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THE CRIMINAL CODE.

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No. 25 of 1933.

Assented to in His Majesty's name this Sixteenth day of December, 1933.



G. C. B. PARISH,
Acting Governor.



GAMBIA.

An Ordinance to Establish a Code of Criminal Law.

By Proclamation.

ENACTED by the Governor of the Colony of the Gambia, with the advice and consent of the Legislative Council thereof, as follows:— Date of commencement.

PART I.—GENERAL PROVISIONS.

CHAPTER I.

PRELIMINARY AND INTERPRETATION.

1. This Ordinance may be cited as "the Criminal 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. Nothing in this Code shall affect— Saving of certain laws
 - (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 naval or military 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.

General rule of interpretation of Code.

3. (1) 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.

Definitions.

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

“ Colony ” means the Colony and Protectorate of the Gambia;

“ 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, member 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 seven o'clock in the evening and 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 rules 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 duties 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 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, 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 and includes aircraft;

“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 II.

TERRITORIAL APPLICATION OF THIS CODE.

4. (1) The jurisdiction of the courts of the Colony for the purpose of this Code extends to every place within the Colony within three nautical miles of the coast thereof measured from low water mark. Extent of jurisdiction of Colonial courts.

(2) 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. Offences committed partly within and partly beyond the jurisdiction.

CHAPTER III.

GENERAL RULES AS TO CRIMINAL RESPONSIBILITY.

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

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

7. 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. Intention: motive.

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.

8. 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. Mistake of fact.

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

Presumption
of sanity.

9. 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.

10. 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 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.

11. 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.

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.

12. 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.

Judicial
officers.

13. 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.

Compulsion.

14. 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.

15. 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.

16. 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.

17. 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 IV.

DUTIES RELATING TO THE PRESERVATION OF LIFE AND HEALTH.

18. 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.

19. 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.

20. 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 Duty of masters.

consequences which adversely affect the life or health of the servant or apprentice by reason of any omission to perform that duty.

Duty of persons doing dangerous acts.

21. 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 in charge of dangerous things.

22. It is the duty of every person who has in his charge or under his control anything, whether animate 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 V.

PARTIES TO OFFENCES.

Principal offenders.

23. 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—

- (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.

24. 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.

Offences committed by joint offenders in prosecution of common purpose.

25. 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.

Counselling another to commit an offence.

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

26. (1) 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.

Definition of accessories after the fact.

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 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.

(2) Any person who becomes an accessory after the fact to a felony is guilty of a misdemeanour, and is liable, if no other punishment is provided, to imprisonment for two years.

Punishment of accessories after the fact to felonies.

(3) Any person who becomes an accessory after the fact to a misdemeanour is guilty of a misdemeanour and is liable to imprisonment for one year.

Punishment of accessories after the fact to misdemeanours.

CHAPTER VI.

PUNISHMENTS.

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

Different kinds of punishments.

- (1) Death.
- (2) Imprisonment.
- (3) Corporal punishment.
- (4) Fine.
- (5) Payment of costs.
- (6) Payment of compensation.

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

(8) Forfeiture.

Sentence of death.

28. (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.

(3) Where a woman convicted of an offence punishable with death is found to be pregnant in accordance with the provisions of section 258 of the Criminal Procedure Code, the sentence to be passed on her shall be a sentence of imprisonment for life.

Imprisonment.

29. (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.

(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.

(4) Sentences of imprisonment shall take effect and run in the manner provided by sections 10 and 259 of the Criminal Procedure Code.

Corporal punishment.

30. (1) A sentence of corporal punishment shall be to be privately 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 review and confirmation by the Supreme Court and shall not be carried into effect until such sentence has been reviewed and confirmed.

(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.

Provided that no sentence of corporal punishment may be imposed in default of payment of a fine.

(4) A sentence of corporal punishment shall not be carried out except in the presence of a Government Medical Officer of the Colony, nor before such Medical 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 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) In any case in which under the provisions of sub-sections (4) and (5) a sentence of whipping is, wholly or partially, prevented from being executed, the offender shall be kept in custody till the court which passed sentence can revise it; and the said court may, at its discretion, either remit such sentence, or sentence the offender in lieu of corporal punishment or in lieu of so much of the sentence of corporal punishment as was not executed, to imprisonment for any term not exceeding six months or to a fine not exceeding fifty pounds which may be in addition to any other punishment to which he may have been sentenced for the same offence.

(7) Nothing in sub-section (6) shall be deemed to authorise any court to inflict imprisonment for a term or fine of an amount exceeding that to which the accused is liable by the law under which he has been convicted, or that which the said court is competent to inflict, or to sentence to imprisonment an offender who is in the opinion of the court under the age of 16 years.

(8) A sentence of corporal punishment shall be carried out without unnecessary delay and shall in no case be carried out after the expiration of three months from the passing of the sentence.

(9) An offender sentenced to undergo corporal punishment may be detained in a prison or some other convenient place for such time as may be necessary for carrying the sentence into effect, or for ascertaining whether the same shall be carried into effect.

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

31. (1) 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,
costs and
compensa-
tion.

- (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) A person liable to a fine of any amount may be sentenced to pay a fine of any lesser amount.

