule direct.

(2) Every summons shall be directed to the person summoned and shall require him to appear at a time or 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.

90. (1) Every summons shall be served by a police officer or by an officer of the court issuing it or other public servant, and shall, if practicable, be served personally on the person summoned by delivering or tendering to him one of the duplicates of the summons.

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

Service when person summoned cannot be found.

91. 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 male member of his family or with his servant residing with him; and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

Procedure when service cannot be effected as before provided.

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

Service on servant of Government or Kenya and Uganda Railways and Harbours.

93. Where the person summoned is in the active service of the Government or of the Kenya and Uganda Railways and Harbours, the court issuing the summons shall ordinarily send it in duplicate to the head of the office in which such person is employed, and such head shall thereupon cause the summons to be served in the manner provided by section 90 and shall return it to the court under his signature with the indorsement required by that section. Such signature shall be evidence of the service.

Service on company.

94. Service of a summons on an incorporated company or other body corporate may be effected by serving it on the secretary, local manager or other principal officer of the corporation or by registered letter addressed to the chief officer of the corporation in the Colony 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.

Service outside local limits of jurisdiction

95. When a court desires that a summons issued by it shall be served at any place outside the local limits of its jurisdiction, it shall send such summons in duplicate to a magistrate within the local limits of whose jurisdiction the person summoned resides or is, to be there served.

Proof of service when serving officer not present.

96. (1) Where the officer 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 that such summons has been served, and a duplicate of the summons purporting to be indorsed in the

manner hereinbefore provided by the person to whom it was delivered or tendered or with whom it was left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved.

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

97. (1) Whenever a magistrate issues a summons in respect of any offence other than a felony, he may if he sees reason to do so, and shall when the offence with which the accused is charged is punishable only by fine or only by fine and/or imprisonment not exceeding three months, dispense with the personal attendance of the accused, provided that he pleads guilty in writing or appears by an advocate.

Power to dispense with personal attendance of accused

(2) But the magistrate inquiring into or trying any case may in his discretion, at any subsequent stage of the proceedings, direct the peronal attendance of the accused, and, if necessary, enforce such attendance in manner hereinafter provided. But no such warrant shall be issued 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 persons 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 manner hereinafter provided.

(5) Whenever the attendance of an accused 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 of Arrest.

98. 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.

Warrant after issue of summons

99. 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 97, the court may issue a warrant to apprehend him and cause him to be brought before such court. But no such warrant shall be issued unless a complaint or charge has been made upon oath.

Summons disobeyed

Form, contents and duration of warrant of arrest.

100. (1) Every warrant of arrest shall be under the hand of the judge or magistrate issuing the same and shall bear the seal of the court.

(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.

101. (1) Any court issuing a warrant for the arrest of any person in respect of any offence other than murder, treason or rape may in its discretion direct by indorsement 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 indorsement 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.

102. (1) A warrant of arrest may be directed to one or more police officers, or to one police officer and to all other police officers of the area within which the court has jurisdiction, or generally to all police officers of such area. 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 a warrant is directed to more officers or persons than one, it may be executed by all or by any one or more of them.

Warrants may be directed to landholders, etc.

103. (1) A magistrate empowered to hold a subordinate court of the first class may direct a warrant to any landholder, farmer or manager of land within the local limits of his jurisdiction for the arrest of any escaped convict or person who has been accused of a cognizable offence and has eluded pursuit.

(2) Such landholder, farmer or manager shall acknowledge in writing the receipt of the warrant and shall execute it if the person for whose arrest it was issued is in or enters on his land or farm or the land under his charge.

(3) When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest police officer, who shall cause him to be taken before a magistrate having jurisdiction, unless security is taken under section 101.

Execution of warrant directed to police officer.

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

Notification of substance of warrant.

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

Person arrested to be brought before the court without delay.

106. The police officer or other person executing a warrant of arrest shall (subject to the provisions of section 101 as to security) without unnecessary delay bring the person arrested before the court before which he is required by law to produce such person.

Where warrant of arrest may be executed.

107. A warrant of arrest may be executed at any place in the Colony.

Forwarding of warrants for execution outside jurisdiction.

108. (1) When a warrant of arrest is to be executed outside the local limits of the jurisdiction of the court issuing the same, such court may, instead of directing such warrant to a police officer, forward the same by post or otherwise to any magistrate within the local limits of whose jurisdiction it is to be executed.

(2) The magistrate to whom such warrant is so forwarded shall indorse his name thereon, and, if practicable, cause it to be executed in the manner hereinbefore provided within the local limits of his jurisdiction.

Procedure in case of warrant directed to police officer for execution outside jurisdiction.

109. (1) When a warrant of arrest directed to a police officer is to be executed outside the local limits of the jurisdiction of the court issuing the same, he shall take it for indorsement to a magistrate within the local limits of whose jurisdiction it is to be executed.

(2) Such magistrate shall indorse his name thereon, and such indorsement shall be sufficient authority to the police officer to whom the warrant is directed to execute the same within such limits, and the local police officers shall, if so required, assist such officer in executing such warrant.

(3) Whenever there is reason to believe that the delay occasioned by obtaining the indorsement of the magistrate within the local limits of whose jurisdiction the warrant is to be executed will prevent such execution, the police officer to whom it is directed may execute the same without such indorsement in any place outside the local limits of the jurisdiction of the court which issued it.

Procedure on arrest of person outside jurisdiction.

110. (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 within twenty miles of the place of arrest, or is nearer than the magistrate within the local limits of whose jurisdiction the arrest was made, or unless security is taken under section 101, be taken before the 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, treason or rape, and he is ready and willing to give bail to the satisfaction of such magistrate, or if a direction has been indorsed under section 101 on the warrant and such person is ready and willing to give the security required by such direction, the magistrate shall 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 101.

Irregularities in warrant.

111. 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.

Miscellaneous Provisions regarding Processes.

Power to take bond for appearance.

112. Where any person for whose appearance or arrest the officer presiding in any court is empowered to issue a summons or warrant is present in such court, such officer 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.

113. When any person who is bound by any bond taken under this Code to appear before a court does not so appear, the officer presiding in such 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.

114. (1) Where any person for whose appearance or arrest a court is empowered to issue a summons or warrant is confined in any prison within the local limits of the jurisdiction of such court, 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.

Powers of justices of the peace.

115. 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 or indorsing of a summons or warrant may be exercised by a justice of the peace.

SEARCH WARRANTS.

116. Where it is proved on oath to a court that in fact or according to reasonable suspicion anything upon, by or in respect of which an offence has been committed is in any building, ship, carriage, box, receptacle or place, the court may by warrant (called a search warrant) authorise a police officer or other person therein named to search the building, ship, carriage, box, receptacle or place (which shall be named or described in the warrant) for any such thing and, if anything searched for 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. **Power to issue search warrant.**

117. Every search warrant may be issued and executed on a Sunday, and shall be executed between the hours of sunrise and sunset, but the court may, by the warrant, in its discretion, authorise the police officer or other person to whom it is addressed to execute it at any hour. **Execution of search warrant.**

118. (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 afford all reasonable facilities for a search therein. **Persons in charge of closed place to allow ingress.**

(2) If ingress into such building or other place cannot be so obtained, the police officer or other person executing the search warrant may proceed in the manner prescribed by section 21.

(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 25 shall be observed.

119. (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. **Detention of property seized.**

(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.

120. The provisions of sections 100 (1) and (3), 102, 104, 107, 108 and 109 shall, so far as may be, apply to all search warrants issued under section 116. **Provisions applicable to search warrants.**

PROVISIONS AS TO BAIL.

121. (1) When any person, other than a person accused of murder, treason or rape, is arrested or detained without warrant by an officer in charge of a police station, 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 be admitted to bail : **Bail in certain cases.**

Provided that such officer or court may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided.

(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 sub-section (1) of this section, the Supreme Court may in any case direct that any person be admitted to bail or that the bail required by a subordinate court or police officer be reduced.

Bail bond.

122. Before any person is released on bail or on his own recognizance, a bond for such sum as the court or police officer, as the case may be, thinks sufficient shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties, conditioned that such person shall attend at the time and place mentioned in the bond and shall continue so to attend until otherwise directed by the court or police officer, as the case may be.

Discharge from custody.

123. (1) As soon as the bond has been executed, the person for whose appearance it has been executed 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 or in section 121 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 bond was executed.

Deposit instead of recognizance.

124. When any person is required by any court or officer to execute a bond, with or without sureties, such court or officer may, except in the case of a bond for good behaviour, permit him to deposit a sum of money or Government currency notes to such amount as the court or officer may fix in lieu of executing such a bond, and may permit a native to deposit any property.

Power to order sufficient bail when that first taken is insufficient.

125. 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.

126. (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 bond 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 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 bond 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.

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

Persons bound by recognizance absconding may be committed.

128. If it is made to appear to any court, by information on oath, that any person bound by recognizance is about to leave the Colony, 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 recognizance.

Forfeiture of recognizance.

129. (1) Whenever any person shall not appear at the time and place mentioned in any recognizance entered into by him, the court may by order indorse such recognizance and declare the same to be forfeited.

(2) On the forfeiture of any recognizance the court may issue its warrant of distress for the amount mentioned in such recognizance or for the imprisonment of such person and his surety or sureties for any term not exceeding six months, unless the amount mentioned in such recognizance be sooner paid or levied.

(3) A warrant of distress under this section may be executed within the local limits of the jurisdiction of the court which issued it, and it shall authorise the distress and sale of any property belonging to such person without such limits when indorsed by a magistrate holding a subordinate court of the first or second class within the local limits of whose jurisdiction such property is found.

Appeal from and revision of orders.

130. All orders passed under the last preceding section by any magistrate shall be appealable to and may be revised by the Supreme Court.

Power to direct levy of amount due on certain recognizances.

131. The Supreme Court may direct any magistrate to levy the amount due on a recognizance to appear and attend at the Supreme Court.

JOINDER OF CHARGES.

Joinder of charges.

132. For every distinct offence of which any person is accused there shall be a separate charge or information, and every such charge or information shall be tried separately except in the the following cases :—

Three offences of same kind in one year.

(*a*) When a person is accused of more offences than one of the same kind committed within one year of each other, he may be charged with and tried at the same time for any number of them not exceeding three.

Occurring in one series of acts.

(*b*) If in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with and tried at the same time for every such offence.

When doubtful what offence has been committed.

(*c*) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused person may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

When more than one person accused of same offence.

(*d*) When more persons than one are accused of the same offence, or of different offences committed in the same transaction, or when one person is accused of committing any offence and another of aiding and abetting or being accessory to or of attempting to commit such offence, such persons may be charged and tried together or separately as the court thinks fit.

PREVIOUS CONVICTION OR ACQUITTAL.

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

133. 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.

May be tried again on separate charge.

134. A person convicted or acquitted of any offence may be afterwards tried for any offence for which a separate charge might have been made against him on the former trial under paragraph (*b*) of section 132.

Consequences supervening or not known at time of former trial.

135. 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.

136. 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.

137. (1) In any inquiry, trial or other proceeding under this Code, a previous conviction may be proved, in addition to any other mode provided by any law for the time being in force—

(*a*) by an extract certified, under the hand of the officer having the custody of the records of the court in which such conviction was had, to be a copy of the sentence or order; or

(*b*) by a certificate signed by the officer in charge of the prison in which the punishment or any part thereof was inflicted, or by production of the warrant of commitment under which the punishment was suffered;

together with, in each of such cases, evidence as to the identity of the accused person with the person so convicted.

(2) A certificate in the form prescribed by the Governor given under the hand of an officer appointed by the Governor in that behalf, who shall have compared the finger prints of an accused person with the finger prints 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 finger prints of the accused.

(3) A previous conviction in any place outside the Colony 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 finger prints, or photographs of the finger prints of the person so convicted, together with evidence that the finger prints 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.

OFFENCES BY FOREIGNERS WITHIN COLONIAL WATERS.

Leave of Governor necessary before prosecution instituted.

138. (1) Proceedings for the trial of any person, who is not a British subject, for an offence committed on the open sea within three nautical miles of the coast of the Colony measured from low-water mark, shall not be instituted in any court except with the leave of the Governor 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 subordinate 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 consent and certificate under this section.

(*b*) It shall not be necessary to aver in any charge or information that the consent or certificate of the Governor 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 Governor and containing such consent and certificate shall be sufficient evidence for all the purposes of this section of the consent 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.

COMPELLING ATTENDANCE OF WITNESSES.

Summons for witness.

139. (1) If it is made to appear that material evidence can be given by or is in the possession of any person who will not voluntarily attend to give it or will not voluntarily produce the same, it shall be lawful for a court having cognizance 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.

(2) Nothing in this section shall be deemed to affect the provision of sections 123 and 124 of the Indian Evidence Act. 1872.

Warrant for witness who disobeys summons.

140. 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.

141. If the court is satisfied 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.

142. When any witness is arrested under a warrant the court may, on his furnishing security by recognizance to the satisfaction of the court for his appearance at the hearing of the case, 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.

143. (1) Any court desirous of examining as a witness, in any case pending before it, any person confined in any prison within the local limits of its jurisdiction 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.

144. (1) Any person summoned to attend as a witness who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the court, or fails to attend after adjournment of the court after being ordered to attend, shall be liable by order of the court to a fine not exceeding twenty pounds.

(2) Such fine shall 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 Supreme Court may remit or reduce any fine imposed under this section by a subordinate court.

EXAMINATION OF WITNESSES.

Power to examine person present in court and to recall witnesses.

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

146. 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 : **Evidence to be given on oath.**

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.

147. (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— **Refractory witnesses.**

(*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.

148. 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— **Cases when wife or husband may be called without the consent of the accused.**

(*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 Chapter XV of the Penal Code ;

(*c*) in any case where such person is charged in respect of an act or omission affecting the person or property of the wife or husband of such person or the children of either of them.

COMMISSIONS FOR THE EXAMINATION OF WITNESSES.

Issue of commission for examination of witness.

149. (1) Whenever in the course of any inquiry, trial or other proceeding under this Code, the Supreme Court 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 may 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.

150. (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 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.

Power of magistrate to apply for issue of commission.

151. Whenever in the course of any inquiry, trial or other proceeding under this Code before any magistrate, it appears that a commission ought to be issued for the examination of a witness whose evidence 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, such magistrate shall apply to the Supreme Court, stating the reasons for the application; and the Supreme Court may either issue a commission in the manner hereinbefore provided or reject the application.

Return of commission.

152. (1) After any commission issued under section 149 or section 151 has been duly executed it shall be returned, together with the deposition of the witness examined thereunder, to the Supreme Court, 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, if it satisfies the conditions prescribed by section 33 of the Indian Evidence Act, 1872, may also be received in evidence at any subsequent stage of the case before another court.

Adjournment of inquiry or trial.

153. In every case in which a commission is issued under section 149 or section 151 the inquiry, trial or other proceeding may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

EVIDENCE FOR DEFENCE.

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

Provided as follows :—

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

(2) 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. No comment if not called as witness.

(3) 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. Spouses.

(4) 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. Communications during marriage.

(5) 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. Cross-examination.

(6) 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— No question to show commission of offence not charged.

(*a*) 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 Exceptions.

(*b*) he has personally or by his advocate asked questions of the witnesses for the prosecution with a view to establishing his own good character, or 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

(*c*) he has given evidence against any other person charged with the same offence.

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

(8) Nothing in this section shall affect the provisions of section 218 or any right of the person charged to make a statement without being sworn. Statement by person charged.

Procedure where person charged is the only witness called.

155. 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.

156. 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 :

Provided that the Attorney General or Solicitor General when appearing personally as advocate for the prosecution shall in all cases have the right of reply.

PROCEDURE IN CASE OF THE LUNACY OR OTHER INCAPACITY OF AN ACCUSED PERSON.

Inquiry by court as to lunacy of accused.

157. (1) When in the course of a trial or preliminary investigation the court has reason to believe that the accused is of unsound mind and consequently 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 and consequently incapable of making his defence, it shall postpone further proceedings in the case.

(3) If the case is one in which bail may be taken, the court may release the accused person on sufficient security being given that he will be properly taken care of and prevented from doing injury to himself or to any other person, and for his appearance before the court or such officer as the court may appoint in that behalf.

(4) If the case is one in which bail may not be taken, or if sufficient security is not given, the court shall report the case to the Colonial Secretary, and the Governor if satisfied by medical certificate may order the accused to be confined in a lunatic asylum or other suitable place of custody, and the court shall issue a warrant in accordance with such order.

Defence of lunacy at preliminary investigation.

158. 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 unsoundness of mind incapable of knowing the nature of the act or that it was wrong or 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 lunacy on trial

159. Where any act or omission is charged against any person as an offence, and it is given in evidence on the trial of such person for that offence that he was insane so as not to be responsible for his action at the time when the act was done or omission made, then if it appears to the court before which such person is tried that he did the act or made the omission charged but was insane as aforesaid at the time when he did or made the same, the court shall make a special finding to the effect that the accused was guilty of the act or omission charged but was insane as aforesaid when he did the act or made the omission.

When such special finding is made the court shall report the case for the order of the Governor and shall meanwhile order the accused to be kept in custody as a criminal lunatic in such place and in such manner as the court shall direct.

The Governor may order such person to be confined in a lunatic asylum, prison or other suitable place of safe custody.

Resumption of trial or investigation

160. Whenever any preliminary investigation or trial is postponed the court may at any time resume the preliminary investigation or trial and require the accused to appear or be brought before such court, when, if the court considers him capable of making his defence, the preliminary investigation or trial shall proceed.

But if the court considers the accused to be still incapable of making his defence, it shall act as if the accused were brought before it for the first time.

Certificate of medical officer of asylum as to sanity to be evidence.

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

Procedure when accused does not understand proceedings.

162. If the accused, though not insane, cannot be made to understand the proceedings, the court may proceed with the preliminary investigation or trial; and, in the case of a court other than the Supreme Court, if such investigation results in a committal for trial, or if such trial results in a conviction, the proceedings shall be forwarded to the Supreme Court with a report of the circumstances, and the Supreme Court shall pass thereon such order as it thinks fit.

JUDGMENT.

Mode of delivering judgment.

163. (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 brought before the court, or, if not in custody, be required by the court to attend, to hear judgment delivered, except 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.

(4) Nothing in this section shall be construed to limit in any way the provisions of section 367.

Contents of judgment.

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

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

(3) In the case of an acquittal the judgment shall state the offence of which the accused person is acquitted and shall direct that he be set at liberty.

(4) Notwithstanding anything hereinbefore contained, in trials by jury the court need not write a judgment but shall record the heads of the charge to the jury.

Copy of judgment, etc., to be given to accused on application.

165. (1) 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 copy shall be given free of cost.

(2) In a trial by jury a copy of the heads of the charge to the jury shall, on the application of the accused person, be given to him without delay and free of cost.

COSTS AND COMPENSATION.

Costs against accused.

166. (1) It shall be lawful for a judge of the Supreme Court or a magistrate of a subordinate court of the first, second or third class to order any person convicted before him of an offence to pay to the public or private prosecutor, as the case may be, such reasonable costs as to such judge or magistrate may seem fit, in addition to any other penalty imposed :

Provided that such costs shall not exceed fifty pounds in the case of the Supreme Court or twenty-five pounds in the case of a subordinate court.

Costs against private prosecutor.

(2) It shall be lawful for a judge of the Supreme Court or a magistrate of a subordinate court of the first, second or third class 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 by a court 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 fifty pounds in the case of an acquittal or discharge by the Supreme Court or twenty-five pounds in the case of an acquittal or discharge by a subordinate court :

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

(3) The costs awarded under this section may be awarded in addition to any compensation awarded under section 168.

(4) In this section—

" Public prosecutor " means any person prosecuting for or on behalf of the Crown or for or on behalf of a public authority.

" Private prosecutor " means any prosecutor other than a public prosecutor.

Order to pay costs appealable.

167. An appeal shall lie from any order awarding costs under the last preceding section, if made by a magistrate to the Supreme Court and if by a judge to His Majesty's Court of Appeal for Eastern Africa. 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.

168. 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.

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

169. The sums allowed for costs or compensation shall in all cases be specified in the conviction or order, and the same shall be recoverable in like manner as any penalty may be recovered under this Code; and in default of payment of such costs or compensation or of distress as hereinafter provided the person in default shall be liable to imprisonment with or without hard labour for a term not exceeding three months unless such costs or compensation shall be sooner paid.

Power of courts to award expenses or compensation out of fine.

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

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

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

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

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

RESTITUTION OF PROPERTY.

Property found on accused person.

171. 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.

172. (1) Where any person is convicted of having stolen any property or having obtained it fraudulently or by false pretences, the court convicting him may order that the property or a part thereof be restored to the person who appears to be the owner thereof, either on payment or without payment by the owner to the person in whose possession such property or a part thereof may be, of any sum named in such order.

(2) This section shall not apply to—

(*a*) any valuable security which has been *bonâ fide* paid or discharged by any person liable to pay or discharge the same; or

(*b*) any negotiable instrument which shall have been *bonâ fide* received by transfer or delivery by any person for a just and valuable consideration without notice, or without reasonable cause to suspect that it has been stolen or dishonestly obtained.

MISCELLANEOUS PROVISIONS.

The person accused of any offence may be convicted of attempt.

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

When offence proved is included in offence charged.

174. When a person is charged with an offence, and part of the charge is not proved, but the part which is proved amounts to a different offence, he may be convicted of the offence which he is proved to have committed, although he was not charged with it.

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

175. If on any trial for any of the offences mentioned in Chapter XXIX of the Penal Code, the facts proved in evidence authorise a conviction for some other of the said offences and not the offence wherewith the accused is charged, he may be found guilty of the said other offence, and thereupon he shall be punished as if he had been convicted on a charge or an information charging him with such offence.

Conviction of receiving on charge of stealing.

176. When a person is charged with stealing anything and it is proved that he received the thing knowing the same to have been stolen, he may be convicted of receiving, although he was not charged with that offence.

Conviction of false pretences on charge of stealing.

177. When a person is charged with stealing anything and it is proved that he obtained the thing in any such manner as would amount, under the provisions of the Penal Code, to obtaining it by false pretences with intent to defraud, he may be convicted of obtaining it by false pretences although he was not charged with that offence.

Conviction of stealing on charge of false pretences.

178. 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 stealing it although he was not charged with that offence.

179. When a person is charged with any offence under sections 257, 258 or 259 of the Penal Code it shall be sufficient to specify the gross sum 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 items or exact dates.

Charge of stealing by persons in public service, clerks and servants and directors or officers of companies.

180. If on any trial for rape or for defilement of a girl under the age of sixteen years the facts proved in evidence authorise a conviction for an offence under section 131 of the Penal Code or for an indecent assault and not the offence wherewith the accused is charged, he may be convicted of an offence under section 131 of the Penal Code or of indecent assault, as the case may be, and thereupon he shall be punished as if he had been convicted on a charge or an information charging him with such last-mentioned offence or with indecent assault.

Person charged with rape may be convicted of kindred offence.

181. 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 direct such person to be prosecuted for felony, whereupon such person may be dealt with as if not previously put on trial for misdemeanour.

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

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

Right of accused to be defended.

PART V.—MODE OF TAKING AND RECORDING EVIDENCE IN INQUIRIES AND TRIALS.

GENERAL.

183. 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).

Evidence to be taken in presence of accused.

SUBORDINATE COURTS.

184. In inquiries and trials (other than trials under section 187) by or before a magistrate, the evidence of the witnesses shall be recorded in the following manner :—

Manner of recording evidence before magistrate.

(a) The evidence of each witness shall be taken down in writing in the language of the court 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.

(3) If the evidence 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 evidence shall be interpreted to him in the language in which it was given or in a language which he understands.

Interpretation of evidence to accused or his advocate.

185. (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 the language of the court.

(2) If he appears by advocate and the evidence is given in a language other than the language of the court, and not understood by the advocate, it shall be interpreted to such advocate in the language of the court.

(3) 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.

(4) The language of the Supreme Court shall be English, and the language of a subordinate court, other than a subordinate native court, shall be English or Swahili or a vernacular language.

Remarks respecting demeanour of witness.

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

Procedure in case of minor offences.

187. (1) Notwithstanding anything contained in this Code, any magistrate having jurisdiction to try any of the offences mentioned in the next succeeding sub-section may try any such offence without recording the evidence as hereinbefore provided, but in any such case he shall enter, in such form as the Supreme Court may direct, the following particulars :—

(*a*) The serial number;

(*b*) The date of the commission of the offence;

(*c*) The date of the complaint;

(*d*) The name of the complainant;

(*e*) The name, parentage and residence of the accused;

(*f*) The offence complained of and the offence (if any) proved, and in cases coming under paragraphs (*d*), (*e*) or (*f*) of the next succeeding sub-section the value of the property in respect of which the offence has been committed;

(*g*) The plea of the accused;

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

(*i*) The sentence or other final order;

(*j*) The date on which the proceedings terminated.

(2) The offences referred to in the preceding sub-section are as follows :—

(*a*) Offences punishable with imprisonment for a term not exceeding six months or a fine not exceeding fifty pounds;

Cap. 96. (*b*) Offences against the Weights and Measures Ordinance;

(*c*) Common assault under section 228 of the Penal Code;

(*d*) Theft under Chapter XXVI of the Penal Code where the value of the property stolen does not exceed five pounds;

(*e*) Receiving or retaining stolen property under Chapter XXXI of the Penal Code where the value of such property does not exceed five pounds;

(*f*) Malicious injury to property where the value of such property does not exceed five pounds;

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

(*h*) Aiding, abetting, counselling or procuring the commission of any of the foregoing offences;

(*i*) Attempting to commit any of the foregoing offences.

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

(4) No sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under this section.

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

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

SUPREME COURT.

Record of evidence in Supreme Court.

189. The Supreme Court may from time to time, by rules, prescribe the manner in which evidence shall be taken down in cases coming before the court, and the judges of such court shall take down the evidence or the substance thereof in accordance with such rules.

PART VI.—PROCEDURE IN TRIALS BEFORE SUBORDINATE COURTS.

PROVISIONS RELATING TO THE HEARING AND DETERMINATION OF CASES.

Non-appearance of complainant at hearing.

190. If, in any case which a subordinate 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 by virtue of a warrant, then, if the complainant, having had notice of the time and place appointed for the hearing of the charge, does not appear, the court shall dismiss the charge, unless for some reason it shall think 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, but shall not commit him to prison unless the charge has been made on oath.

Appearance of both parties.

191. If at the time appointed for the hearing of the case both the complainant and the accused person appear before the court which is to hear and determine the charge, or if the complainant appears and the personal attendance of the accused person has been dispensed with under section 97, the court shall proceed to hear the case.

Withdrawal of complaint.

192. If a complainant, at any time before a final order is passed in any case under this Part, satisfies the court that there are sufficient grounds for permitting him to withdraw his complaint, the court may permit him to withdraw the same and shall thereupon acquit the accused.

Adjournment.

193. 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, if the charge has been made on oath, but not otherwise, may commit him to prison, or may discharge him upon his entering into a recognizance 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 shall be adjourned :

Provided that no such adjournment shall be for more than fifteen clear days, the day following that on which the adjournment is made being counted as the first day.

Non-appearance of parties after adjournment.

194. (1) If at the time or place to which the hearing or further hearing shall be adjourned, the accused person shall not appear before the Court which shall have made the order of adjournment, it shall be lawful for such court, unless the accused person is charged with felony, to proceed with the hearing or further hearing as if the accused were present, and if the complainant shall not appear the court may dismiss the charge with or without costs as the court shall think fit.

(2) If the court convicts the accused 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.

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

(4) 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.

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.

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 complainant and his witnesses 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.

The defence

197. (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 ask him if he wishes to say anything in answer to the charge, or 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.

198. If the accused person adduces in his defence any evidence, other than evidence as to character, the prosecutor may adduce evidence in reply thereto. But, except with the leave of the court, the prosecutor shall not in any case be allowed to make any observations by way of reply to the evidence adduced by the accused nor, without such leave as aforesaid, shall the accused in any case be allowed to make any observation on evidence adduced by the prosecutor in reply.

Variance between charge and evidence.

199. Variance between the charge and the evidence adduced in support of it with respect to the time at which the alleged offence was committed is not material, if it is proved that the charge was in fact made within the time (if any) limited by law for the making thereof.

But if any variance between the charge and the evidence appears to the court to be such that the accused has been thereby deceived or misled, the court may adjourn the hearing 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.

The court may make an amendment of the charge on such terms as may be just.

The decision.

200. The court having heard both the complainant 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 dismiss the case.

Drawing up of conviction or order.

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

Order of dismissal bar to further procedure.

202. The production of a copy of the order of dismissal, 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.

LIMITATIONS AND EXCEPTIONS RELATING TO TRIALS BEFORE SUBORDINATE COURTS.

Limitation of time for summary trials in certain cases.

203. Except where a longer time is specially allowed by law, no offence, the maximum punishment for which does not exceed imprisonment for six months and/or a fine of fifty pounds, shall be triable by a subordinate court, unless the charge or complaint relating to it is laid within twelve months from the time when the matter of such charge or complaint arose.

Procedure in case of offence proving unsuitable for summary trial.

204. (1) If in the course of a trial before a subordinate court it appears to the magistrate at any stage of the proceedings that the case is one which ought to be tried by the Supreme Court, and if he is empowered to commit for trial, he shall stop further proceedings and commit the accused person for trial upon information before the Supreme Court, and in such case he shall follow the procedure hereinafter directed in relation to preliminary inquiries as to offences triable by the Supreme Court.

(2) If such magistrate is not empowered to commit for trial he shall submit the case with a brief report thereon to a magistrate holding a subordinate court of the first class, empowered to direct the transfer of the case under section 77.

PART VII.—SPECIAL PROVISIONS RELATING TO THE TRIAL OF EUROPEANS.

Method of inquiry into certain offences committed by Europeans.

205. Save as is hereinafter provided, every case in which a European shall appear before a subordinate court accused of an offence punishable with imprisonment which may exceed six months shall be inquired into under Part VIII as if the offence were one triable exclusively by the Supreme Court, and if there are sufficient grounds for committing the accused for trial the subordinate court shall commit him for trial by the Supreme Court.

Offences committed by Europeans triable by a subordinate court.

206. Notwithstanding anything contained in the preceding section, a subordinate court of the first or second class may try and pass sentence according to law upon a European in any of the following cases :—

(*a*) If the maximum term of imprisonment prescribed by law as a punishment for the offence alleged does not exceed three years and the court, after hearing the evidence for the prosecution, is of the opinion that the accused would be adequately punished for the offence by a fine or by imprisonment for a term not exceeding six months with or without fine, and the person accused shall consent to be tried by such subordinate court;

(*b*) If, after inquiry into any case in which a person is accused of an offence punishable by imprisonment which may exceed six months, the court considers for reasons to be recorded that there is no evidence against the accused of the alleged offence but that there is evidence against the accused of a lesser offence the punishment for which does not exceed imprisonment for six months with or without fine;

(*c*) If, after inquiry into any case in which a person is accused of an offence punishable by imprisonment which may exceed three years, the court considers for reasons to be recorded that there is not sufficient evidence of the commission of the alleged offence but that there is evidence against the accused of a lesser offence the punishment for which does not exceed imprisonment for three years with or without fine, and the court is of opinion that the accused would be adequately punished for the offence by a fine or by imprisonment for a term not exceeding six months with or without fine, and the person accused shall consent to be tried by such subordinate court;

(*d*) Cases in which, notwithstanding the provisions herein contained, a subordinate court is given jurisdiction over Europeans by any other Ordinance or law;

(*e*) If the offence alleged is triable under the provisions of section 187.

Jurisdiction of subordinate courts of the third class in regard to Europeans.

207. Subordinate courts of the third class shall not have jurisdiction to try Europeans under this Part, but may take cognizance of an offence committed by a European in any case in which it could take cognizance of a like offence if committed by another person, but so that if any subordinate court of the third class issue process for the purpose of compelling the appearance of any European accused of an offence, such process shall be made returnable before a subordinate court of the first or second class.

Right to be tried as European may be relinquished.

208. If an accused person does not claim to be a European when before the subordinate court by which he is tried or by which he is committed for trial, or if when such claim has been made and disallowed by the committing magistrate it is not made again before the Supreme Court, he shall be held to have relinquished his right to be dealt with as a European and shall not assert it at any subsequent stage of the same case.

Europeans committed for trial to be tried by jury of Europeans.

209. Every person committed for trial to the Supreme Court under the provisions of this Part shall be tried by a jury composed of Europeans.

On trials for murder or treason the number of the jury shall be twelve; on trials for other offences the number of the jury shall be nine.

European accused jointly with non-European.

210. In any case in which a European is accused jointly with a person not being a European, and such persons are committed for trial, they shall be tried together, and the procedure at the trial shall be the same as it would have been had the European been tried separately.

Grounds of claim to be dealt with as a European to be stated and inquired into.

211. (1) When any person claims to be dealt with under this Part, he shall state the grounds of such claim to the subordinate court before which he is brought for the purpose of inquiry or trial, and such court shall, if necessary, inquire into the truth of such statement and allow the person making it reasonable time within which to prove that it is true and shall then decide whether he is or is not a European.

(2) If any such person is convicted by such subordinate court and appeals from such conviction, the burden of proving that the decision of the subordinate court on such claim was wrong shall lie upon such person.

(3) The question of any person claiming to be dealt with under this Part as a European is a question of fact for the court.

Saving of proceedings when non-European is tried under this Part.

212. When a person who is not a European is dealt with under this Part and does not object, the inquiry, commitment, trial, finding or sentence, as the case may be, shall not by reason thereof be invalid.

PART VIII.—PROVISIONS RELATING TO THE COMMITTAL OF ACCUSED PERSONS FOR TRIAL BEFORE THE SUPREME COURT.

Preliminary Inquiry by Subordinate Courts.

Power to commit for trial.

213. Any magistrate empowered to hold a subordinate court of the first, second or third class may commit any person for trial to the Supreme Court:

Provided that it shall not be competent for a magistrate empowered to hold a subordinate court of the third class to commit a European for trial to the Supreme Court.

Court to hold preliminary inquiry.

214. Whenever any charge has been brought against any person of an offence not triable by a subordinate court or as to which the subordinate court is of opinion that it is not suitable to be disposed of upon summary trial, a preliminary inquiry shall be held according to the provisions hereinafter contained by a subordinate court, locally and otherwise competent.

Depositions.

215. (1) When the accused person charged with such an offence comes before a subordinate court, on summons or warrant or otherwise, the court shall, 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 are 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 depositions.

(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) The deposition of each witness shall be read over to such witness and shall be signed by him and by the magistrate holding the inquiry.

Admission of signed reports by medical officer or Government analyst.

216. (1) At any preliminary inquiry under this Part any document purporting to be a report under the hand of a medical officer or a Government analyst upon any examination or analysis carried out by him shall, if it bears his signature, be admitted in evidence.

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

Variance between evidence and charge.

217. 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.

218. 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 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 of accused person.