(iv) 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.

Costs or
compensa-
tion.

(2) In addition to or in substitution for any other punishment, a court may adjudge a person to pay costs or compensation in the manner provided by Sections 139, 141 and 142 of the Criminal Procedure Code and in default of payments of such costs or compensation or of distress therefor as provided by law, may order that the person in default shall suffer imprisonment for a certain time.

Distress.

(3) It shall also be lawful for a court, subject to the provisions of the Criminal Procedure Code, to issue a warrant for the levy by distress and sale of any amount due for a fine, costs or compensation on the immovable and movable property of the person ordered to pay such fine, costs or compensation.

(4) The term of imprisonment ordered by a court in respect of the non-payment of any sum of money adjudged to be paid by way of fine, costs or compensation 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 10s. 7 days.
Exceeding 10s. but not exceeding £1 14 days.
„ £1	„ „ £5	... 1 month.
„ £5	„ „ £10	... 2 months.
„ £10	„ „ £20	... 3 months.
„ £20 6 months.

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

Security to
keep the
peace and be
of good
behaviour or
to come up
for
judgment.

32. In the case of any offence not punishable with death, a person may, instead of or in addition to, any other punishment to which he is liable and subject to any provisions of the Criminal Procedure Code, be ordered to enter into a recognizance with or without a surety or sureties, in such amount as the court thinks fit, conditioned that he shall keep the peace and be of good behaviour for a time fixed by the court, or that he shall appear to receive judgment or sentence at some future sitting of the court or when called upon.

33. When any person is convicted of an offence under any of the following sections, namely, sections 86, 87, 88, 101, 102 and 103, 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. Forfeiture.

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 such imprisonment and such fine. General punishment for misdemeanours.

PART II.—CRIMES.

Division I.—Offences Against Public Order.

CHAPTER VII.

TREASON AND OTHER OFFENCES AGAINST THE SOVEREIGN'S AUTHORITY.

35. 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, 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. Treason by the law of England.

36. 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. Instigating invasion.

37. 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, a magistrate or 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. Concealment of treason.

Treasonable felonies.

38. 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.

39. 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.

40. 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.

Two witnesses necessary.

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.

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.

Inciting to mutiny.

41. Any person who advisedly attempts to effect any of the following purposes, that is to say—

(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.

42. Any person who—

- (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,

Aiding soldiers or policemen in acts of mutiny.

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

43. Any person who, by any means whatever, directly or indirectly—

- (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,

Inducing soldiers or policemen to desert.

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.

44. Any person who—

- (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.

Aiding prisoners of war to escape.

45. 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 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.

Definition of overt act.

46. 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

Seditious conspiracy, libel and publications.

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.

47. (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 46 of this Code.

Evidence
necessary for
conviction.

48. A person cannot be convicted of any offences against section 46 or section 47 on the uncorroborated testimony of one witness.

Forfeiture
of seditious
publications.

49. A court on convicting any person of an offence under section 46 or section 47 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.

50. Any of the following officers, viz.—

any officer of the Postal Services not below the rank of 1st Grade Postmaster;

any officer of the Customs Branch of the Receiver's General's Department not below the rank of 1st Grade Clerk;

any police officer not below the rank of Superintendent;
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 46 or section 47 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 46 or section 47.

Powers of
arrest.

Power of
Governor in
Council to
declare docu-
ments, etc., to
be seditious
publications.

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

52. 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.

53. For the purposes of the seven last preceding sections—
“newspaper” means any periodical work containing public news or comments on public news, and includes any part of such work or extract therefrom;

Interpretation.

“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.

54. 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—

- (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.

Innocent intention.

55. 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,

Unlawful oaths to commit capital offences.

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

Other
unlawful
oaths to
commit
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 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;
- (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.

57. 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.

58. (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.

59. Any person who makes, publishes or circulates any statement, rumour or report— Publishing
false reports.

- (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.

60. 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. Defamation
of foreign
princes.

61. 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— Foreign
enlistment.

- (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.

Piracy.

62. 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.

CHAPTER IX.

UNLAWFUL ASSEMBLIES, RIOTS AND OTHER OFFENCES
AGAINST PUBLIC TRANQUILLITY.

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

(2) A society is an unlawful society 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.

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

65. Any person who—

- (a) is a member of an unlawful society; or Being member of unlawful society.
- (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.

66. (1) A prosecution for an offence under the two last Prosecutions under sections 64 and 65. preceding sections shall not be instituted except with the consent of the Governor:

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.

67. Any magistrate or any police officer authorised by warrant of a magistrate 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 "police officer" means any police officer not below the rank of Sub-Inspector.

Forfeiture of insignia, etc.

68. 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.

69. 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.

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.

70. 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 unlawful assembly.

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

72. Any magistrate or, in his absence, any commissioned officer of police, 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. Making proclamation for rioters to disperse.

73. 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. Dispersion of rioters after proclamation made.

74. 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. Rioting after proclamation.

75. Any person who forcibly prevents or obstructs the making of such proclamation as is in section 72 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. Preventing or obstructing the making of proclamation.

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

77. 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. Rioters injuring buildings, machinery, etc.