219. (1) After the examination of the witnesses called on behalf of the prosecution, and provided that the court does not consider that the case should be dealt with in accordance with the provisions of section 221, the magistrate shall read the charge to the accused person and explain the nature thereof in ordinary language, and inform him that he has the right to call witnesses and, if he so desires, to give evidence on his own behalf.

After doing so the magistrate shall then address to him the following words or words to the like effect :—

> "Do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so, but whatever you say will be taken down in writing and may be given in evidence upon your trial."

(2) Before the accused person makes any statement in answer to the charge, the magistrate shall state to him and give him clearly to understand that he has nothing to hope from any promise of favour and nothing to fear from any threat which may have been held out to him to induce him to make any admission or confession of his guilt, but that whatsoever he then says may be given in evidence on his trial notwithstanding the promise or threat.

(3) Whatever the accused person states in answer to the charge 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 his statement.

(4) When the whole is made conformable to what he declares is the truth, the statement shall be attested by the magistrate, who shall certify that such statement was taken in his presence and hearing and contains accurately the whole statement made 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 statement may be used as if he had signed or attested it.

Evidence in defence.

220. (1) Immediately after the accused person shall so have had opportunity of making his answer to the charge, the court shall ask him whether he desires to call any witnesses, and the depositions of such witnesses as the accused person shall call and who shall appear on his behalf shall then be taken in like manner as in the case of the witnesses for the prosecution, and every witness as aforesaid, not being merely a witness to the character of the accused person, shall, if the court be of opinion that his evidence is in any way material to the case, be bound by recognizance to appear and give evidence at the trial of such accused person.

(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 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 recognizance in the same manner as witnesses under sub-section (1).

Discharge of accused person.

221. If the court considers that the evidence against the accused person is not sufficient to put him on his trial, the court shall forthwith order him to be discharged as to the particular charge under inquiry; but such discharge shall not be a bar to any subsequent charge in respect of the same facts:

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

222. If the court considers the evidence sufficient to put the accused person on his trial, the court shall commit him for trial to the Supreme 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, although out of the jurisdiction of such court.

Commitment for trial.

223. If, at the close of or during the inquiry, it shall appear to the subordinate 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 provisions of Part VI, hear and finally determine the matter and either convict the accused person or dismiss the charge:

Summary adjudication.

Provided that in every such case the accused shall be entitled to have recalled for cross-examination all witnesses for the prosecution whom he has not already cross-examined.

224. When the accused person is committed for trial before the Supreme Court, the subordinate court committing him shall bind by recognizance, with or without surety or sureties, as it may deem requisite, the complainant and every witness to appear at the trial to give evidence, and also to appear and give evidence if required, at any further examination concerning the charge which may be held by direction of the Attorney General.

Complainant and witnesses to be bound over.

225. If a person refuses to enter into such recognizance, 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 recognizance. But 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.

Refusal to be bound over.

226. A person who has been committed for trial before the Supreme Court shall be entitled at any time before the trial to have a copy of the depositions on payment of a reasonable sum, not exceeding fifty cents for every hundred words, or, if the court thinks fit, without payment.

Accused person entitled to copy of depositions.

The court shall at the time of committing him for trial inform the accused person of the effect of this provision.

227. (1) Where any person charged before a subordinate court with an offence triable upon information before the Supreme Court is committed for trial, and it appears to such subordinate 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 who has been examined before it is unnecessary by reason of anything contained in any statement by the accused person, or of the accused person having pleaded guilty to the charge, or of the evidence of the witness being merely of a formal nature, the subordinate court shall, if the witness has not already been bound over, bind him over to attend the trial conditionally upon notice given to him and not otherwise, or shall, if the witness has already been bound over, direct that he shall be treated as having been bound over to attend only conditionally as aforesaid, and shall transmit to the Supreme Court a statement in writing of the names, addresses and occupations of the witnesses who are, or who are to be treated as having been, bound over to attend the trial conditionally.

Binding over of witnesses conditionally.

(2) Where a witness has been, or is to be treated as having been, bound over conditionally to attend the trial, the Attorney General or the person committed for trial may give notice at any time before the opening of the sessions of the Supreme Court to the committing subordinate court and at any time thereafter to the registrar of the Supreme 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 notify the witness that he is required so to attend in pursuance of his recognizance.

The subordinate 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 which he must take for the purpose of enforcing such attendance.

(3) Any documents or articles produced in evidence before the subordinate 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 subordinate court otherwise orders, be retained by the subordinate court and forwarded with the depositions to the registrar of the Supreme Court.

PRESERVATION OF TESTIMONY IN CERTAIN CASES.

Taking the depositions of persons dangerously ill.

228. 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 Supreme 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.

Notices to be given.

229. 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 may, and shall if he so requests, 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.

230. If the statement relates to an offence for which any person is then or subsequently committed for trial, it shall be transmitted to the registrar of the Supreme Court, and a copy thereof shall be transmitted to the Attorney General.

Use of statement in evidence.

231. 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 same.

PROCEEDINGS AFTER COMMITTAL FOR TRIAL.

Transmission of records to Supreme Court and Attorney General.

232. In the event of a committal for trial the written charge (if any), the depositions, the statement of the accused person, the recognizances of the complainant and of the witnesses, the recognizances of bail (if any), and any documents or things which have been put in evidence, shall be transmitted without delay by the committing court to the registrar of the Supreme Court, and an authenticated copy of the depositions and statement aforesaid shall be also transmitted to the Attorney General.

Power of Attorney General to direct further investigation.

233. If, after receipt of the authenticated copy of the depositions and statement provided for by the last preceding section and before the trial before the Supreme Court, the Attorney General shall be of opinion that further investigation is required before such trial, it shall be lawful for the Attorney General to direct that the original depositions be remitted to the court which committed the accused person for trial, and such court may thereupon re-open 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 the powers possessed by such court, it may, if thought expedient by the court, or if the Attorney General so directs, be so tried and determined accordingly.

Powers of Attorney General as to additional witnesses.

234. If, after receipt of the authenticated copy of the depositions and statement as aforesaid and before the trial before the Supreme Court, the Attorney General shall be of opinion that there is in any case committed for trial any material or necessary witness for the prosecution or the defence who has not been bound over to give evidence on the trial of the case, the Attorney General—

(*a*) may require the subordinate court which committed the accused person for trial to take the depositions of such witness and compel his attendance either by summons or by warrant as hereinbefore provided; or

(*b*) may call such witness or witnesses before the Supreme Court notwithstanding that such witness or witnesses did not give evidence before the court which committed the accused; provided that in such case he shall give to the Registrar of the Supreme Court and to the accused person notice of his intention to call such witness or witnesses together with a copy of the evidence which each such witness will give.

Return of depositions in certain cases.

235. If the Attorney General shall be of opinion that there is not sufficient evidence to warrant a committal for trial before the Supreme Court, he may cause the depositions to be returned to the court which committed the accused, and such court may thereupon re-open 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 by such court it may be so tried and determined accordingly.

Filing of an information.

236. If, after the receipt of the authenticated copy of the depositions as aforesaid, the Attorney General shall be of the opinion that the case is one which should be tried upon information before the Supreme Court, an information shall be drawn up in accordance with the provisions of this Code, and when signed by the Attorney General shall be filed in the registry of the Supreme Court.

Notice of trial.

237. The registrar or his deputy shall indorse 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 Supreme 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 Supreme Court to be held at on the day of 19 ."

Copy of information and notice of trial to be served.

238. The registrar shall deliver or cause to be delivered to the officer of the court or police officer serving the information a copy thereof with the notice of trial indorsed on the same or annexed thereto, and, if there are more accused persons committed for trial than one, then as many copies as there are such accused persons; and the officer of the court or police officer aforesaid shall, as soon as may be after having received the copy or copies of the information and notice or notices of trial, and 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 Supreme Court, from being tried thereat, if he shall express his assent to be so tried and no specal objection be made thereto on the part of the Crown.

Return of service.

239. 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.

240. It shall be lawful for the Supreme 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 to a subsequent sessions, and to respite the recognizances of the complainant and witnesses, in which case the respited recognizances shall have the same force and effect as fresh recognizances to prosecute and give evidence at such subsequent sessions would have had.

RULES AS TO INFORMATIONS BY THE ATTORNEY GENERAL.

241. All informations drawn up in pursuance of section 236 of this Code shall be in the name of and (subject to the provisions of section 81) signed by the Attorney General, and when so signed shall be as valid and effectual in all respects as an indictment presented by a Grand Jury in England. Informations by Attorney General.

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

IN THE SUPREME COURT OF KENYA AT

The day of , 19 .

At the sessions holden at

on the day of , 19 , the Court is informed by the Attorney General on behalf of our Lord the King that A.B. is charged with the following offence (or offences).

243. The following provisions shall apply to all informations, and, notwithstanding any rule of law or practice, an 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. General provisions as to informations.

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

(2) Figures and abbreviations may be used for expressing anything which is commonly expressed thereby. Use of figures and abbreviations.

(3) (i) A description of the offence charged in an information, or, where more offences than one are charged in an information, of each offence so charged, shall be set out in the information in a separate paragraph termed a count. Mode in which offences are to be charged.

(ii) A count of an information shall commence with a statement of the offence charged, called the statement of offence.

(iii) 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.

(iv) 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 Ordinance or statute limits the particulars of an offence which are required to be given in an information, nothing in this rule shall require any more particulars to be given than those so required.

(v) The forms set out in the Second Schedule to this Code or forms conforming thereto as nearly as may be shall be used in cases to which they are applicable, and in other cases forms to the like effect or conforming thereto as nearly as may be shall be used, the statement of offence and the particulars of offence being varied according to the circumstances in each case.

(vi) Where an information contains more than one count, the counts shall be numbered consecutively.

Provision as to statutory offences.

(4) (i) Where an enactment constituting an offence states the offence to be the omission to do any one of any different acts in the alternative, or the doing or the omission to do any act in any one of any different capacities, or with any one of any different intentions, or states any part of the offence in the alternative, the acts, omissions, capacities or intentions, or other matters stated in the alternative in the enactment, 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 qualification to the operation of the enactment creating the offence.

Description of property.

(5) (i) The description of property in a count in an information shall be in ordinary language, and such as to indicate with reasonable clearness 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 property is vested in more than one person, and the owners of the property are referred to in an 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 laid as the property of His Majesty the King.

(iv) Coin and bank notes may be described as money; and any averment as to money, so far as regards the description of 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 the cases of stealing and defrauding by false pretences, by proof that the accused 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.

Description of persons.

(6) The description or designation in an information of the accused, 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."

Description of document.

(7) Where it is necessary to refer to any document or instrument in an 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.

General rule as to description.

(8) Subject to any other provisions of these rules, it shall be sufficient to describe any place, time, thing, matter, act or omission whatsoever to which it is necessary to refer in any information in ordinary language in such a manner as to indicate with reasonable clearness the place, time, thing, matter, act or omission referred to.

Statement of intent.

(9) 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.

Charge of previous convictions.

(10) Where a previous conviction of an offence is charged in an information it shall be charged at the end of the information by means of a statement that the accused has been previously convicted of that offence at a certain time and place without stating the particulars of the offence.

Powers of Chief Justice.

244. The Chief Justice may, with the approval of the Governor in Council, make rules varying or annulling the rules contained in the last preceding section, and may make further rules with respect to the matters dealt with in those rules, and those rules shall have effect subject to any modifications or additions so made.

PART IX.—PROCEDURE IN TRIALS BEFORE THE SUPREME COURT.

GENERAL.

Practice of Supreme Court in its criminal jurisdiction.

245. The practice of the Supreme Court in its criminal jurisdiction shall be assimilated as nearly as circumstances will admit to the practice of His Majesty's High Court of Justice in its criminal jurisdiction and of Courts of Oyer and Terminer and General Gaol Delivery in England.

MODE OF TRIAL.

Trials before Supreme Court to be by jury or with assessors.

246. Subject to the provisions of Part VII, all trials before the Supreme Court shall be with the aid of assessors.

Number of assessors.

247. When the trial is to be held with the aid of assessors, the number of assessors shall be three.

LIST OF JURORS AND ASSESSORS.

Preparation of list of jurors and assessors.

248. The registrar of the Supreme Court shall, before the first day of March in each year, and subject to such rules as the Supreme Court may from time to time prescribe, prepare a list of all persons in the Colony other than natives of African extraction liable to serve as jurors or assessors.

Liability to serve.

249. Subject to the exemptions in the next succeeding section contained, all male persons between the ages of twenty-one and sixty shall be liable to serve as assessors, and all male persons of European extraction between the ages of twenty-one and sixty shall be liable also to serve as jurors, at any trial held by the Supreme Court within the Colony:

Provided that the Supreme Court may from time to time make rules regulating the area within which a person may be summoned to serve as a juror or assessor.

Exemptions.

250. The following persons are exempt from liability to serve as jurors or assessors, namely:—

(*a*) Members of the Executive Council;

(*b*) Members of the Legislative Council;

(*c*) The Clerk of the Legislative Council and the persons appointed to act as official reporters to that Council;

(*d*) Persons actively discharging the duties of priests or ministers of their respective religions;

(*e*) Physicians, surgeons and apothecaries in active practice;

(*f*) Legal practitioners in active practice;

(*g*) Officers and others in His Majesty's Army, Navy, or Air Force on full pay;

(*h*) Members of the Police Force;

(*i*) Persons exempted from personal appearance in court under the provisions of the Civil Procedure Ordinance, 1924, or any rules made thereunder;

(*j*) Persons disabled by mental or bodily infirmity;

(*k*) Other persons exempted by the Governor from liability to serve as jurors or assessors.

Publication of list.

251. (1) A copy of the list made by the registrar of persons liable to serve as jurors or assessors shall be published in the Gazette in the first issue thereof in March, and extracts therefrom containing the names of the persons liable to serve as jurors or assessors residing in each province or district shall be exposed to public inspection at the offices of the provincial or district commissioner of each province or district respectively.

(2) To every such copy or extract shall be subjoined a notice stating that objections to the list will be heard and determined by a judge of the Supreme Court and such magistrate as the Supreme Court may appoint at a time and place to be mentioned in such notice.

Revision of list.

252. (1) For the hearing of objections to the list a judge of the Supreme Court shall sit with the magistrate, and shall, at the time and place mentioned in the notice, revise the list and hear the objections (if any) of persons interested in the amendment thereof, and shall strike out the name of any person not suitable in their judgment to serve as a juror or as an assessor, or who may establish his right to any exemption from service given by section 250, and insert the name of any person omitted from the list whom they deem qualified for such service.

(2) In the event of a difference of opinion between the judge and the magistrate, the name of the proposed juror or assessor shall be omitted from the list.

(3) A copy of the revised list shall be signed by the judge and magistrate and sent to the registrar of the Supreme Court.

(4) Any order of the judge and magistrate as aforesaid in preparing and revising the list shall be final.

(5) Any exemption not claimed under this section shall be deemed to be waived, until the list is next revised.

(6) The list so prepared and revised shall be again revised once in every year.

ATTENDANCE OF JURORS AND ASSESSORS.

Summoning of jurors or assessors.

253. (1) The registrar of the Supreme Court shall ordinarily, seven days at least before the day which from time to time may be fixed for holding a sessions of the Supreme Court, send a letter to a magistrate holding a subordinate court of the first class, having jurisdiction in the province or district in which such sessions are to be held, requesting him to summon as many persons as seem to the judge who is to preside at the sessions to be needed for trials by jury and trials with the aid of assessors at the said sessions.

(2) In the case of persons named in the said list, the names of the persons to be summoned shall be drawn by lot by such magistrate in open court, excluding those who have served within six months unless the number required cannot be made up without them.

Form of summons.

254. Every summons to a juror or an assessor shall be in writing, and shall require his attendance as a juror or an assessor, as the case may be, at a time and place to be therein specified.

Excuses.

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

List of jurors and assessors attending.

256. (1) At each sessions the Supreme Court shall cause to be made a list of the names of those who have attended as jurors and assessors at such sessions, and such list shall be kept with the list of the jurors and assessors as revised under section 252.

(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 juror or assessor.

257. (1) Any person summoned to attend as a juror or 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 Supreme Court, or fails to attend after adjournment of the court after being ordered to attend, shall be liable by order of the Supreme Court to a fine not exceeding twenty pounds.

(2) Such fine unless paid shall be levied by a magistrate empowered to hold a subordinate court of the first class by attachment and sale of any movable property belonging to such juror or assessor within the local limits of the jurisdiction of such magistrate.

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

(4) In default of recovery of the fine by attachment and sale a juror or assessor may, by order of the Supreme 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.

ARRAIGNMENT.

Pleading to information.

258. The accused person to be tried before the Supreme 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 of 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.

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

259. (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 indorsed on the information, and the information shall be treated for the purposes of all proceeding 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*) if such order is made during a trial with a jury or during a trial with assessors the court may order that the jury or the assessors are to be discharged from giving a verdict or opinions, as the case may be, on the count or counts the trial of which is postponed, or on the information, as the case may be; and

(*b*) 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 (provided that the jury or assessors, if any, have been discharged) as if the trial had not commenced; and

(*c*) the court may make such order as to admitting the accused to bail, and as to the enlargement of recognizances 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

260. 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.

261. Where an information contains a count charging an accused person with having been previously convicted for 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 jury, or the court and the assessors, as the case may be, shall then hear evidence concerning such previous conviction, and in such case (where the trial is by jury) it shall not be necessary to swear the jurors again:

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 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 of guilty is returned, and the jury, or the court and assessors, as the case may be, shall inquire concerning such previous conviction or convictions at the same time that they inquire concerning such subsequent offence.

Plea of "not guilty".

262. 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.

263. 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 King'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.

264. 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 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.

The Governor may order such accused person to be confined in a lunatic asylum, prison, or other suitable place for safe custody.

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

266. If the accused pleads " not guilty," or if a plea of " not guilty " is entered in accordance with the provisions of section 264, the court shall proceed to choose jurors or assessors, as hereinafter directed, and to try the case : Proceedings after plea of " not guilty ".

Provided that, subject to the right of objection hereinafter mentioned, the same jury may try, or the same assessors may aid in the trial of, as many accused persons successively as the court thinks fit.

267. 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. Power to postpone or adjourn proceedings.

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.

TRIAL BY JURY.

268. At the sitting of the Supreme Court to try criminal cases triable by jury the names of all the jurors summoned shall be written on separate pieces of card or paper of equal size and put into a box, and, whenever a jury is required, the registrar or other officer of the court shall, in open court, draw from the box by lot until the required number of jurors appear, who, after all just causes of challenge allowed, shall remain as fair and indifferent. The same procedure shall be followed whenever it shall be necessary to form a new jury : Choosing the jury.

Provided that if a case be brought on for trial during the time that a jury in any other case may be deliberating, a new jury may be drawn from the residue of the cards in the box.

269. Whenever there shall be a deficiency of jurors, or when the number of trials before the court renders the attendance of one set of jurors for the whole of any sessions oppressive, it shall be lawful for the court to issue fresh orders, if necessary, and, subject to all rights of challenge, to put upon the jury so many men of the bystanders as shall be sufficient to make up the full number thereof, and it shall not be an objection to any such talesman that his name is not upon any jurors' list. Deficiency of jurors.

270. When the jurors are ready to be sworn, the registrar or other officer of the court shall address the accused person as follows :—" The jurors who are to try you are now about to be sworn ; if you object to any of them, you must do so as they come to the Book to be sworn, and before they are sworn, and you shall be heard." Warning accused to challenge.

271. There shall be no challenge to the array, but every accused person either personally or by his advocate shall be allowed to challenge six of the jurors by way of peremptory challenge and without being subject to assign any reason therefor ; but every peremptory challenge beyond that number shall be void. And in like manner the advocate for the Peremptory challenges

prosecution may, without cause assigned, challenge six jurymen if one person is arraigned, and twelve if two are arraigned together, and so forth, being six without cause assigned for every person arraigned; and every further peremptory challenge shall be void.

Challenges for cause.

272. Challenges for cause shall be allowed on any of the following grounds :—

1st, presumed or actual partiality or prejudice in the juror, as standing in the relation of husband, master or servant to the person accused, or to the person supposed to have been injured or affected by the acts complained of, or to the person on whose complaint the prosecution was instituted; being in the employment of either of such persons; being plaintiff or defendant against either of such persons in civil suit, or having complained against or having been accused by either of such persons in any criminal prosecution, or entertaining prejudiced views on the case to be tried;

2nd, some personal cause, as infancy, old age, deafness, blindness, infirmity or ill-health;

3rd, that the juror has been convicted of any offence which, in the opinion of the court, renders him unfit to serve as a juror;

4th, that the juror does not understand the English language.

Trial of challenges for cause.

273. Every challenge for cause, if objected to by the opposite party, shall be tried and determined by the court without a jury, and the person challenged shall be examined on oath, and shall be required to answer on oath all lawful questions relating to the trial of the challenge.

Foreman of jury.

274. (1) When the jurors have been chosen they shall appoint one of their number to be foreman.

(2) The foreman shall preside at the meetings of the jury for consideration, and shall announce the verdict of the jury, and ask any information from the court that is required by the jury or any of the jurors.

(3) If a majority of the jury do not, within such time as the court thinks reasonable, agree in the appointment of a foreman, he shall be appointed by the court.

Swearing of jury.

275. When the foreman has been appointed, the jurors shall be sworn.

Giving the accused in charge.

276. The jury having been sworn to give a true verdict according to the evidence upon the issues to be tried by them, and having elected a foreman, the proper officer of the court shall inform them of the charge set forth in the information. and of their duty as jurors upon the trial.

Absence of a juror.

277. If in the course of a trial by jury, at any time before the delivery of the verdict, any juror from any sufficient cause is prevented from attending throughout the trial or from further attendance at the time, or if any juror absent himself and it is not practicable to enforce his attendance, the court may postpone the trial until the juror can attend, if within a reasonable time; or, if the attendance of such juror cannot

be procured within a reasonable time, the court may direct that a new juror shall be added and the jury re-sworn, or that the jury shall be discharged and a new jury empanelled, and in either of the latter cases the trial shall commence anew.

Illness of accused.

278. If during a trial the accused person in the opinion of the court becomes incapable, through sickness or other sufficient cause, of remaining at the bar, the court may discharge the jury and adjourn the trial.

Keeping jury together.

279. (1) It shall not be necessary in any case to keep the jury together during any adjournment prior to the close of the judge's summing up; but it shall be lawful for the court, if it shall appear to it to be advisable in the interests of justice in any trial, to require the jury to be kept together during any adjournment.

(2) When the jury have retired to consider their verdict, the court may give such directions as it may think fit with respect to their accommodation, custody and refreshment.

Jurors to attend at adjourned sittings.

280. If the trial is adjourned, the jurors shall be required to attend at the adjourned sitting, and at every subsequent sitting until the conclusion of the trial.

TRIAL WITH ASSESSORS.

Selection of assessors.

281. When a trial is to be held with the aid of assessors, the court shall select three from the list of those summoned to serve as assessors at the sessions.

The absence of an assessor.

282. (1) If, in the course of a trial with the aid of assessors, at any time before the finding, any assessor is from any sufficient cause prevented from attending throughout the trial, or absents himself, and it is not practicable immediately to enforce his attendance, the trial shall proceed with the aid of the other assessors.

(2) If two or more of the assessors are prevented from attending, or absent themselves, the proceedings shall be stayed and a new trial shall be held with the aid of fresh assessors.

Assessors to attend at adjourned sittings.

283. 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.

CASE FOR THE PROSECUTION.

Opening of case for prosecution.

284. When the jurors or assessors have been chosen, the 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.

285. 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. No such notice need be given if the prosecution first became aware of the evidence which the witness could give on the day on which he is called.

Cross-examination of witnesses for the prosecution.

286. 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 advocate for the prosecution.

Depositions may be read as evidence in certain cases.

287. Where any person has been committed for trial for any offence, the deposition of any person taken before the committing subordinate 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 227, or of a witness who is proved at the trial by oath of a credible witness to be absent from the Colony 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 the procurement of the accused or on his behalf;

(*b*) It must be proved at the trial, either by a certificate purporting to be signed by the magistrate of the subordinate court before whom the deposition purports to have been taken or by the clerk to such court, or by the oath of a credible witness, that the deposition was taken in the presence of the accused, and that the accused or his advocate had full opportunity of cross-examining the witness;

(*c*) The deposition must purport to be signed by the magistrate of the subordinate court 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, or, where the proof required by paragraph (*b*) of this section is given by means of a certificate, that the certificate 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.

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

289. (1) When the evidence of the witnesses for the prosecution has been concluded, and the statement (if any) of the accused person has been given in evidence, the accused person shall be asked whether he means to give or adduce evidence. **Close of case for prosecution.**

(2) If he says that he does not, the advocate for the prosecution may sum up the case against the accused person; and if the court considers that there is no evidence that the accused person committed the offence, it may then, in a case tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict, of not guilty.

(3) If the accused person, or any one of several accused persons, says that he means to give or adduce evidence, and the court considers that there is no evidence that the accused committed the offence, the court may then, in a case tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict, of not guilty.

(4) If the accused person, or any one of several accused persons, says that he means to give or adduce evidence, and the court considers that there is evidence that he committed the offence, the court shall call on the accused person to enter on his defence.

CASE FOR THE DEFENCE.

290. 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. **The defence.**

291. 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, but he shall not be entitled as of right to have any witness summoned other than the witnesses whom he named to the subordinate court committing him for trial as witnesses whom he desired to be summoned. **Additional witnesses for the defence.**

292. If the accused person, or any one of several accused persons, adduces any evidence, the advocate for the prosecution shall be entitled to reply. **Prosecutor's reply.**

293. 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 advocate for the prosecution shall then 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. **Where accused adduces no evidence.**

CLOSE OF HEARING.

In Trials by Jury.

294. When, in a trial before a jury, the case on both sides is closed, the judge shall, if necessary, sum up the law and evidence in the case. **Summing up by judge.**

Duty of judge.

295. (1) In such cases it is the duty of the judge—

(*a*) to decide all questions of law arising in the course of a trial, and especially all questions as to the relevancy of facts which it is proposed to prove and the admissibility of evidence or the propriety of questions asked by or on behalf of the parties, and, in his discretion, to prevent the production of inadmissible evidence whether it is or is not objected to by the parties;

(*b*) to decide upon the meaning and construction of all documents given in evidence at the trial;

(*c*) to decide on all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given;

(*d*) to decide whether any question which arises is for himself or for the jury, and upon this point his decision shall bind the jurors.

(2) The judge may, if he thinks proper, in the course of his summing up, express to the jury his opinion upon any question of fact or upon any question of mixed law and fact relevant to the proceedings.

Duty of jury.

296. It is the duty of the jury—

(*a*) to decide which view of the facts is true and then to return the verdict which, under such view, ought, according to the direction of the judge, to be returned;

(*b*) to determine the meaning of all technical terms (other than terms of law) and words used in an unusual sense, which it may be necessary to determine, whether such words occur in documents or not;

(*c*) to decide all questions which, according to law, are to be deemed questions of fact;

(*d*) to decide whether general indefinite expressions do or do not apply to particular cases, unless such expressions refer to legal procedure, or unless their meaning is ascertained by law, in either of which cases it is the duty of the judge to decide their meaning.

Jury to consider their verdict.

297. After the summing up, the jury shall consider their verdict, and for that purpose may retire.

Except with the leave of the court, no person other than a juror shall speak to or hold any communication with any member of the jury while the jury are considering their verdict.

Delivery of verdict.

298. When the jury have considered their verdict, the foreman shall inform the judge what is their verdict, or that they are not unanimous.

Procedure where jury differ.

299. If the jury are not unanimous, the judge may require them to retire for further consideration. After such period as the judge considers reasonable, the jury may deliver their verdict, or state that they are not unanimous.

Verdict on each charge.

300. (1) Unless otherwise ordered by the court, the jury shall return a verdict on all the charges on which the accused is tried, and the judge may ask them such questions as are necessary to ascertain what their verdict is.

(2) Such questions and the answers to them shall be recorded.

Amending a verdict.

301. When by accident or mistake a wrong verdict is delivered, the jury may, before or immediately after it is recorded, amend the verdict, and it shall stand as ultimately amended.

Action on verdict.

302. (1) (*a*) When the jury are unanimous in their opinion, the judge shall give judgment in accordance with that opinion.

(*b*) If the accused person is found not guilty, the judge shall record a judgment of acquittal. If the accused person is found guilty, the judge shall pass sentence on him according to law.

(2) If the jury are not unanimous in their opinion, the judge shall, after the lapse of such time as he thinks reasonable, discharge the jury.

Retrial of accused after discharge of jury.

303. Whenever the jury is discharged, the accused person shall be detained in custody or released on bail, as the case may be, and shall be tried by another jury, unless the judge considers that he should not be retried, in which case the judge shall make an entry to that effect on the information, and such entry shall operate as an acquittal.

In Cases tried with Assessors.

Delivery of opinions by assessors.

304. (1) When, in a case tried with assessors, the case on both sides is closed, the judge may sum up the evidence for the prosecution and the defence, and shall then require each of the assessors to state his opinion orally, 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.

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

PASSING SENTENCE.

Calling upon the accused.

305. If the jury find the accused person guilty, or if the judge convicts him, or if the accused person pleads guilty, it shall be the duty of the registrar to ask him whether he has anything to say why sentence should not be passed upon him according to law, but the omission so to ask him shall have no effect on the validity of the proceedings.

Motion in arrest of judgment.

306. (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.

307. 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.

308. 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 questions arising in the course of the trial.

309. (1) When any person has, in a trial before the Supreme Court, been convicted of an offence, the judge may reserve and refer for the decision of a court consisting of two or more judges of the Supreme Court 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 the Supreme Court shall have power to review the case, or such part thereof as may be necessary, and finally determine such question, and thereupon to alter the sentence passed by the trial judge and to pass such judgment or order as the Supreme Court may think fit.

Objections cured by verdict.

310. 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 because of any error committed in summoning or swearing the jury or any of them; nor because any person who has served upon the jury was not qualified to sit as a juror, nor because of any objection which might have been stated as a ground of challenge of any of the jurors, nor for any informality in swearing the witnesses or any of them.

Evidence for arriving at a proper sentence.

311. 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 X.—SENTENCES AND THEIR EXECUTION.

Sentence of Death.

Sentence of death.

312. When any person is sentenced to death, the sentence shall direct that he shall be hanged by the neck till he is dead.

Accused to be informed of right to appeal.

313. When an accused person is sentenced to death, the court shall inform him of the period within which, if he wishes to appeal, his appeal should be preferred.

Authority for detention.

314. A certificate under the hand of the registrar or other officer of the court that sentence of death has been passed, and naming the person condemned, shall be sufficient authority for the detention of such person.

Record and report to be sent to Governor.

315. (1) As soon as conveniently may be after sentence of death has been pronounced, if no appeal from the sentence is preferred, or if such appeal is preferred and the sentence is confirmed, then as soon as conveniently may be after such confirmation, the presiding judge shall forward to the Governor

a copy of the notes of evidence taken on the trial, with a report in writing signed by him containing any recommendation or observations on the case he may think fit to make.

(2) The Governor after considering the said report in Executive Council shall communicate to the said judge, or his successor in office, the terms of any decision to which he may come thereon, and such judge shall cause the tenor and substance thereof to be entered in the records of the court.

(3) The Governor shall issue a death warrant, or an order for the sentence of death to be commuted, or a pardon, under his hand and the public seal of the Colony to give effect to the said decision. If the sentence of death is to be carried out, the warrant shall state the place where and the time when execution is to be had, and shall give directions as to the place of burial or cremation of the body of the person executed. If the sentence is commuted for any other punishment, the order shall specify that punishment. If the person sentenced is pardoned, the pardon shall state whether it is free, or to what conditions (if any) it is subject:

Provided that the Governor's order may direct that the execution shall take place at such time and at such place and that the body of the person executed shall be buried or cremated at such place, as shall be appointed by some officer specified in the order.

(4) The warrant, or order, or pardon of the Governor shall be sufficient authority in law to all persons to whom the same is directed to execute the sentence of death or other punishment awarded, and to carry out the directions therein given in accordance with the terms thereof.

Sentence of death on pregnant woman.

316. If a woman sentenced to death be alleged to be pregnant, the court shall inquire into the fact and, if there is a reasonable cause for believing it, shall order the sentence to be postponed until the result of the pregnancy be known and shall report such order to the Governor.

OTHER SENTENCES.

Warrant in case of sentence of imprisonment

317. A warrant under the hand of the judge or magistrate by whom any person shall be sentenced to imprisonment, ordering that the sentence shall be carried out in any prison within the Colony, shall be issued by the sentencing judge or magistrate, and shall be full authority to the officer in charge of such prison and to all other persons for carrying into effect the sentence described in such warrant, not being a sentence of death. Every sentence shall be deemed to commence from, and to include, the whole of the day of the date on which it was pronounced.

Warrant for levy of fine, etc.

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

(2) Such person may pay or tender to the officer having the execution of the warrant the sum therein mentioned, together with the amount of the expenses of the distress up to the time of payment or tender, and thereupon the officer shall cease to execute the same.

(3) A warrant under this section may be executed within the local limits of the jurisdiction of the court issuing the same, and it shall authorise the distress and sale of any property belonging to such person without such limits when indorsed by a magistrate holding a subordinate court of the first or second class within the local limits of whose jurisdiction such property was found.

Suspension of execution of sentence of imprisonment in default of fine.

319. (1) When an offender has been sentenced to fine only and to imprisonment in default of payment of the fine, and the court issues a warrant under the last preceding section, it may suspend the execution of the sentence of imprisonment and may release the offender on his executing a bond, with or without sureties, as the court thinks fit, conditioned for his appearance before such court on a date not being more than fifteen days from the time of executing the bond; and in the event of the fine not having been realised the court may direct the sentence of imprisonment to be carried into execution at once.

(2) In any case in which an order for the payment of money has been made, on non-recovery of which imprisonment may be awarded, and the money is not paid forthwith, the court may require the person ordered to make such payment to enter into a bond as prescribed in sub-section (1), and in default of his so doing may at once pass sentence of imprisonment as if the money had not been recovered.

Payment by instalments.

(3) The court may in its discretion direct that any money to which this section applies may be paid by instalments at such times and in such amounts as the court may deem fit; but so nevertheless that in default of payment of any such instalment as aforesaid the whole of the amount outstanding shall become and be immediately due and payable, and all the provisions of this Code and of the Penal Code applicable to a sentence of fine and to imprisonment in default of payment thereof shall apply to the same accordingly.

Commitment for want of distress.

320. If the officer having the execution of a warrant of distress reports that he could find no property or not sufficient property whereon to levy the money mentioned in the warrant with expenses, the court may by the same or a subsequent warrant commit the person ordered to pay to prison for a time specified in the warrant, unless the money and all expenses of the distress, commitment and conveyance to prison, to be specified in the warrant, are sooner paid.

Commitment in lieu of distress.

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

Payment in full after commitment.

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

Part payment after commitment.

323. (1) If any person committed to prison for non-payment shall pay any sum in part satisfaction of the sum adjudged to be paid, the term of his imprisonment shall be

reduced by a number of days bearing as nearly as possible the same proportion to the total number of days for which such person is committed, as the sum so paid bears to the sum for which he is liable.