- Riotously interfering with vehicle or vessel. **78.** 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 vehicle or vessel, or the starting or transit of any vehicle, or the sailing or navigation of any vessel, or unlawfully and with force board any vehicle or vessel with intent to do so.
- Going armed in public. **79.** 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. **80.** 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. **81.** 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.
- Affray. **82.** 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.
- Challenge to fight a duel. **83.** 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.
- Threatening violence. **84.** Any person who—
(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.
- Assembling for the purpose of smuggling. **85.** 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.

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

CHAPTER X.

CORRUPTION AND THE ABUSE OF OFFICE.

86. 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 solicits, 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.

87. 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.

88. 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.

Public
officers
receiving
property to
show favour.

89. 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.

False claims
by officials.

Abuse of
office.

90. 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 Legal Adviser.

False
certificates
by public
officers.

91. 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.

92. 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.

93. 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.

Threat of
injury to
public
servant.

94. Whoever holds out any threat of injury to any person employed in the public service, or to any person in whom he believes the person employed in the public service to be interested, for the purpose of inducing the last named person to do any act, or to forbear or delay to do any act, connected with the exercise of his public functions, is guilty of a misdemeanour.

CHAPTER XI.

OFFENCES RELATING TO THE ADMINISTRATION OF JUSTICE.

95. (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. Perjury and subornation of 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 person who gives the testimony is a competent witness or not, or whether the testimony is admissible in the proceeding or not.

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

(3) Any person who commits perjury or suborns perjury is liable to imprisonment for seven years. Punishment of perjury.

96. 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. Evidence on charge of perjury.

97. Any person who, with intent to mislead any tribunal in any judicial proceeding— Fabricating evidence.

(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 two years.

98. 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. False swearing.

99. 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. Deceiving witnesses.

- 100.** Any person who, knowing that any article, book, document or other thing of any kind is or may be required in evidence in a judicial proceeding, wilfully removes, conceals or 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.
- 101.** 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.
- 102.** 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.
- 103.** 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.
- 104.** 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
 - (3) prints or publishes any such offer,
- is guilty of a misdemeanour.
- 105.** (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) Where any of the offences set out in paragraphs (a), (b), (c), (d) or (i) of sub-section (1) of this section are committed in the face of a court, such court may proceed forthwith to hear the case summarily and on conviction may sentence the offender to a fine not exceeding twenty pounds or in default to imprisonment without hard labour for a term not exceeding one month.

(3) 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.

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

- (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.

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

Aiding
prisoners
to escape.

108. Any person who—

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

(2) wilfully or negligently permits a person within his lawful custody to escape; or

(3) conveys anything or causes anything to be conveyed into a prison with intent to facilitate the escape of a prisoner, is guilty of a misdemeanour, and is liable to imprisonment for two years.

Removal,
etc., of
property
under lawful
seizure.

109. 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.

110. 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.

111. Any person employed in the public service who, in 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.

112. 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.

False
information
to public
servant.

113. Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause such public servant—

(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts, respecting which such information is given, were known to him; or

(b) to use the lawful power of such public servant to the injury or annoyance of any person, 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 fine and such imprisonment.

114. 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.

115. 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.

116. 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.

117. 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.

118. 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.

119. Any person who, with the deliberate intention of wounding the religious feelings of any person, utters or writes 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.

- 120.** 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.
- 121.** Any person who commits the offence of rape is liable to be punished with imprisonment for life.
- 122.** Any person who attempts to commit rape is guilty of a felony, and is liable to imprisonment for seven years.
- 123.** 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.
- 124.** Any person who unlawfully takes or causes to be taken 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.
- 125.** (1) Any person who unlawfully and indecently assaults any woman or girl is guilty of a misdemeanour, and is liable to imprisonment for two years.
- (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.
- (3) Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, is guilty of a misdemeanour, and is liable to imprisonment for one year.
- 126.** (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 fourteen years.

(2) Any person who attempts to have unlawful carnal Attempt. knowledge of any girl under the age of sixteen years is guilty of a felony, and is liable to imprisonment for three 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.

127. Any person who, knowing a woman or girl to be an Defilement of idiots or imbeciles. 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 misdemeanour, and is liable to imprisonment for two years.

128. Any person who—

Procuration

- (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 30 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.

129. 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

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

- (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.

130. 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.

131. 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 will in brothel.

132. Any person who detains any woman or girl against her

- (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.

133. 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 magistrate 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. Power of search.

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.

134. (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,

Male person living on earnings of prostitution or persistently soliciting.

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.

135. 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.

136. 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.

137. 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.

138. 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.

Attempts to procure abortion.

139. 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.

140. 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 instrument to procure abortion.

141. 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.

142. Except as otherwise expressly stated, it is immaterial Knowledge of age of female 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.

143. 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.

Unnatural offences.

144. 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.

Attempt to commit unnatural offences.

145. Any person who unlawfully and indecently assaults a boy under the age of fourteen years is guilty of a felony, and is liable to imprisonment for seven years.

Indecent assault of boys under 14.

146. Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, is guilty of a felony and is liable to imprisonment for five years.

Indecent practices between males.

147. (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.

Incest by females.