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

Who may issue warrant.

324. Every warrant for the execution of any sentence may be issued either by the judge or magistrate who passed the sentence or by his successor in office.

Limitation of imprisonment.

325. No commitment for non-payment shall be for a longer period than six months, unless the law under which the conviction has taken place enjoins or allows a longer period.

FIRST OFFENDERS.

Power to release upon probation instead of sentencing to punishment.

326. (1) In any case in which a person is convicted before any court of any offence punishable with not more than three years' imprisonment, and no previous conviction is proved against him, if it appears to the court before which he is convicted that, having regard to the youth, character, antecedents, health or mental condition of the offender, or to the trivial nature of the offence, or to any extenuating circumstances under which the offence was committed, it is expedient to release the offender on probation, the court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, and during such period (not exceeding one year) as the court may direct, to appear and receive sentence when called upon, and in the meantime to keep the peace and be of good behaviour.

(2) An order under this section may be made by the Supreme Court when exercising its powers of revision.

Provisions in case of offender failing to observe conditions of his recognizance.

327. (1) If at any time the court which convicted the offender is satisfied that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension.

(2) An offender when apprehended on any such warrant shall be brought forthwith before the court by which the warrant was issued, and such court may either remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned for his appearing for sentence. Such court may, after hearing the case, pass sentence.

Condition as to abode of offender.

328. The court, before directing the release of an offender under section 326, shall be satisfied that the offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the court acts, or in which the offender is likely to live during the period named for the observance of the condition.

PREVIOUSLY CONVICTED OFFENDERS.

Person twice convicted may be subjected to police supervision.

329. (1) When any person, having been convicted of any offence punishable with imprisonment for a term of three years or upwards, is again convicted of any offence punishable with imprisonment for a term of three years or upwards, the court may, if it thinks fit, at the time of passing sentence of imprisonment on such person, also order that he shall be subject to police supervision as hereinafter provided for a term not exceeding five years from the date of the expiration of such sentence.

(2) If such conviction is set aside on appeal or otherwise, such order shall become void.

(3) An order under this section may be made by the Supreme Court when exercising its powers of revision.

Requirements from persons subject to police supervision.

330. (1) Every person subject to police supervision, and who is at large in the Colony, shall—

(*a*) report himself personally once in each month to the officer in charge of the police station nearest to his place of residence at such time as may be directed by such police officer, or as may be prescribed by rules under this section; and

(*b*) notify the place of his residence and any change of such residence at such time and place and in such manner and to such person as may be prescribed by rules under this section.

(2) The Governor in Council may make rules for carrying out the provisions of this section.

Failure to comply with requirements under section 330.

331. If any person subject to police supervision who is at large in the Colony refuses or neglects to comply with any requirement prescribed by the last preceding section or by any rule made thereunder, such person shall, unless he proves to the satisfaction of the court before which he is tried that he did his best to act in conformity with the law, be guilty of an offence and liable to imprisonment for a term not exceeding six months.

DEFECTS IN ORDER OR WARRANT.

Errors and omissions in orders and warrants.

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

PART XI.—APPEALS.

APPEALS FROM SUBORDINATE COURTS.

Appeals.

Appeal to Supreme Court.

333. (1) Save as hereinafter provided, any person convicted on a trial held by any subordinate court may appeal to the Supreme Court, and shall be so informed by the magistrate at the time when sentence is passed.

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

334. (1) No appeal shall be allowed in the case of any accused person who has pleaded guilty and has been convicted on such plea by a subordinate court, except as to the extent or legality of the sentence.

No appeal on plea of guilty nor in petty cases.

(2) No appeal shall be allowed in cases in which a subordinate court has passed a sentence of imprisonment not exceeding one month only, or of a fine not exceeding five pounds only, or of corporal punishment only :

Provided that there shall be no appeal from a sentence of imprisonment passed by such court in default of the payment of a fine, when no substantive sentence of imprisonment has also been passed :

Provided, however, that an appeal may be brought against any sentence referred to in this sub-section by which any two or more of the punishments therein mentioned are combined, but no 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.

335. Every appeal shall be entered within thirty days of the date of the order or sentence appealed against.

Limitation.

336. Every appeal shall be made in the form of a petition in writing presented by the appellant or his advocate, and every such petition shall (unless the Supreme Court otherwise directs) be accompanied by a copy of the judgment or order appealed against.

Petition of appeal.

337. If the appellant is in prison, he may present his petition of appeal and the copies accompanying the same to the officer in charge of the prison, who shall thereupon forward such petition and copies to the registrar of the Supreme Court.

Appellant in prison.

338. (1) On receiving the petition and copy under section 336 the Supreme Court shall peruse the same, and if it considers that there is no sufficient ground for interfering, it may dismiss the appeal summarily :

Summary dismissal of appeal.

Provided that no appeal shall be dismissed unless the appellant (if not in custody) or his advocate has had a reasonable opportunity of being heard in support of the same, and provided further that no appeal, where the appellant is in custody, shall be dismissed unless the appellant's advocate (if the court has been notified that he has an advocate) has had such opportunity.

(2) Before dismissing an appeal under this section, the court may call for the record of the case, but shall not be bound to do so.

339. If the Supreme Court does not dismiss the appeal summarily, it shall cause notice to be given to the appellant or his advocate, and to the Attorney General, of the time and place at which such appeal will be heard, and shall furnish the Attorney General with a copy of the proceedings and of the grounds of appeal.

Notice of time and place of hearing.

340. (1) The Supreme Court shall then send for the record of the case, if such record is not already in court. After perusing such record and hearing the appellant or his advocate,

Powers of Supreme Court.

if he appears, and the Attorney General, if he appears, the court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may—

(*a*) in an appeal from a conviction—

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

(ii) alter the finding, maintaining the sentence, or, with or without altering the finding, reduce or increase the sentence; or

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

(*b*) in an appeal from any other order, alter or reverse such order,

and in either case may make any amendment or any consequential or incidental order that may appear just and proper.

(2) An appellant who is in custody shall be entitled to be present at the hearing of an appeal unless his appeal is being conducted by an advocate :

Provided that the court may, in any case in which it considers it to be in the interest of the appellant that he be present, direct his attendance.

Order of the Supreme Court to be certified to lower court.

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

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

Suspension of sentence pending appeal.

342. (1) Pending any appeal by a convicted person, the Supreme Court may, for reasons to be recorded by it in writing, order that the execution of a sentence or order appealed against be suspended and also, if he is in confinement, that he be released on bail or on his own bond.

(2) When the appellant is ultimately sentenced to imprisonment, the time during which he is so released shall be excluded in computing the term for which he is sentenced.

Further evidence

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

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

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

(4) Evidence taken in pursuance of this section shall be taken as if it were evidence taken at a trial before a subordinate court.

344. All appeals to the Supreme Court shall be heard by not less than two judges: Provided that any interlocutory matter may be heard and disposed of by one judge. Number of judges on an appeal.

If on the hearing of an appeal the court is equally divided in opinion, the appeal shall be dismissed.

345. Every appeal from a subordinate court (except an appeal from a sentence of fine) shall finally abate on the death of the appellant. Abatement of appeals.

346. Any person aggrieved by a decision of the Supreme Court in its appellate jurisdiction under this Part may appeal to the Court of Appeal for Eastern Africa on a matter of law (not including severity of sentence) but not on a matter of fact. Appeals to Court of Appeal for Eastern Africa.

Every such appeal shall be entered within thirty days of the date of the order appealed against and the provisions of sections 336 to 345 inclusive shall apply *mutatis mutandis* to appeals from the Supreme Court to the Court of Appeal for Eastern Africa.

Revision.

347. The Supreme Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court. Power of Supreme Court to call for records.

348. (1) Any magistrate may call for and examine the record of any criminal proceedings before a subordinate court of a class inferior to the court which he is empowered to hold, and situate within the local limits of his jurisdiction, for the purpose of satisfying himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior subordinate court. Power of magistrates to call for records of inferior courts and to report to the Supreme Court.

(2) If any magistrate acting under sub-section (1) considers that any finding, sentence or order of such inferior subordinate court is illegal or improper, or that any such proceedings are irregular, he shall forward the record, with such remarks thereon as he thinks fit, to the Supreme Court.

349. (1) In the case of any proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the Supreme Court may— Powers of Supreme Court on revision.

(*a*) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by section 340, 342 and 343 and may enhance the sentence;

(*b*) in the case of any other order other than an order of acquittal, alter or reverse such order.

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

(3) Where the sentence dealt with under this section has been passed by a subordinate court, the Supreme Court shall not inflict a greater punishment for the offence, which in the opinion of the Supreme Court the accused has committed, than might have been inflicted by a magistrate empowered to hold a subordinate court of the first class.

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

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

Discretion of court as to hearing parties.

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

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

Number of judges in revision.

351. All proceedings before the Supreme Court in the exercise of its revisional jurisdiction may be heard and any judgment or order thereon may be made or passed by one judge :

Provided that when such court is composed of more than one judge and the court is equally divided in opinion, the sentence or order of the subordinate court shall be upheld.

Supreme Court order to be certified to lower court.

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

Case Stated.

Case stated by subordinate court.

353. After the hearing and determination by any subordinate court of any summons, charge, information or complaint, either party to the proceedings before the said subordinate court may, if dissatisfied with the said determination as being erroneous in point of law, or as being in excess of jurisdiction, apply in writing within thirty days after the said determination to the said subordinate court to state and sign a case setting forth the facts and the grounds of such determination for the opinion thereon of the Supreme Court, and such party, hereinafter called the appellant, shall within fourteen days after receiving such case transmit the same to the Supreme Court, first giving notice in writing of such appeal, with a copy of the case so stated and signed, to the other party to the proceedings in which the determination was given, hereinafter called the respondent.

Recognizance to be taken and fees paid.

354. The appellant, at the time of making such application and before the case shall be stated and delivered to him by the subordinate court, shall in every instance enter into a recognizance before such subordinate court, with or without surety or sureties, and in such sum not exceeding fifty pounds as to the subordinate court shall seem meet, conditioned to prosecute without delay such appeal, and to submit to the judgment of the Supreme Court, and to pay such

costs as may be awarded by the same; and before he shall be entitled to have the case delivered to him, he shall pay to the clerk of such subordinate court his fees for and in respect of the case and recognizances, and any other prescribed fees to which such clerk shall be entitled, which fees shall be in accordance with the Third Schedule, and which shall be paid in stamps to be affixed to the original case stated, recognizance or certificate of refusal, as the case may be, and shall be cancelled by the subordinate court.

The appellant, if then in custody, shall be liberated upon the recognizance being further conditioned for his appearance before the same subordinate court, or, if that is impracticable, before some other subordinate court exercising the same jurisdiction, within fourteen days after the judgment of the Supreme Court shall have been given, to abide such judgment unless the determination appealed against be reversed:

Provided that nothing in this section shall apply to an application for a case stated by or under the direction of the Attorney General.

Subordinate court may refuse case when it thinks application frivolous.

355. If the subordinate court be of opinion that the application is merely frivolous, but not otherwise, it may refuse to state a case, and shall, on the request of the appellant, sign and deliver to him a certificate of such refusal: Provided that the subordinate court shall not refuse to state a case when the application for that purpose is made to him by or under the direction of the Attorney General, who may require a case to be stated with reference to proceedings to which he was not a party.

Procedure on refusal of subordinate court to state case.

356. When a subordinate court has refused to state a case as aforesaid it shall be lawful for the appellant to apply to the Supreme Court within two months of such refusal, upon an affidavit of the facts, for a rule calling upon such subordinate court and also upon the respondent to show cause why such case should not be stated, and the Supreme Court may make the same absolute or discharge it, with or without payment of costs, as to the court shall seem fit, and the subordinate court, upon being served with such rule absolute, shall state a case accordingly, upon the appellant entering into such recognizance as is hereinbefore provided.

Supreme Court to determine the questions on the case; its decision to be final.

357. The Supreme 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 subordinate court with the opinion of the Supreme Court thereon, or may make such other order in relation to the matter, and may make such order as to costs, as to the court may seem fit, and all such orders shall be final and conclusive on all parties: Provided always that no magistrate who shall state and deliver a case in pursuance of this Part or *bonâ fide* refuse to state one shall be liable to any costs in respect or by reason of such appeal against his determination or refusal, and provided further that no costs shall be awarded against the Crown except where the Crown is the appellant.

Case may be sent back for amendment or rehearing.

358. The Supreme Court shall have power, if it thinks fit—

(*a*) to cause the case to be sent back for amendment or restatement, and thereupon the same shall be amended or restated accordingly, and judgment shall be delivered after it has been so amended or restated;

(*b*) to remit the case to the subordinate court for rehearing and determination with such directions as it may deem necessary.

Powers of subordinate court after decision of Supreme Court.

359. After the decision of the Supreme Court has been given on a case stated, the subordinate court in relation to whose determination the case has been stated, or any other subordinate court exercising the same jurisdiction, shall have the same authority to enforce any conviction or order, which may have been affirmed, amended or made by the Supreme Court, as the subordinate court which originally decided the case would have had to enforce its determination if the same had not been appealed against; and no action or proceeding whatsoever shall be commenced or had against the magistrate holding such subordinate court for enforcing such conviction or order, by reason of any defect in the same respectively.

Appellant may not proceed both by case stated and by appeal.

360. No person who has appealed under section 333 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 333.

Contents of case stated.

361. A case stated by a subordinate court shall set out—

(*a*) the charge, summons, information or complaint;

(*b*) the facts found by the subordinate 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 subordinate court;

(*f*) any question or questions of law which the subordinate court or any of the parties may desire to be submitted for the opinion of the Supreme Court;

(*g*) any question of law which the Attorney General may require to be submitted for the opinion of the Supreme Court.

Constitution of court hearing case stated.

362. A case stated for the opinion of the Supreme Court shall be heard by not less than two judges. If on the hearing of a case stated the court is equally divided in opinion the case stated shall be reheard before three judges.

Supreme Court may enlarge time.

363. The Supreme Court may, if it deems fit, enlarge any period of time prescribed by sections 353, 354 or 356.

APPEALS FROM SUPREME COURT.

Appeals from Supreme Court to His Majesty's Court of Appeal for Eastern Africa.

364. Any person convicted on a trial held by the Supreme Court may appeal to His Majesty's Court of Appeal for Eastern Africa—

(*a*) Against his conviction on any ground of appeal which involves a question of law alone; and

(*b*) with the leave of such Court of Appeal or upon the certificate of the judge who tried him that it is a fit case for appeal on any ground of appeal which involves a question of fact alone or a question of mixed law and fact or any other ground which appears to the court to be a sufficient ground of appeal; and

(c) with the leave of such Court of Appeal against the sentence passed on conviction unless such sentence is one fixed by law.

PART XII.—SUPPLEMENTARY PROVISIONS.

Irregular Proceedings.

Proceedings in wrong place.

365. 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 province, district or other local area, unless it appears that such error has in fact occasioned a failure of justice.

Trial by jury of offence triable with assessors.

366. (1) If an offence triable with the aid of assessors is tried by a jury, the trial shall not on that ground only be invalid.

Trial with assessors of offence triable by jury.

(2) If an offence triable by a jury is tried with the aid of assessors, the trial shall not on that ground only be invalid, unless the objection is taken before the court records its finding.

Finding or sentence when reversible by reason of error or omission in charge or other proceedings.

367. Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered on appeal or revision on account—

(a) of any error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during the trial or in any inquiry or other proceedings under this Code; or

(b) of the omission to revise any list of jurors or assessors in accordance with section 252; or

(c) of any misdirection in any charge to a jury,

unless such error, omission, irregularity or misdirection has in fact occasioned a failure of justice:

Provided that in determining whether any error, omission or irregularity has occasioned a failure of justice the court shall have regard to the question whether the objection could and should have been raised at an earlier stage in the proceedings.

Distress not illegal nor distrainer a trespasser for defect or want of form in proceedings.

368. No distress made under this Code shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress or other proceedings relating thereto.

Inquiries as to Sudden Deaths.

Magistrates empowered to hold inquests.

369. Any magistrate empowered to hold a subordinate court of the first, second or third class, and any magistrate specially empowered in that behalf by the Governor, shall be empowered to hold inquests.

Police to inquire and report on suicide, etc.

370. (1) The officer in charge of a police station, or any other officer specially empowered by the Governor in that behalf, on receiving information that a person—

(a) has committed suicide; or

(b) has been killed by another or by an accident; or

(*c*) has died under circumstances raising a reasonable suspicion that some other person has committed an offence,

shall immediately give information thereof to the nearest magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the Governor, shall proceed to the place where the body of such deceased person is, and shall there make an investigation and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted. The report shall be forwarded forthwith to the nearest magistrate empowered to hold inquests.

(2) When there is any doubt regarding the cause of death, or when for any other reason the police officer considers it expedient to do so, he shall, subject to any rule prescribed by the Governor, forward the body, with a view to its being examined, to the nearest medical officer or other person appointed by the Governor in this behalf, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

Inquiry by magistrate into cause of death.

371. (1) When any person dies while in the custody of the police, or of a prison officer, or in a prison, the nearest magistrate empowered to hold inquests shall, and in any other case mentioned in sub-section (1) of the last preceding section any magistrate so empowered may, hold an inquiry into the cause of death, either instead of or in addition to the investigation held by the police or prison officer, and if he does so he shall have all the powers in conducting it which he would have in holding an inquiry into an offence.

(2) Whenever such magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the magistrate may cause the body to be disinterred and examined.