148. 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 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.

149. 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.

Proceedings in camera.

150. All proceedings under sections 147 and 148 may be held in camera.

Sanction of Legal Adviser.

151. No prosecution for an offence under sections 147 or 148 of this Code shall be commenced without the sanction of the Legal Adviser.

CHAPTER XVI.

OFFENCES RELATING TO MARRIAGE AND DOMESTIC OBLIGATIONS.

Fraudulent pretence of marriage.

152. 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.

153. 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.

154. 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.

155. 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.

156. 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.

157. 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.

158. 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.

159. 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.

Gaming
houses.

160. (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 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 subsection (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.

161. 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:

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

162. (1) A lottery shall be deemed to be illegal unless it is Lotteries. authorised by the Commissioner of Police or by a police officer not below the rank of Superintendent to whom the power to authorise a lottery has been delegated in writing by the Commissioner of Police.

A lottery may be authorised in pursuance of this section subject to such conditions as the Commissioner or any officer acting on his behalf as aforesaid may see fit to impose.

(2) Any person who opens, keeps or uses any place or otherwise carries on any lottery not authorised in the manner prescribed by this section or in contravention of any of the conditions imposed in pursuance of this section is guilty of a misdemeanour.

(3) 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.

(4) 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.

(5) 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.

163. 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 160, 161 and 162 is to be taken to the keeper thereof, whether he is or is not the real keeper. Keeper of premises defined.

Traffic in
obscene
publications.

164. 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.

165. The following persons—

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

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

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

(4) every person who publicly without lawful excuse does any indecent act; and

(5) every person who in any public place persistently solicits or importunes for immoral purposes,

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.

166. The following persons—Rogues and
vagabonds.

(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 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;

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

(4) 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.

167. (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:

Wearing of
uniform
without
authority
prohibited.

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.

(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.

Bringing
contempt on
uniform.

(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.

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

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. **168.** 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. **169.** 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. **170.** 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. **171.** 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. **172.** 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 unadulterated, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, is guilty of a misdemeanour.

Fouling water. **173.** 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. **174.** 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. **175.** 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.

176. 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 libel.

177. 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: Definition of defamatory matter.

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

178. (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. Definition of publication.

(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.

179. 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. Definition of unlawful publication.

180. (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 naval or military 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 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.

Cases in which publication of defamatory matter is conditionally privileged.

181. 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—

(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.

182. 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.

183. 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.

Division IV.—Offences Against the Person.

CHAPTER XIX.

MURDER AND MANSLAUGHTER.

- Man-slaughter.** **184.** 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.
- Murder.** **185.** Any person who of malice aforethought causes the death of another person by an unlawful act or omission is guilty of murder.
- Punishment of murder.** **186.** Any person convicted of murder shall be sentenced to death.
- Punishment of manslaughter.** **187.** Any person who commits the felony of manslaughter is liable to imprisonment for life.
- Malice aforethought.** **188.** Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances—
- (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.
- Presumption that killing is murder.** **189.** 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.
- The burden of proving circumstances of excuse, justification, or extenuation is upon the person who is shown to have caused the death of another.
- Killing on provocation.** **190.** 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.

191. 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. Provocation defined.

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.

192. 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— Causing death defined.

- (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.

When child deemed to be a person. **193.** 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.

Limitation as to time of death. **194.** 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.

Reckoning of period. **195.** The period mentioned in section 194 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

INFANTICIDE AND CHILD DESTRUCTION.

Infanticide. **196.** Where a woman by any wilful act or omission causes the death of her newly-born child, but at the time of the act or omission she had not fully recovered from the effect of giving birth to such child, and by reason thereof the balance of her mind was then disturbed, she shall, notwithstanding that the circumstances were such that but for this section the offence would have amounted to murder, be guilty of the felony of infanticide, and may for such offence be dealt with and punished as if she had been guilty of the offence of manslaughter of such child.

Child destruction. **197.** Subject as hereinafter in this section provided, any person who, with intent to destroy the life of a child capable of being born alive, by any wilful act causes a child to die before it has an existence independent of its mother, shall be guilty of the felony of child destruction, and shall be liable on conviction to imprisonment for life:

Provided that no person shall be found guilty of an offence under this section unless it is proved that the act which caused the death of the child was not done in good faith for the purpose only of preserving the life of the mother.

Evidence of pregnancy. **198.** For the purposes of the last preceding section, evidence that a woman had at any material time been pregnant for a period of twenty-eight weeks or more shall be *prima facie* proof that she was at that time pregnant of a child capable of being born alive.

CHAPTER XXI.

OTHER OFFENCES CONNECTED WITH MURDER AND SUICIDE.

199. 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,

Attempt to murder.

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

200. 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.

Attempt to murder by convict.

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

Accessory after the fact to murder.

202. 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.

Written threats to murder.

203. 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.

Conspiracy to murder.

204. 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,

Aiding suicide.

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

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

Attempting suicide.

206. 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.

Concealing the birth of children.

CHAPTER XXII.

OFFENCES ENDANGERING LIFE AND HEALTH.

207. 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.

Disabling in order to commit felony or misdemeanour.