(3) If before or at the termination of the inquiry the magistrate is of opinion that the commission by some known person or persons of an offence has been disclosed, he shall issue a summons or warrant for his or their arrest, as the case may be, or take such other steps as may be necessary to secure his or their attendance to answer the charge. On the attendance of the said person or persons the magistrate shall commence the inquiry *de novo* and shall proceed as if he had taken cognizance of an offence.

(4) If at the termination of the inquiry the magistrate is of opinion that an offence has been committed by some person or persons unknown, he shall record his opinion and shall forthwith send a copy thereof to the Commissioner of Police.

(5) If at the termination of the inquiry the magistrate is of opinion that no offence has been committed, he shall record his opinion accordingly.

DIRECTIONS IN THE NATURE OF HABEAS CORPUS AND WRITS.

372. (1) The Supreme Court may whenever it thinks fit direct— Power to issue directions of the nature of a *habeas corpus*

(*a*) that any person within the limits of the Colony 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 for trial 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 Supreme Court may from time to time frame rules to regulate the procedure in cases under this section.

373. (1) The Supreme Court may in the exercise of its criminal jurisdiction issue any writ which may be issued by the High Court of Judicature in England. Power of the Supreme Court to issue writs.

(2) The Supreme Court may from time to time frame rules to regulate the procedure in cases under this section.

MISCELLANEOUS.

374. Affidavits and affirmations to be used before the Supreme Court may be sworn and affirmed before a judge of the Supreme Court or any magistrate or the registrar or deputy registrar of the Supreme Court or any justice of the peace or commissioner for oaths. Persons before whom affidavits may be sworn.

375. Shorthand notes may be taken of the proceedings at the trial of any person before the Supreme 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. Shorthand notes of proceedings.

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

377. Such forms as the Supreme Court may from time to time approve, with such variation as the circumstances of each case may require, may be used for the respective purposes therein mentioned, and if used shall be sufficient. Forms.

Expenses of jurors, assessors, witnesses, etc.

378. Subject to any rules which may be made by the Governor in Council, any court may order payment on the part of Government of the reasonable expenses of any juror, assessor, complainant or witness attending before such court for the purposes of any inquiry, trial or other proceeding under this Code.

REPEAL.

Repeal and saving clause. No. 7 of 1926. No. 14 of 1926. No. 31 of 1926.

379. (1) The Criminal Procedure Ordinance (Chapter 7 of the Revised Edition) as amended by the Revised Edition of the Laws (Operation) Ordinance, 1926, and the Costs in Criminal Cases Ordinance, 1926, and the Criminal Procedure (Amendment) Ordinance, 1926, are hereby repealed :

Provided that such repeal shall not affect—

(*a*) the past operation of the said repealed Ordinances or any of them ;

(*b*) any right, privilege, obligation or liability acquired, accrued or incurred under the said repealed Ordinances or any of them ;

(*c*) any penalty, forfeiture or punishment incurred in respect of any offence committed under the said repealed Ordinances or any of them ;

(*d*) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, but any such investigation, legal proceeding or remedy may be carried on or sought as if the said Ordinances had not been repealed :

Provided further that all rules, orders, declarations and appointments made, sanctions and directions given, forms approved, powers conferred and notifications and proclamations published under any of the said repealed Ordinances shall, so far as they are consistent with the provisions of this Code, be deemed to have been respectively made, given, approved, conferred and published under this Code.

(2) Whenever reference is made in any enactment now in force or in any document to any provision in any of the said repealed Ordinances for which other provision is made by this Code, such reference shall be construed as a reference to the other provision made by this Code if such reference is consistent with the context in which it occurs.

FIRST SCHEDULE.

OFFENCES UNDER THE PENAL CODE.

EXPLANATORY NOTE.—The entries in the second and fourth columns of this Schedule, headed respectively "Offence" and "Punishment under the Penal Code," are not intended as definitions of the offences and punishments described in the several corresponding sections of the Penal Code or even as abstracts of those sections, but merely as references to the subject of the section, the number of which is given in the first column.

CHAPTER V.—PARTIES TO OFFENCES.

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code. (*N.B.*—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. *Vide* also section 34 of the Penal Code.)	5 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non-native.*
21	Aiding, abetting, counselling or procuring the commission of an offence.	May arrest without warrant if arrest for the offence aided, abetted, counselled or procured may be made without warrant but not otherwise.	Same punishment as for the offence aided, abetted, counselled or procured.	Any court by which the offence aided, abetted, counselled or procured would be triable.

DIVISION I.

OFFENCES AGAINST PUBLIC ORDER.

CHAPTER VII.—TREASON AND OTHER OFFENCES AGAINST THE SOVEREIGN'S AUTHORITY.

36	Treason.	May arrest without warrant.	Death.	
37	Instigating foreign invasion.	ditto	ditto	
38	Misprision of treason.	ditto	Imprisonment for life	
39	Treasonable felony.	ditto	ditto	
40	Promoting native war.	ditto	ditto	
42	Inciting to mutiny.	ditto	ditto	
43	Aiding in acts of mutiny.	Shall not arrest without warrant	Imprisonment for two years.	Subordinate court of the first or second class.
44	Inducing desertion.	ditto	Imprisonment for six months.	Any magistrate.
45 (1)	Aiding prisoner of war to escape.	May arrest without warrant.	Imprisonment for life.	
(2)	Permitting prisoner of war to escape.	Shall not arrest without warrant	Imprisonment for two years.	Subordinate court of the first or second class.
47	Seditious conspiracy libel and publication.	May arrest without warrant.	ditto	ditto
47	Seditious conspiracy, libel and publication (after previous conviction).	ditto	Imprisonment for seven years.	Subordinate court of the first class.
48	Possessing seditious publications.	ditto	Imprisonment for one year.	Subordinate court of the first or second class.
56	Administering or taking oath to commit capital offence.	ditto	Imprisonment for life.	
57	Administering or taking other unlawful oaths.	ditto	Imprisonment for seven years.	Subordinate court of the first class.
59 (1)	Unlawful drilling.	ditto	ditto	ditto
(2)	Being unlawfully drilled.	ditto	Imprisonment for two years.	Subordinate court of the first or second class.

* For the court by which an offence is triable when the accused is a native, *vide* section 10.

FIRST SCHEDULE—*continued.*

CHAPTER VIII.—OFFENCES AFFECTING RELATIONS WITH FOREIGN STATES AND EXTERNAL TRANQUILLITY.

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code. (*N.B.*—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. *Vide* also section 34 of the Penal Code.)	5 Court (in addition to the Supreme Court by which offence is triable when the accused is a non-native.*
60	Publishing false reports.	Shall not arrest without warrant.	Imprisonment for two years.	Subordinate court of the first or second class.
61	Defamation of foreign princes.	ditto	ditto	ditto
62	Foreign enlistment.	ditto	ditto	ditto
63	Piracy.	May arrest without warrant.	Punishment prescribed by law of England.	

CHAPTER IX.—UNLAWFUL ASSEMBLIES, RIOTS AND OTHER OFFENCES AGAINST PUBLIC TRANQUILLITY.

65	Managing unlawful society.	May arrest without warrant.	Imprisonment for seven years	Subordinate court of the first class.
66	Being member of unlawful society.	ditto	Imprisonment for three years.	Subordinate court of the first or second class.
72	Unlawful assembly.	ditto	Imprisonment for one year without hard labour.	ditto
73	Riot.	ditto	Imprisonment for two years.	ditto
76	Rioting after proclamation.	ditto	Imprisonment for five years.	Subordinate court of the first class.
77	Obstructing proclamation.	ditto	Imprisonment for ten or five years.	ditto
78	Rioters destroying buildings.	ditto	Imprisonment for life.	
79	Rioters injuring buildings.	ditto	Imprisonment for seven years.	Subordinate court of the first class.
80	Riotously interfering with railway, vehicle or vessel	ditto	Imprisonment for two years.	Subordinate court of the first or second class.
81	Going armed in public.	ditto	ditto	ditto
82	Forcible entry.	ditto	ditto	ditto
83	Forcible detainer.	ditto	ditto	ditto
84	Committing affray.	ditto	Imprisonment for one year.	Any magistrate.
85	Challenging to fight a duel.	Shall not arrest without warrant	Imprisonment for two years.	ditto
86	Threatening violence.	May arrest without warrant.	Imprisonment for one year.	ditto
	If the offence committed in the night.	ditto	Imprisonment for two years.	ditto
87	Assembling for purpose of smuggling.	ditto	Fine of one hundred pounds or imprisonment for six months	ditto

DIVISION II.

OFFENCES AGAINST THE ADMINISTRATION OF LAWFUL AUTHORITY.

CHAPTER X.—CORRUPTION AND ABUSE OF OFFICE.

88	Official corruption.	Shall not arrest without warrant.	Imprisonment for seven years.	Subordinate court of the first or second class.
89	Extortion by public officers.	ditto	ditto	ditto

* For the court by which an offence is triable when the accused is a native, *vide* section 10

FIRST SCHEDULE—*continued.*

CHAPTER X.—CORRUPTION AND ABUSE OF OFFICE—(*contd.*).

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code. (*N.B.*—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. *Vide* also section 34 of the Penal Code.)	5 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non-native.*
90	Receiving property to show favour.	Shall not arrest without warrant	Imprisonment for six months.	Subordinate court of the first or second class.
91	Officer discharging duties in respect of property in which he has a special interest.	ditto	Imprisonment for one year.	ditto
92	False claims by officials.	ditto	Imprisonment for two years.	ditto
93	Abuse of office.	ditto	ditto	ditto
93	Abuse of office. (if for purposes of gain).	ditto	Imprisonment for three years.	ditto
94	False certificates by public officers.	ditto	Imprisonment for two years.	ditto
95	False assumption of authority.	ditto	ditto	ditto
96	Personating public officers.	May arrest without warrant	Imprisonment for three years.	ditto

CHAPTER XI.—OFFENCES RELATING TO THE ADMINISTRATION OF JUSTICE.

98	Perjury or subornation of perjury.	Shall not arrest without warrant	Imprisonment for seven years.	Subordinate court of the first class.
100	Fabricating evidence	ditto	ditto	ditto
101	False swearing.	ditto	Imprisonment for two years.	Subordinate court of the first or second class.
102	Deceiving witnesses.	ditto	ditto	ditto
103	Destroying evidence.	ditto	ditto	ditto
104	Conspiracy to defeat justice and interference with witnesses.	ditto	ditto	ditto
105	Compounding felonies.	ditto	ditto	ditto
106	Compounding penal actions.	ditto	ditto	ditto
107	Advertising for stolen property.	ditto	ditto	ditto
108	Contempt of court.	May arrest without warrant	Imprisonment for three months	Any Magistrate.

CHAPTER XII.—RESCUES, ESCAPES, AND OBSTRUCTING OFFICERS OF COURTS OF LAW.

109	Rescue.			
(*a*)	if person rescued is under sentence of death or imprisonment for life or charged with offence punishable with death or imprisonment for life;	May arrest without warrant.	Imprisonment for life.	

* For the court by which an offence is triable when the accused is a native, *vide* section 10.

FIRST SCHEDULE—*continued.*

CHAPTER XII.—RESCUES, ESCAPES, AND OBSTRUCTING OFFICERS OF COURTS OF LAW.—(*contd.*).

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code. (*N.B.*—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. *Vide* also section 34 of the Penal Code.)	5 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non-native.*
(*b*)	if person rescued is imprisoned on a charge or under sentence for any other offence ;	May arrest without warrant.	Imprisonment for seven years.	Subordinate court of the first class.
(*c*)	in any other case.	ditto	Imprisonment for two years.	Subordinate court of the first or second class.
110	Escape.			
(*a*)	if person escaping is charged with or has been convicted of felony ;	ditto	Imprisonment for seven years, with or without corporal punishment.	Subordinate court of the first class.
(*b*)	in any other case.	ditto	Imprisonment for two years.	Subordinate court of the first or second class.
111	Aiding prisoners to escape.	ditto	Imprisonment for seven years.	Subordinate court of the first class.
112	Removal, etc., of property under lawful seizure.	ditto	Imprisonment for three years.	Subordinate court of the first or second class.
113	Obstructing court officers.	ditto	Imprisonment for one year.	ditto

CHAPTER XIII.—MISCELLANEOUS OFFENCES AGAINST PUBLIC AUTHORITY.

114	Frauds and breaches of trust by public officers.	Shall not arrest without warrant	Imprisonment for two years.	Subordinate court of the first class.
115	Neglect of official duty.	ditto	ditto	ditto
116	Disobedience of statutory duty.	ditto	ditto	ditto
117	Disobedience of lawful orders.	ditto	ditto	ditto

DIVISION III.

OFFENCES INJURIOUS TO THE PUBLIC IN GENERAL.

CHAPTER XIV.—OFFENCES RELATING TO RELIGION.

118	Insult to religion of any class.	May arrest without warrant.	Imprisonment for two years.	Subordinate court of the first or second class.
119	Disturbing religious assemblies.	ditto	ditto	ditto
120	Trespassing on burial places.	ditto	ditto	ditto
121	Uttering words with intent to wound religious feelings.	Shall not arrest without warrant	Imprisonment for one year.	ditto

* For the court by which an offence is triable when the accused is a native, *vide* section 10

FIRST SCHEDULE—*continued.*

CHAPTER XV.—OFFENCES AGAINST MORALITY.

1	2	3	4	5
Section	Offence	Whether the police may arrest without warrant or not	Punishment under the Penal Code. (*N.B.*—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. *Vide* also section 34 of the Penal Code.)	Court (in addition to the Supreme Court) by which offence is triable when the accused is a non-native.*
123	Rape.	May arrest without warrant	Death or imprisonment for life or for any term not less than three years, with or without corporal punishment.	
124	Attempted rape.	ditto	Imprisonment for life, with or without corporal punishment.	
125	Abduction.	ditto	Imprisonment for seven years.	Subordinate court of the first class.
126	Abduction of girl under sixteen.	ditto	Imprisonment for two years.	ditto
127(1)	Indecent assault on females.	ditto	Imprisonment for fourteen years, with or without corporal punishment.	ditto
(3)	Indecently insulting or annoying females	ditto	Imprisonment for one year.	ditto
128(1)	Defilement of girl under sixteen.	ditto	Imprisonment for life, with or without corporal punishment.	
(2)	Attempted defilement of girl under sixteen.	ditto	Imprisonment for fourteen years, with or without corporal punishment.	Subordinate court of the first class.
129	Defilement of an idiot or imbecile.	ditto	ditto	ditto
130	Procuration.	ditto	Imprisonment for two years, with or without corporal punishment.	ditto
131	Procuring defilement by threats or fraud or administering drugs.	ditto	Imprisonment for two years.	ditto
132	Householder permitting defilement of girl under thirteen on his premises.	ditto	Imprisonment for five years.	ditto
133	Householder permitting defilement of girl under sixteen on his premises.	ditto	Imprisonment for two years.	ditto
134	Detention with intent or in brothel.	ditto	ditto	ditto
136	Male person living on earnings of prostitution or persistently soliciting.	ditto	ditto	ditto

* For the court by which an offence is triable when the accused is a native, *vide* section 10.

FIRST SCHEDULE—*continued.*

CHAPTER XV.—OFFENCES AGAINST MORALITY—(*contd.*).

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code. (*N.B.*—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. *Vide* also section 34 of the Penal Code.)	5 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non-native.*
137	Woman living on earnings of prostitution or aiding, etc., for gain, prostitution of another woman.	May arrest without warrant.	Imprisonment for two years.	Subordinate court of the first class.
139	Keeping a brothel.	ditto	ditto	ditto
140	Conspiracy to defile.	ditto	Imprisonment for three years, with or without corporal punishment.	ditto
141	Attempt to procure abortion.	ditto	Imprisonment for fourteen years.	ditto
142	Woman attempting to procure her own abortion.	ditto	Imprisonment for seven years.	ditto
143	Supplying drugs or instruments to procure abortion.	ditto	Imprisonment for three years.	ditto
145	Unnatural offences.	ditto	Imprisonment for fourteen years, with or without corporal punishment.	
146	Attempt to commit unnatural offence.	ditto	Imprisonment for seven years, with or without corporal punishment.	
147(1)	White woman having connection with native.	ditto	Imprisonment for five years.	
(2)	White woman soliciting native to have connection with her.	ditto	Imprisonment for two years.	
(3)	Native having or attempting to have connection with white woman.	ditto	Imprisonment for five years.	
(4)	Procuring or attempting to procure white woman for purpose of having connection with native.	ditto	Imprisonment for ten years, with or without corporal punishment.	
(5)	Householder permitting connection between native and white woman.	ditto	Imprisonment for five years.	
148(1)	Incest by males.	ditto	Imprisonment for five years.	
(2)	If female person is under the age of thirteen years.	ditto	Imprisonment for life.	
(3)	Attempt to commit incest.	ditto	Imprisonment for two years.	
149	Incest by females.	ditto	Imprisonment for five years.	

* For the court by which an offence is triable when the accused is a native, *vide* section 10.

FIRST SCHEDULE—*continued.*

CHAPTER XVI.—OFFENCES RELATING TO MARRIAGE AND DOMESTIC OBLIGATIONS.

1	2	3	4	5
Section	Offence	Whether the police may arrest without warrant or not	Punishment under the Penal Code. (*N.B.*—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. *Vide* also section 34 of the Penal Code.)	Court (in addition to the Supreme Court) by which offence is triable when the accused is a non-native.*
153	Fraudulent pretence of marriage.	May arrest without warrant.	Imprisonment for ten years.	
154	Bigamy.	ditto	Imprisonment for five years.	
155	Dishonestly or fraudulently going through ceremony of marriage.	ditto	ditto	
156	Desertion of children.	Shall not arrest without warrant	Imprisonment for two years.	Subordinate court of the first or second class.
157	Neglecting to provide food, etc., for children.	ditto	ditto	ditto
158	Master not providing for servants or apprentices.	ditto	ditto	ditto
159	Child stealing.	May arrest without warrant.	Imprisonment for seven years.	Subordinate court of the first class.