Stupefying
in order to
commit
felony or
mis-
demeanour.

208. 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.

Exposing,
etc., of
children.

209. If any person over the age of sixteen years, who has the custody, charge, or care of any child under the age of fourteen years, wilfully assaults, ill-treats, neglects, abandons, or exposes such child, or causes or procures such child to be assaulted, ill-treated, neglected, abandoned, or exposed in a manner likely to cause such child unnecessary suffering or injury to his health (including injury to or loss of sight, or hearing, or limb or organ of the body, and any mental derangement), that person shall be guilty of a misdemeanour.

Suffocation
of infants.

210. Where it is proved that the death of an infant under three years of age was caused by suffocation (not being suffocation caused by disease or the presence of any foreign body in the throat or air-passages of the infant) whilst the infant was in bed with some other person over sixteen years of age, and that that other person was at the time of going to bed under the influence of drink, that other person shall be deemed to have neglected the infant in a manner likely to cause injury to its health within the meaning of section 209.

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.

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

214. 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. Attempting to injure by explosive substances.

215. 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. Maliciously administering poison with intent to harm.

216. 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,

Wounding and similar acts.

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

217. 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. Failure to supply necessaries.

218. 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, 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. Surgical operation.

219. 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. Excess of force.

220. Notwithstanding anything contained in section 219, 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.

221. 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, gives away, or does any act with 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, medicine or poisonous or dangerous matter, 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.

Other negligent acts causing harm.

222. 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.

Exhibition of false light, mark or buoy.

223. 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.

Conveying person by water for hire in unsafe or overloaded vessel.

224. 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.

Danger or obstruction in public way or line of navigation.

225. 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.

CHAPTER XXIV.

ASSAULTS.

Common assault.

226. 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.

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

228. 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 on persons protecting wreck.

229. 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 Assaults punishable with two years' imprisonment.
- (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 two years.

CHAPTER XXV.

OFFENCES AGAINST LIBERTY.

230. 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 the Colony.

231. 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 kidnapping from lawful guardianship.

232. 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. Definition of abduction.

233. 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.

- 234.** 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.
- 235.** 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.
- 236.** 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.
- 237.** 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.
- 238.** 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.
- 239.** 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.
- 240.** 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.
- 241.** Any person who unlawfully compels any person to labour against the will of that person is guilty of a misdemeanour.

Division V.—Offences Relating to Property.

CHAPTER XXVI.

THEFT.

- 242.** Every inanimate thing whatever which is the property of any person, and which is movable, is 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.

243. (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. Definition of theft.

(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.

244. (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.

245. 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 from whom the money, security or power of attorney was received until the direction has been complied with.

Funds, etc., received by agents for sale.

246. 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.

247. 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. Money received for another.

248. 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. Theft by person having an interest in the thing stolen.

249. 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. Husband and wife.

250. 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. General punishment for theft.

251. 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 wills.

252. 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 postal matter, etc.

253. 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 cattle.

254. If a theft is committed under any of the circumstances following, that is to say— Stealing from the person; stealing goods in transit, etc.

- (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.

Stealing by persons in public service.

255. 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 clerks and servants.

256. 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 directors or officers of companies.

257. 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 agents, etc.

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

- (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.

259. 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.

260. If the offender, before committing the theft, had been convicted of a theft punishable under section 250 he is liable to imprisonment for seven years. Stealing after previous conviction.

CHAPTER XXVII.

OFFENCES ALLIED TO STEALING.

261. 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.

262. 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 wills.

263. 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. Concealing deeds.

264. 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. Killing animals with intent to steal.

265. 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. Severing with intent to steal.

266. (1) Any person who, being the mortgagor of mortgaged goods, removes or disposes of the goods without the consent of the mortgagee, and with intent to defraud, is guilty of a misdemeanour. Fraudulent disposition of mortgaged goods.

(2) In this section the term "mortgaged goods" includes any goods and chattels of any kind and any animals, and any progeny of any animals and any crops or produce of the soil, whether growing or severed, which are subject for the time being, by virtue of the provisions of any Ordinance or of any written instrument, to a valid charge or lien by way of security for any debt or obligation.

267. 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. Fraudulently dealing with minerals in mines.

Fraudulent appropriation of power.

268. 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.

269. 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.

270. 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.

271. 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.

272. 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.

273. Any person who assaults any person with intent to steal anything is guilty of a misdemeanour, and is liable to imprisonment for two years.

274. Any person who, with intent to extort or gain any- thing 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.

Demanding
property by
written
threats.

275. Any person who, with intent to extort or gain any- thing from any person—

Attempts at
extortion by
threats.

- (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.

276. 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—

Procuring
execution of
deeds, etc.,
by threats.

- (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.

277. Any person who, with intent to steal any 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.

278. 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.

House-breaking and burglary.

279. 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.

280. 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.

281. Any person who—

- (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,

Breaking into building and committing felony.

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

282. 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.

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

- (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 house-breaking;
- (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,

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

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.

284. When any person is convicted of an offence under this chapter the court may order that any dangerous or offensive weapon or instrument of house-breaking carried or used in connexion with any such offence shall be forfeited to His Majesty.

Forfeiture of house-breaking instruments, etc.