CHAPTER XVII.—NUISANCES AND OFFENCES AGAINST HEALTH AND CONVENIENCE.

160	Committing common nuisance.	Shall not arrest without warrant	Imprisonment for one year.	Any magistrate.
161(3)	Keeping common gaming house.	ditto	Imprisonment for two years.	Subordinate court of the first or second class.
(4)	Being found in common gaming house.	ditto	Fine of five pounds for first offence, and for each subsequent offence a fine of twenty pounds or imprisonment for three months or both.	ditto
162	Keeping or permitting the keeping of a common betting house.	ditto	Imprisonment for one year.	ditto
163(1)	Carrying on a lottery	ditto	Imprisonment for two years.	ditto
(2)	Printing or publishing advertisement relating to a lottery.	ditto	Fine of fifty pounds.	ditto
165	Trafficking in obscene publications.	May arrest without warrant.	Imprisonment for two years.	ditto
166	Being an idle or disorderly person.	ditto	Imprisonment for one month or a fine of two pounds, or both.	Any magistrate.

* For the court by which an offence is triable when the accused is a native, *vide* section 10.

FIRST SCHEDULE—*continued.*

CHAPTER XVII.—NUISANCES—(*contd.*).

1	2	3	4	5
Section	Offence	Whether the police may arrest without warrant or not	Punishment under the Penal Code. (*N.B.*—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. *Vide* also section 34 of the Penal Code.)	Court (in addition to the Supreme Court) by which offence is triable when the accused is a non-native.*
167	Being a rogue or vagabond.	May arrest without warrant.	Imprisonment for three months for first offence, and for each subsequent offence imprisonment for one year with or without corporal punishment.	Subordinate court of the first or second class.
168(1)	Wearing uniform without authority.	ditto	Imprisonment for one month or a fine of ten pounds.	ditto
(2)	Bringing contempt on uniform.	ditto	Imprisonment for three months or a fine of twenty pounds.	ditto
(3)	Importing or selling uniform without authority.	ditto	Imprisonment for six months or a fine of one hundred pounds.	ditto
169	Doing any act likely to spread infection of dangerous disease.	ditto	Imprisonment for two years.	ditto
170	Adulteration of food or drink intended for sale.	Shall not arrest without warrant	ditto	ditto
171	Selling, or offering or exposing for sale, noxious food or drink.	ditto	ditto	ditto
172	Adulteration of drugs intended for sale.	ditto	ditto	ditto
173	Selling adulterated drugs.	ditto	ditto	ditto
174	Fouling water of public spring or reservoir.	May arrest without warrant.	ditto	Any magistrate.
175	Making the atmosphere noxious to health.	Shall not arrest without warrant	ditto	ditto
176	Carrying on offensive trade.	ditto	Imprisonment for one year.	ditto

CHAPTER XVIII.—DEFAMATION.

177	Libel.	Shall not arrest without warrant	Imprisonment for two years.	Subordinate court of the first class

* For the court by which an offence is triable when the accused is a native, *vide* section 10

FIRST SCHEDULE—*continued.*

DIVISION IV.

OFFENCES AGAINST THE PERSON.

CHAPTER XIX.—MURDER AND MANSLAUGHTER.

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code. (*N.B.*—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. *Vide* also section 34 of the Penal Code.)	5 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non-native.*
187	Murder.	May arrest without warrant.	Death.	
188	Manslaughter.	ditto	Imprisonment for life.	

CHAPTER XXI.—OFFENCES CONNECTED WITH MURDER AND SUICIDE.

201	Attempted murder.	May arrest without warrant.	Imprisonment for life.	
202	Attempted murder by convict.	ditto	Imprisonment for life, with or without corporal punishment.	
203	Being accessory after the fact to murder.	ditto	Imprisonment for seven years.	
204	Sending written threat to murder.	ditto	ditto	
205	Conspiracy to murder.	ditto	Imprisonment for fourteen years.	
206	Aiding suicide.	ditto	Imprisonment for life.	
207	Attempted suicide.	ditto	Imprisonment for two years.	Subordinate court of the first or second class.
208	Concealing the birth of a child.	ditto	ditto	ditto

CHAPTER XXII.—OFFENCES ENDANGERING LIFE OR HEALTH.

209	Disabling in order to commit felony or misdemeanour.	May arrest without warrant.	Imprisonment for life, with or without corporal punishment.	
210	Stupefying in order to commit felony or misdemeanour.	ditto	Imprisonment for life.	
211	Acts intended to cause grievous harm or prevent arrest.	ditto	ditto	
212	Preventing escape from wreck.	ditto	ditto	
213	Intentionally endangering safety of persons travelling by railway.	ditto	Imprisonment for life, with or without corporal punishment.	
214	Doing grievous harm	ditto	Imprisonment for seven years.	Subordinate court of the first or second class.

* For the court by which an offence is triable when the accused is a native, *vide* section 10.

FIRST SCHEDULE—*continued.*

CHAPTER XXII.—OFFENCES ENDANGERING LIFE OR HEALTH—(*contd.*).

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code. (*N.B.*—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. *Vide* also section 34 of the Penal Code.)	5 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non-native.*
215	Attempting to injure by explosive substances.	May arrest without warrant.	Imprisonment for fourteen years.	
216	Administering poison with intent to harm.	ditto	ditto	
217	Wounding and similar acts.	ditto	Imprisonment for three years.	Subordinate court of the first or second class.
218	Failing to provide necessaries of life.	ditto	ditto	ditto
	CHAPTER XXIII.—CRIMINAL RECKLESSNESS AND NEGLIGENCE.			
222	Rash and negligent acts.	ditto	Imprisonment for two years.	Subordinate court of the first or second class.
223	Other negligent acts causing harm.	ditto	Imprisonment for six months.	ditto
224	Endangering safety of persons travelling by railway.	ditto	Imprisonment for two years.	ditto
225	Exhibiting false light, mark or buoy.	ditto	Imprisonment for seven years.	
226	Conveying person by water for hire in unsafe or overloaded vessel.	ditto	Imprisonment for two years.	Subordinate court of the first or second class.
227	Causing danger or obstruction in public way or line of navigation.	Shall not arrest without warrant.	Fine.	ditto
	CHAPTER XXIV.—ASSAULTS.			
228	Common assault.	Shall not arrest without warrant	Imprisonment for one year.	Any magistrate
229	Assault occasioning actual bodily harm.	May arrest without warrant.	Imprisonment for five years.	Subordinate court of the first or second class.
230	Assaulting person protecting wreck.	ditto	Imprisonment for seven years.	Subordinate court of the first class.
231	Various assaults.	ditto	Imprisonment for Five years.	Subordinate court of the first or second class.
	CHAPTER XXV.—OFFENCES AGAINST LIBERTY.			
235	Kidnapping.	May arrest without warrant.	Imprisonment for seven years.	Subordinate court of the first class.
236	Kidnapping or abducting in order to murder.	ditto	Imprisonment for ten years.	
237	Kidnapping or abducting with intent to confine a person.	ditto	Imprisonment for seven years.	Subordinate court of the first class

* For the court by which an offence is triable when the accused is a native, *vide* section 10

FIRST SCHEDULE—*continued.*

CHAPTER XXV.—OFFENCES AGAINST LIBERTY—(*contd.*)

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code. (*N.B.*—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. *Vide* also section 34 of the Penal Code.)	5 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non-native.*
238	Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc.	May arrest without warrant.	Imprisonment for ten years.	
239	Wrongfully concealing or keeping in confinement a kidnapped or abducted person.	ditto	Same punishment as for kidnapping or abduction.	
240	Kidnapping or abducting child under fourteen with intent to steal from its person.	ditto	Imprisonment for seven years.	Subordinate court of the first class.
241	Buying or disposing of any person as a slave.	ditto	ditto	
242	Habitually dealing in slaves.	ditto	Imprisonment for ten years.	
243	Unlawful compulsory labour.	ditto	Imprisonment for two years.	Any magistrate.

DIVISION V.

OFFENCES RELATING TO PROPERTY.

CHAPTER XXVI.—THEFT.

252	Theft.	ditto	Imprisonment for five years.	Any magistrate.
253	Stealing wills.	ditto	Imprisonment for ten years.	Subordinate court of the first or second class.
254	Stealing postal matter, etc.	ditto	ditto	ditto
255	Stealing cattle, etc.	ditto	Imprisonment for seven years.	ditto
256	Stealing from the person, in a dwelling-house, in transit, etc.	ditto	ditto	ditto
257	Stealing by persons in the public service	ditto	ditto	ditto
258	Stealing by clerks and servants.	ditto	ditto	ditto
259	Stealing by directors or officers of companies.	ditto	ditto	ditto
260	Stealing by agents, etc.	ditto	ditto	ditto
261	Stealing by tenants or lodgers.	ditto	ditto	ditto
262	Stealing after previous conviction.	ditto	ditto	ditto

* For the court by which an offence is triable when the accused is a native, *vide* section 10.

FIRST SCHEDULE—*continued.*

CHAPTER XXVII.—OFFENCES ALLIED TO STEALING.

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code. (*N.B.*—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. *Vide* also section 34 of the Penal Code.)	5 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non-native.*
263	Concealing registers.	May arrest without warrant.	Imprisonment for ten years.	
264	Concealing wills.	ditto	ditto	
265	Concealing deeds.	ditto	Imprisonment for three years.	
266	Killing animals with intent to steal.	ditto	Same punishment as if the animal had been stolen.	Any court by which the theft of the animal would be triable.
267	Severing with intent to steal.	ditto	Same punishment as if the thing had been stolen.	Any court by which the theft of the thing would be triable.
268	Fraudulently dealing with ore or minerals in mines.	ditto	Imprisonment for five years.	Subordinate court of the first or second class.
269	Fraudulent appropriation of mechanical or electrical power.	ditto	ditto	ditto
270	Unlawfully using vehicle, animal, etc.	ditto	Imprisonment for two years and/or five of fifty pounds.	ditto

CHAPTER XXVIII.—ROBBERY AND EXTORTION.

272	Robbery.	May arrest without warrant.	Imprisonment for fourteen years.	Subordinate court of the first class.
	Robbery with violence.	ditto	Imprisonment for life, with or without corporal punishment.	
273	Attempted robbery.	May arrest without warrant.	Imprisonment for seven years.	Subordinate court of the first class.
	Attempted robbery with violence.	ditto	Imprisonment for life, with or without corporal punishment.	
274	Assault with intent to steal.	ditto	Imprisonment for three years.	Subordinate court of the first or second class.
275	Demanding property by written threats.	ditto	Imprisonment for fourteen years.	Subordinate court of the first class.
276	Threatening with intent to extort—			
	in certain specified cases ;	ditto	ditto	ditto
	in any other case.	ditto	Imprisonment for three years.	Subordinate court of the first or second class.

*For the court by which an offence is triable when the accused is a native, *vide* section 10.

FIRST SCHEDULE—*continued.*

CHAPTER XXVIII.—ROBBERY AND EXTORTION—(*contd.*).

1	2	3	4	5
Section	Offence	Whether the police may arrest without warrant or not	Punishment under the Penal Code. (*N.B.*—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. *Vide* also section 34 of the Penal Code.)	Court (in addition to the Supreme Court) by which offence is triable when the accused is a non-native.*
277	Procuring execution of deeds, etc., by threats.	May arrest without warrant.	Imprisonment for fourteen years.	Subordinate court of the first class.
278	Demanding property with menaces with intent to steal.	ditto	Imprisonment for five years.	Subordinate court of the first or second class.

CHAPTER XXIX.—BURGLARY, HOUSEBREAKING AND SIMILAR OFFENCES.

280	Housebreaking.	May arrest without warrant.	Imprisonment for seven years.	Subordinate court of the first or second class.
	Burglary.	ditto	Imprisonment for ten years.	ditto
281	Entering dwelling-house with intent to commit felony.	ditto	Imprisonment for five years.	ditto
	If offence is committed in the night.	ditto	Imprisonment for seven years.	ditto
282	Breaking into building and committing felony.	ditto	ditto	ditto
283	Breaking into building with intent to commit felony.	ditto	Imprisonment for five years.	ditto
284	Being found armed, etc., with intent to commit felony.	ditto	Imprisonment for three years.	ditto
	If offender has been previously convicted of a felony relating to property.	ditto	Imprisonment for seven years.	ditto

CHAPTER XXX.—FALSE PRETENCES.

287	Obtaining property by false pretence.	May arrest without warrant.	Imprisonment for three years.	Subordinate court of the first or second class.
288	Obtaining execution of a security by false pretence.	ditto	ditto	ditto
289	Cheating.	ditto	ditto	ditto
290	Obtaining credit, etc., by false pretence.	ditto	Imprisonment for one year.	ditto
291	Conspiracy to defraud.	ditto	Imprisonment for three years.	ditto
292	Frauds on sale or mortgage of property.	ditto	Imprisonment for two years.	ditto

* For the court by which an offence is triable when the accused is a native, *vide* section 10.

FIRST SCHEDULE—*continued.*

CHAPTER XXX.—FALSE PRETENCES—(*contd.*).

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code. (*N.B.*—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. *Vide* also section 34 of the Penal Code.)	5 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non-native.*
293	Pretending to exercise witchcraft or tell fortunes.	May arrest without warrant.	Imprisonment for one year.	Subordinate court of the first or second class.
294	Obtaining registration, etc., by false pretence.	ditto	ditto	ditto

CHAPTER XXXI.—RECEIVING PROPERTY STOLEN OR UNLAWFULLY OBTAINED AND LIKE OFFENCES.

295(1)	Receiving or retaining stolen property.	May arrest without warrant.	Imprisonment for seven years.	Subordinate court of the first or second cass.
(2)	Receiving property unlawfully obtained, converted or disposed of.	ditto	Same punishment as offender by whom the property was unlawfully obtained, converted or disposed of.	Any court by which the unlawful obtaining, conversion or disposal of the property would be triable.
296	Failing to account for possession of property suspected to be stolen or unlawfully obtained.	ditto	Imprisonment for two years.	Subordinate court of the first or second class.

CHAPTER XXXII.—FRAUDS BY TRUSTEES AND PERSONS IN A POSITION OF TRUST, AND FALSE ACCOUNTING.

298	Fraudulently disposing of trust property	May arrest without warrant.	Imprisonment for seven years.	Subordinate court of the first or second class.
299	Directors and officers of corporations fraudulently appropriating property, or keeping fraudulent accounts, or falsifying books or accounts.	ditto	ditto	ditto
300	False statements by officials of corporations.	ditto	ditto	ditto
301	Fraudulent false accounting by clerk or servant.	ditto	ditto	ditto
302	False accounting by public officer.	ditto	Imprisonment for two years.	ditto

* For the court by which an offence is triable when the accused is a native, *vide* section 10.

FIRST SCHEDULE—*continued.*

DIVISION VI.

MALICIOUS INJURIES TO PROPERTY.

CHAPTER XXXIII.—OFFENCES CAUSING INJURY TO PROPERTY.

Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code. (*N.B.*—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. *Vide* also section 34 of the Penal Code.)	5 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non-native.*
303	Arson.	May arrest without warrant.	Imprisonment for life.	
304	Attempt to commit arson.	ditto	Imprisonment for fourteen years.	Subordinate court of the first class.
305	Setting fire to crops or growing plants.	ditto	ditto	ditto
306	Attempting to set fire to crops or growing plants.	ditto	Imprisonment for seven years.	ditto
307	Casting away a vessel.	ditto	Imprisonment for fourteen years, with or without corporal punishment.	
303	Attempt to cast away a vessel.	ditto	Imprisonment for seven years, with or without corporal punishment.	Subordinate court of the first class.
309	Killing or wounding animals.	ditto	Imprisonment for two years.	Any magistrate.
310(1)	Destroying or damaging property in general.	ditto	ditto	ditto
(2)	Destroying or damaging an inhabited house or a vessel with explosives.	ditto	Imprisonment for life, with or without corporal punishment.	
(3)	Destroying or damaging river bank or wall, or navigation works, or bridges.	ditto	Imprisonment for life.	
(4)	Destroying or damaging wills or registers.	ditto	Imprisonment for fourteen years.	Subordinate court of the first class.
(5)	Destroying or damaging wrecks.	ditto	Imprisonment for seven years.	ditto
(6)	Destroying or damaging railways.	ditto	Imprisonment for fourteen years.	ditto
(7)	Destroying or damaging property of special value.	ditto	Imprisonment for seven years.	ditto
(8)	Destroying or damaging deeds or records.	ditto	ditto	ditto

* For the court by which an offence is triable when the accused is a native, *vide* section 10.

FIRST SCHEDULE—*continued.*

CHAPTER XXXIII.—OFFENCES CAUSING INJURY TO PROPERTY—(*contd.*)

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code. (*N.B.*—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. *Vide* also section 34 of the Penal Code.)	5 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non-native.*
311	Attempt to destroy or damage property by use of explosives.	May arrest without warrant.	Imprisonment for fourteen years.	Subordinate court of the first class.
312	Communicating infectious disease to animals.	ditto	Imprisonment for seven years.	ditto
313	Removing boundary marks with intent to defraud.	ditto	Imprisonment for three years.	Subordinate court of the first or second class.
314	Removing or injuring survey or boundary marks.	ditto	Imprisonment for three months or a fine of twenty pounds.	Any magistrate.
315	Injuring or obstructing railway works, etc.	ditto	ditto	ditto
316	Threatening to burn any building, etc., or to kill or wound any cattle.	ditto	Imprisonment for seven years.	Subordinate court of the first class.