CHAPTER XXX.

FALSE PRETENCES.

285. 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.

Definition of false pretence.

Obtaining
goods by
false
pretences.

286. 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
a security by
false
pretences.

287. 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 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 misdemeanour, and is liable to imprisonment for three years.

Cheating.

288. 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.

289. 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.

290. 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.

291. Any person who, being a seller or mortgagor of any property, or being the solicitor 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.

292. Any person who for gain or reward pretends to exercise Pretending 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. witchcraft or tell fortunes.

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

294. Any person who makes a statement which is to his knowledge untrue for the purpose of procuring a passport, whether for himself or for any other person is guilty of a misdemeanour. False declaration for passport.

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 or having reason to believe 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.

(3) No person shall be convicted of an offence under this section unless it is proved that chattel, money, valuable security or other property to which the charge relates has in fact been unlawfully taken, obtained, converted or disposed of as the case may be.

296. (1) If any person without lawful excuse receives, or has in his possession, any property stolen outside the Colony of the Gambia, knowing or having reason to believe such property to Receipt or possession of property stolen abroad.

have been stolen, he shall be liable to imprisonment, with or without hard labour, for a term not exceeding seven years.

(2) For the purposes of this section property shall be deemed to have been stolen where it has been taken, extorted, obtained, embezzled, converted, or disposed of, in such circumstances that, if the act had been committed in the Colony of the Gambia, the person committing it would have been guilty of an offence under this Code.

(3) An offence under this section shall be a felony or misdemeanour according as the act committed outside the Colony of the Gambia would have been a felony or misdemeanour if committed in such Colony.

CHAPTER XXXII.

FRAUDS BY TRUSTEES AND PERSONS IN A POSITION OF TRUST, AND FALSE ACCOUNTING.

Trustees
fraudulently
disposing of
trust
property.

297. 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.

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.

Provided that no prosecution for any offence included in this section shall be commenced—

- (a) by any person without the sanction of the Legal Adviser;
- (b) by any person who has taken civil proceedings against such trustee, without the sanction also of the court or Judge before whom such civil proceedings have been had or are pending.

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

298. 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.

299. 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—

False statements by officials of companies.

- (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.

300. 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.

301. 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.

- Arson.** **302.** Any person who wilfully and unlawfully sets fire to—
- (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.
- Attempts to commit arson.** **303.** 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 fourteen years.
- Setting fire to crops and growing plants.** **304.** Any person who wilfully and unlawfully sets fire to—
- (a) a crop of cultivated produce, whether standing, picked 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.** **305.** 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.** **306.** 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.

307. Any person who attempts unlawfully to cast away or Attempts to destroy a vessel, whether completed or not, or attempts unlawfully cast away to do any act tending to the immediate loss or destruction of a vessels. vessel in distress, is guilty of a felony, and is liable to imprisonment for seven years.

308. Any person who wilfully and unlawfully kills, maims, Injuring or wounds any animal capable of being stolen is guilty of a animals. misdemeanour.

309. (1) Any person who wilfully and unlawfully destroys Punishment or damages any property is guilty of an offence, which, unless for malicious otherwise stated, is a misdemeanour, and he is liable, if no other injuries in punishment is provided, to imprisonment for two years. general.

(2) If the property in question is a dwelling-house or a vessel, In special and the injury is caused by the explosion of any explosive cases :— substance, and if— Destroying or damaging an inhabited house or a vessel with explosives.

(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.

(3) (a) If the property in question is a bank or wall of a river, River bank canal, aqueduct, reservoir, or inland water, or work or wall, or which appertains to a dock, reservoir, or inland navigation works or water, and the injury causes actual danger of bridges. inundation or damage to any land or building; or

(b) if the property in question is a bridge, viaduct, or aqueduct which is constructed over a highway or canal, or over which a highway or canal passes, and the property is destroyed; or

(c) if the property in question, being any such bridge, viaduct, or aqueduct, is damaged, and the damage is done with intent to render the bridge, viaduct or aqueduct, or the highway 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.

(4) If the property in question is a testamentary instrument, Wills and whether the testator is living or dead, or a register which is registers. 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.

(5) If the property in question is a vessel in distress or Wrecks. 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.

Other things
of special
value.

(6) (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 bridge, viaduct, or aqueduct which is constructed over a highway or canal, or over which a highway or canal passes, is damaged, and the damage is done with intent to render the bridge, viaduct, or aqueduct, or the highway 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 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.

(7) 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.

310. 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.

Communicat-
ing infectious
diseases to
animals.

311. 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.

312. 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.

Removing
boundary
marks with
intent to
defraud.

313. 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 survey mark erected by or under the authority of any Government or licensed surveyor, or by an intending applicant for any lease, licence or right under an Ordinance relating to mines or minerals,

Wilful
damage, etc.,
to survey and
boundary
marks.

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.

314. 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.

Threats to
burn, etc.

Division VII.—Forgery, Coining, Counterfeiting and Similar Offences.

CHAPTER XXXIV.

DEFINITIONS.

315. Forgery is the making of a false document with intent to defraud or deceive.

Definition of
forgery.

316. 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.

Document.