DIVISION VII.

FORGERY, COINING, COUNTERFEITING AND SIMILAR OFFENCES.

CHAPTER XXXV.—FORGERY.

321	Forgery (where no special punishment is provided).	May arrest without warrant.	Imprisonment for three years.	Subordinate court of the first class.
322	Forgery of a will, document of title, security, cheque, etc.	ditto	Imprisonment for life.	
323	Forgery of judicial or official document.	ditto	Imprisonment for seven years.	
324	Forgery, etc., of stamps.	ditto	Imprisonment for seven years.	
325	Uttering false document.	ditto	Same punishment as for forgery of document.	Any court by which forgery of document would be triable.
326	Uttering cancelled or exhausted document.	ditto	ditto	ditto
327	Procuring execution of document by false pretences.	ditto	ditto	ditto
328	Obliterating or altering the crossing on a cheque.	ditto	Imprisonment for seven years.	Subordinate court of the first class.

* For the court by which an offence is triable when the accused is a native, *vide* section 10.

FIRST SCHEDULE—*continued.*

CHAPTER XXXV.—FORGERY—(*contd.*)

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code. (*N.B.*—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. *Vide* also section 34 of the Penal Code.)	5 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non-native.*
329	Making or executing document without authority.	May arrest without warrant.	Imprisonment for seven years.	Subordinate court of the first class.
330	Demanding property upon forged testamentary instrument	ditto	Same punishment as for forgery of instrument.	Any court by which forgery of instrument would be triable.
331	Purchasing or receiving forged bank note.	ditto	Imprisonment for seven years.	Subordinate court of the first class.
332	Falsifying warrant for money payable under public authority.	ditto	ditto	ditto
333	Permitting falsification of register or record.	ditto	ditto	ditto
334	Sending false certificate of marriage to registrar.	ditto	ditto	ditto
335	Making false statement for insertion in register of births, deaths or marriages	ditto	Imprisonment for three years.	Subordinate court of the first or second class.

CHAPTER XXXVI.—OFFENCES RELATING TO COIN.

337	Counterfeiting coin.	May arrest without warrant.	Imprisonment for life.	
338	Making preparations for coining.	ditto	ditto	
339	Clipping coin.	ditto	Imprisonment for seven years.	Subordinate court of the first class.
340	Being in possession of clippings.	ditto	ditto	ditto
341	Uttering counterfeit coin.	ditto	Imprisonment for two years.	ditto
342	Repeated uttering of counterfeit coin.	ditto	Imprisonment for three years.	ditto
343	Uttering piece of metal as coin.	ditto	Imprisonment for one year.	ditto
344	Exporting counterfeit coin.	ditto	Imprisonment for two years.	ditto

For the court by which an offence is triable when the accused is a native, *vide* section 10

FIRST SCHEDULE—*continued.*

CHAPTER XXXVI.—OFFENCES RELATING TO COIN—(*contd.*)

1	2	3	4	5
Section	Offence	Whether the police may arrest without warrant or not	Punishment under the Penal Code. (*N.B.*—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. *Vide* also section 34 of the Penal Code.)	Court (in addition to the Supreme Court) by which offence is triable when the accused is a non-native.*
	CHAPTER XXXVII.—COUNTERFEIT STAMPS.			
346	Being in possession, etc., of die or paper used for purpose of making revenue stamps.	May arrest without warrant.	Imprisonment for seven years.	Subordinate court of the first class
347	Being in possession, etc., of die or paper used for postage stamps.	ditto	Imprisonment for one year or fine of fifty pounds.	ditto
	CHAPTER XXXVIII.—COUNTERFEITING TRADE MARKS.			
349	Counterfeiting, etc., trade mark.	Shall not arrest without warrant	Imprisonment for two years.	Subordinate court of the first or se ond class.
	CHAPTER XXXIX.—PERSONATION.			
350	Personation in general.	May arrest without warrant.	Imprisonment for two years.	Subordinate court of the first or second class.
	If representation is that the offender is a person entitled by will or operation of law to any specific property and he commits the offence to obtain such property.	ditto	Imprisonment for seven years.	Subordinate court of the first class
351	Falsely acknowledging deeds, recognizances, etc.	ditto	Imprisonment for two years.	Subordinate court of the first or second class.

* For the court by which an offence is triable when the accused is a native, *vide* section 10.

FIRST SCHEDULE—*continued.*

CHAPTER XXXIX.—PERSONATION—(*contd.*).

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code. (*N.B.*—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. *Vide* also section 34 of the Penal Code.)	5 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non-native.*
352	Personation of a person named in a certificate.	May arrest without warrant.	Same punishment as for forgery of certificate.	Any court by which forgery of certificate would be triable.
353	Lending, etc., certificate for purposes of personation.	ditto	Imprisonment for two years.	Subordinate court of the first or second class.
354	Personation of person named in a testimonial of character.	ditto	Imprisonment for one year.	ditto
355	Lending, etc., testimonial of character for purposes of personation.	ditto	Imprisonment for two years.	ditto
	CHAPTER XL.—SECRET COMMISSIONS AND CORRUPT PRACTICES.			
357	Corrupt practices.	Shall not arrest without warrant.	Imprisonment for two years and/or fine of three hundred pounds.	Subordinate court of the first or second class.
358	Secret commission on Government contracts.	Shall not arrest without warrant.	Imprisonment for seven years and/or fine of five hundred pounds.	Subordinate court of the first class.

DIVISION VIII.

ATTEMPTS AND CONSPIRACIES TO COMMIT CRIMES AND ACCESSORIES AFTER THE FACT.

CHAPTER XL.—ATTEMPTS.

362	Attempt to commit a felony or misdemeanour.	According as to whether or not the offence is one for which the police may arrest without a warrant.	Imprisonment for two years.	Any court by which the felony or misdemeanour attempted would be triable.
363	Attempt to commit a felony punishable with death or imprisonment for fourteen years or upwards.	May arrest without warrant.	Imprisonment for seven years.	Any court by which the felony attempted would be triable.
364	Soliciting or inciting others to commit offence in Colony or elsewhere.	May arrest without warrant if arrest for offence solicited or incited may be made without warrant, but not otherwise.	Same punishment as for the offence solicited or incited.	Any court by which offence solicited or incited would be triable.

* For the court by which an offence is triable when the accused is a native, *vide* section 10.

FIRST SCHEDULE—*continued.*

CHAPTER XL.—ATTEMPTS.

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code. (*N.B.*—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. *Vide* also section 34 of the Penal Code.)	5 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non-native.*
365	Neglecting to prevent commission or completion of a felony'	Shall not arrest without warrant	Imprisonment for two years.	Subordinate court of the first or second class.
	CHAPTER XLI.—CONSPIRACIES.			
366	Conspiracy to commit a felony.	May arrest without warrant.	Imprisonment for seven years.	Any court by which the felony would be triable.
367	Conspiracy to commit a misdemeanour.	According as to whether or not the misdemeanour is one for which the police may arrest without warrant.	Imprisonment for two years.	Any court by which the misdemeanour would be triable.
368	Conspiracy to effect certain specified purposes.	Shall not arrest without warrant	ditto	Subordinate court of the first or second class.
	CHAPTER XLII.—ACCESSORIES AFTER THE FACT.			
370	Being an accessory after the fact to a felony.	May arrest without warrant.	Imprisonment for three years.	Subordinate court of the first or second class.
371	Being an accessory after the fact to a misdemeanour.	Shall not arrest without warrant	Imprisonment for two years.	ditto
	OFFENCES UNDER OTHER LAWS.			
	If punishable with death or imprisonment for seven years or upwards.	May arrest without warrant.		
	If punishable with imprisonment for three years or upwards, but less than seven.	ditto		Subordinate court of the first class.
	If punishable with imprisonment for one year or upwards, but less than thre .	Shall not arrest without warrant		Subordinate court of the first or second class.
	If punishable with imprisonment for less than one year or with fine only.	ditto		Any magistrate.

* For the court by which an offence is triable when the accused is a native, *vide* section 10.

SECOND SCHEDULE.

FORMS OF STATING OFFENCES IN INFORMATIONS.

1.—MURDER.

Murder, contrary to section 187 of the Penal Code.

PARTICULARS OF OFFENCE.

A. B., on the.....day of....., 19....., in the province of ....., murdered *J. S.*

2.—ACCESSORY AFTER THE FACT TO MURDER.

Accessory after the fact to murder, contrary to section 203 of the Penal Code.

PARTICULARS OF OFFENCE.

A. B., well knowing that one, *H. C.*, did on the.....day of ....., in the province of....., murder *C. C.*, did on the .....day of....., in the province of....., and on other days thereafter receive, comfort, harbour, assist and maintain the said *H.C.*

3.—MANSLAUGHTER.

Manslaughter, contrary to section 188 of the Penal Code.

PARTICULARS OF OFFENCE.

A. B., on the.....day of....., 19....., in the province of ....., unlawfully killed *J. S.*

4.—RAPE.

Rape, contrary to section 123 of the Penal Code.

PARTICULARS OF OFFENCE.

A. B., on the.....day of....., 19....., in the province of ....., had carnal knowledge of *E. F.*, without her consent.

5.—WOUNDING.

First Count.

Wounding with intent, contrary to section 211 of the Penal Code.

PARTICULARS OF OFFENCE.

A. B., on the. .....day of....., 19....., in the province of ...., wounded *C. D.*, with intent to maim, disfigure or disable, or to do some grievous harm, or to resist the lawful arrest of him the said *A. B.*

Second Count.

Wounding, contrary to section 217 of the Penal Code.

PARTICULARS OF OFFENCE.

A. B., on the.....day of....., 19....., in the province of ....., unlawfully wounded *C. D.*

SECOND SCHEDULE (*Contd.*).

6.—THEFT.

First Count.

Stealing, contrary to section 252 of the Penal Code.

PARTICULARS OF OFFENCE.

A. B., on the.....day of....., 19....., in the province of ....., stole a bag, the property of *C. D.*

Second Count.

Receiving stolen goods, contrary to section 295 of the Penal Code.

PARTICULARS OF OFFENCE.

A. B., on the.....day of....., 19....., in the province of ....., did receive a bag, the property of *C. D.*, knowing the same to have been stolen.

7.—THEFT BY CLERK.

Stealing by clerks and servants, contrary to section 258 of the Penal Code.

PARTICULARS OF OFFENCE.

A. B., on the.....day of....., in the province of ....., being clerk or servant to *M. N.*, stole from the said *M. N.*, 10 yards of cloth.

8.—ROBBERY.

Robbery with violence, contrary to section 272 of the Penal Code.

PARTICULARS OF OFFENCE.

A. B., on the.....day of....., in the province of ....., robbed *C. D.* of a watch, and at, or immediately before or immediately after, the time of such robbery did use personal violence to the said *C. D.*

9.—BURGLARY.

Burglary, contrary to section 280, and stealing, contrary to section 256 of the Penal Code.

PARTICULARS OF OFFENCE.

A. B., in the night of the.....day of....., 19....., in the province of....., did break and enter the dwelling house of *C. D.*, with intent to steal therein, and did steal therein one watch, the property of *S. T.*, the said watch being of the value of £10.

10.—THREATS.

Demanding property by written threats, contrary to section 275 of the Penal Code.

PARTICULARS OF OFFENCE.

A. B., on the.....day of....., in the province of ....., with intent to extort money from *C.D.*, caused the said *C.D.*, to receive a letter containing threats of injury or detriment to be caused to *E. F.*

SECOND SCHEDULE (*Contd.*).

11.—ATTEMPTS TO EXTORT.

Attempt to extort by threats, contrary to section 276 of the Penal Code.

PARTICULARS OF OFFENCE.

A. B., on the.....day of....., in the province of ....., with intent to extort money from *C. D.*, accused or threatened to accuse the said *C. D.*, of an unnatural offence.

12.—FALSE PRETENCES.

Obtaining goods by false pretences, contrary to section 287 of the Penal Code.

PARTICULARS OF OFFENCE.

A. B., on the.....day of....., in the province of ....., with intent to defraud, obtained from *S. P.* 5 yards of cloth by falsely pretending that the said *A. B.* was a servant to *J. S.*, and that he, the said *A. B.*, had then been sent by the said *J. S.*, to *S. P.*, for the said cloth, and that he, the said *A. B.*, was then authorised by the said *J. S.* to receive the said cloth on behalf of the said *J. S.*

13.—CONSPIRACY TO DEFRAUD.

Conspiracy to defraud, contrary to section 291 of the Penal Code.

PARTICULARS OF OFFENCE.

A. B., and *C. D.*, on the.....day of....., and on divers days between that day and the.....day of....., in the province of....., conspired together with intent to defraud by means of an advertisement inserted by them, the said *A.B.* and *C.D.*, in the *H.S.* newspaper, falsely representing that *A.B.* and *C.D.* were then carrying on a genuine business as jewellers at....., in the province of....., and that they were then able to supply certain articles of jewellery to whomsoever would remit to them the sum of £2.

14.—ARSON.

Arson, contrary to section 303 of the Penal Code.

PARTICULARS OF OFFENCE.

A. B., on the.....day of....., in the province of ....., wilfully and unlawfully set fire to a house.

15.—ARSON AND ACCESSORY BEFORE THE FACT.

A. B., Arson, contrary to section 303 of the Penal Code.

C. D., accessory before the fact to same offence.

PARTICULARS OF OFFENCE.

A. B., on the.....day of....., in the province of ....., wilfully and unlawfully set fire to a house.

C. D., on the same day, in the province of....., did counsel or procure the said *A. B.*, to commit the said offence.

SECOND SCHEDULE (*Contd.*).

16.—OBSTRUCTING RAILWAY.

First Count.

Offence under section 51 of the Kenya and Uganda Railway Ordinance, 1927.

PARTICULARS OF OFFENCE.

A. B., on the.....day of....., in the province of ....., with intent to obstruct the use of the Kenya and Uganda Railway, displaced a sleeper belonging to the said railway.

Second Count.

Obstructing railway, contrary to section 213 of the Penal Code.

PARTICULARS OF OFFENCE.

A. B., on the.....day of....., in the province of ....., by unlawfully displacing a sleeper belonging to the Kenya and Uganda Railway, caused an engine or vehicle in use upon the said railway to be obstructed in its passage.

17.—DAMAGE.

Damaging trees, contrary to section 310 of the Penal Code.

PARTICULARS OF OFFENCE.

A. B., on the.....day of....., in the province of ....., wilfully and unlawfully damaged a cocoa tree there growing.

18.—FORGERY.

First Count.

Forgery, contrary to section 322 of the Penal Code.

PARTICULARS OF OFFENCE.

A. B., on the.....day of....., in the province of ....., forged a certain will purporting to be the will of *C. D.*

Second Count.

Uttering a false document, contrary to section 325 of the Penal Code.

PARTICULARS OF OFFENCE.

A. B., on the.....day of....., in the province of ....., knowingly and fraudulently uttered a certain forged will purporting to be the will of *C. D.*

19.—COUNTERFEIT COIN.

Uttering a counterfeit coin, contrary to section 341 of the Penal Code.

A. B., on the.....day of....., at..... market in the province of....., uttered a counterfeit shilling, knowing the same to be counterfeit.

20.—PERJURY.

Perjury, contrary to section 98 of the Penal Code.

PARTICULARS OF OFFENCE.

A. B., on the.....day of....., in the province of ....., being a witness upon the trial of an action in the Supreme Court of Kenya at Nairobi, in which one.....was..... plaintiff, and one.....was defendant, knowingly gave false testimony that he saw one, *M. W.*, in the street called the..... on the.....day of.....

SECOND SCHEDULE (*Contd.*).

21.—DEFAMATORY LIBEL.

Publishing defamatory matter, contrary to section 177 of the Penal Code.

PARTICULARS OF OFFENCE.

A. B., on the.....day of....., in the province of ....., published defamatory matter affecting *E. F.*, in the form of a letter (book, pamphlet, picture, or as the case may be).

(Innuendo should be stated where necessary.)

22.—FALSE ACCOUNTING.

First Count.

Fraudulent false accounting, contrary to section 301 of the Penal Code.

PARTICULARS OF OFFENCE.

A. B., on the.....day of....., in the province of ....., being clerk or servant to *C. D.*, with intent to defraud, made or was privy to making a false entry in a cash book belonging to the said *C. D.*, his employer, purporting to show that on the said day £100 had been paid to *L. M.*

Second Count.

Same as first count.

PARTICULARS OF OFFENCE.

A. B., on the.....day of....., in the province of ....., being clerk or servant to *C. D.*, with intent to defraud, omitted or was privy to omitting from a cash book belonging to the said *C. D.*, his employer, a material particular, that is to say, the receipt on the said day of £50 from *H. S.*

23.—THEFT BY AGENT.

First Count.

Stealing by agents and others, contrary to section 260 of the Penal Code.

PARTICULARS OF OFFENCE.

A. B., on the.....day of....., in the province of ....., stole £100 which had been entrusted to him by *H. S.*, for him, the said *A. B.*, to retain in safe custody.

Second Count.

Stealing by agents and others, contrary to section 260 of the Penal Code.

PARTICULARS OF OFFENCE.

A. B., on the.....day of....., in the province of ....., stole £100 which had been received by him, for and on account of *L. M.*

24.—PREVIOUS CONVICTION.

Prior to commission of the said offence, the said *A. B.* had been previously convicted of.....on the.....day of....., 19....., at the.....held at.....

THIRD SCHEDULE.

FEES TO BE TAKEN BY MAGISTRATES UNDER SECTION 354.

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