317. 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;

Making a
false
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.

318. 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.

319. Any person who forges any document is guilty of an offence which, unless otherwise stated, is a misdemeanour, 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 two years.

Imprisonment for life.

320. Any person who forges any will, codicil or other testamentary document either of a dead or of a living person or any probate or Letters of Administration whether with or without the will annexed, 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.

321. Any person who forges any judicial or official document is liable to imprisonment for seven years.

Imprisonment for seven years

322. 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 die 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.

323. 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
false
documents.

324. 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. Uttering
cancelled or
exhausted
documents.

325. 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. Procuring
execution of
documents by
false
pretences.

326. Any person who, with intent to defraud or deceive—

- (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. Obliterating
crossings on
cheques.

Making documents without authority.

327. 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.

328. 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.

329. 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.

330. 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.

331. 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.

332. 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.

333. 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.

334. In this chapter—

Definitions.

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.

335. Any person who makes or begins to make any counterfeit coin is guilty of a felony, and is liable to imprisonment for life. Counterfeit-
ing Coin.

336. 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.
- Clipping.** **337.** 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.
- Possession of clippings.** **338.** 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, 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.** **339.** Any person who utters any counterfeit coin, knowing it to be counterfeit, is guilty of a misdemeanour.
- Repeated uttering.** **340.** 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 medals coin.** **341.** Any person who, with intent to defraud, utters as and for coin any medal 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.** **342.** 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.** **343.** 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.

344. Any person who, without lawful authority or excuse, the proof of which lies on him—

Possession of die used for purpose of making stamps.

- (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; or

- (8) fraudulently or with intent to cause loss to the Government, uses for any purpose a stamp issued by Government for the purpose of revenue, which he knows to have been before used,

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 is found in his possession shall be forfeited to His Majesty.

Paper and dies for postage stamps.

345. 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.

PERSONATION.

Personation in general.

346. 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.

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.

Falsely acknowledging deeds, recognizances, etc.

347. 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.

348. 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.

349. 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 person may represent himself to be the person named therein, is guilty of a misdemeanour.

Lending, etc.,
certificate for
personation.

350. 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.

351. 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., testi-
monial for
personation.

CHAPTER XXXIX.

SECRET COMMISSIONS AND CORRUPT PRACTICES

352. (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.

Interpreta-
tion.

(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.

353. 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

Corrupt
practices.

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 particular, 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.

354. Any person convicted of an offence under this chapter shall, where the matter or 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.

355. 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.

Consent to prosecution.

356. A prosecution for an offence under this chapter shall not be instituted without the consent of the Legal Adviser.

**Division VIII.—Attempts and Conspiracies to Commit Crimes
and Accessories After the Fact.**

CHAPTER XL.

ATTEMPTS.

357. 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 fulfil 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.

358. 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.

359. 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.

360. 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 XLI.

CONSPIRACIES.

361. 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 felony.

362. 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. Conspiracy to commit misdemeanour.

- Other conspiracies. **363.** 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 lawful purpose by any unlawful means, is guilty of a misdemeanour.

CHAPTER XLII.

REPEAL.

- Repeal. **364.** The Children (Criminal Law Amendment) Ordinance 1909; the Stolen Property Ordinance 1897; the Flogging Regulation Ordinance 1902; the Imprisonment with Hard Labour Ordinance 1884 and the Uniforms Ordinance 1895 are hereby repealed.

Passed in the Legislative Council this twelfth day of December, in the year of our Lord, One thousand nine hundred and thirty-three.

GEO. AMOS,
Clerk of Legislative Council.

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Council, and found by me to be a true and correct copy of the said Bill.

GEO. AMOS,
Clerk of Legislative Council.

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[Appointed by the Government of the Colony of the Gambia the Government Printer of this Ordinance within the meaning of the Evidence (Colonial Statutes) Act, 1907.]

To be purchased from the Crown Agents for the Colonies, 4, Millbank, London, S.W.1., or The Colonial Secretary, Bathurst, Gambia.

PRICE 3/6

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No. 26 of 1933.

Assented to in His Majesty's
name this Sixteenth day of
December, 1933.

L.S.

G. C. B. PARISH,
Acting Governor.



GAMBIA.

An Ordinance to make provision for the procedure to be followed in Criminal Cases.

By Proclamation.

BE IT ENACTED by the Governor of the Colony of the
Gambia 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.
 - "Colony" means the Colony and the Protectorate of the Gambia.
 - "Complaint" means the allegation that any named person has committed an offence, made before a magistrate for the purpose of moving him to issue process under this Code.
 - "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 a warrant.

- “ Court ” means a Court of competent jurisdiction but does not include a Native Tribunal.
- “ Magistrate ” means the Police Magistrate or two Justices of the Peace or a Commissioner or Assistant Commissioner.
- “ Native Tribunal ” means a Tribunal established under the Native Tribunals Ordinance, 1933.
- “ Non-cognizable offence ” means an offence for which a police officer may not arrest without a warrant.
- “ Officer in charge of a police station ” includes,
- (a) 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 who is next in rank to such officer and is above the rank of constable, and
 - (b) every officer appointed to any area who is superior in rank to the officer in actual charge of any police station in such area.
- “ Police Officer ” includes any member of the Police Force.
- “ Police Station ” means any post or place appointed by the Commissioner of Police to be a police station or the office of a Commissioner or Assistant Commissioner and includes the 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 the Legal Adviser and any person acting under the direction of the Legal Adviser.
- Summary Trial ” means a trial held by a subordinate court under Part V.

Trial of offences under Criminal Code.

Trial of offences under other laws.

Practice in Supreme Court.

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

(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.

(3) The procedure and practice to be observed in the Supreme Court in the exercise of its criminal jurisdiction shall, subject to the express provisions of this Code and any law for the time being in force in the Colony, be assimilated as nearly as circumstances admit to the course of procedure and practice of His Majesty's High Court of Justice and the Courts of Oyer and Terminer and General Gaol Delivery in England at the date of the coming into operation of this Code.

(4) The procedure and practice to be observed in subordinate courts of the first and second class in the exercise of their criminal jurisdiction shall, subject to the express provisions of this Code and any other law for the time being in force in the Colony, be assimilated to the course of practice and procedure in the courts of summary jurisdiction in England at the date of the coming into operation of this Code. Practice in subordinate courts.

PART II.—Powers of Courts.

4. Subject to the provisions of this Code, any offence under the Criminal 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 Criminal Code.

5. (1) Any offence under any law other than the Criminal Code shall, when any court is mentioned in that behalf in such law, be tried by such court. Offences under other laws.

(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.

6. The Supreme Court may pass any sentence authorised by law. Sentences which the Supreme Court may pass

7. A subordinate court presided over by the Police Magistrate or by a Commissioner, hereinafter described as a subordinate court of the first class, may pass the following sentences, namely—
Imprisonment for a term not exceeding two years.
Fine not exceeding £200.
Corporal punishment. Sentences which subordinate courts of first class may pass.

8. A subordinate court presided over by an Assistant Commissioner or constituted by two Justices of the Peace, hereinafter described as a subordinate court of the second class, may pass the following sentences, namely—
Imprisonment for a term not exceeding six months.
Fine not exceeding £50.
Corporal punishment. Sentences which subordinate courts of second class may pass.

9. Any court may pass any lawful sentence combining any of the sentences which it is authorised by law to pass. Combination of sentences.

10. (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 punishment when consisting of imprisonment to commence the one after the other in such order as the court may direct, unless the court directs that such punishments shall run concurrently: Sentences in case of conviction of several offences at one trial

Provided that no sentences of imprisonment in default of payment of a fine, whether imposed in addition to a substantive term of imprisonment or not, shall be directed to run concurrently.

Sentences of corporal punishment non-cumulative.

(2) When a person is convicted at one trial of two or more distinct offences, any two or more of which are legally punishable with corporal punishment, only one sentence of corporal punishment may be passed in respect of all the offences.

Power of court as to consecutive sentences.

(3) In the case of consecutive sentences it shall not be necessary for a subordinate court by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to impose on conviction of a single offence to send the offender for trial before a higher court:

Provided that such aggregate punishment shall not exceed twice the amount of punishment which such court is, in the exercise of its ordinary jurisdiction, competent to impose.

Sentences in case of conviction of several offences at different trials.

(4) 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 concurrently with the former sentence or of any part thereof.

Sentence on person detained under section 46.

(5) Where a person, who is detained in prison or is undergoing imprisonment by virtue of an order made under section 46 is sentenced to a term of imprisonment for an offence committed prior to the making of such order, the sentence shall be executed in lieu of the detention or imprisonment imposed under section 46.

Sentences on escaped convicts.

(6) Where a sentence is passed on an escaped convict such sentence if of death, fine or corporal punishment shall take effect immediately, but if the sentence is one of imprisonment, such sentence shall take effect immediately after the convict has completed any period of imprisonment which at the time of his escape remained unserved.

PART III.—General Provisions.

ARREST, ESCAPE AND RETAKING.

Arrest generally.

Arrest, how made.

11. (1) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

(2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest.

(3) The killing or wounding of a fugitive offender is not justifiable except when his offence is capital and his flight cannot otherwise be stayed.

Search of place entered by person sought to be arrested.

12. (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 to search therein for the 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 for the person to be arrested, 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.

13. 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. Power to break out of house, etc., for purposes of liberation.

14. The person arrested shall not be subjected to more restraint than is necessary to prevent his escape. No unnecessary restraint.

15. Except when the person arrested is in the actual course of the commission of a crime or is pursued immediately after escape from lawful custody, the police officer or other person making the arrest shall inform the person arrested of the cause of the arrest, and, if the police officer or other person is acting under the authority of a warrant, shall notify the substance thereof to the person to be arrested and, if so required, shall show him the warrant. Notification of substance of warrant.

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

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

- (a) stolen articles; or
- (b) instruments of violence; or
- (c) tools connected with the kind of offence which he is alleged to have committed; or
- (d) other articles which may furnish evidence against him in regard to the offence which he is alleged to have committed.

(2) All searches shall be made with a strict decency and whenever it is necessary to cause a woman to be searched, the search shall be made by another woman.

(3) The right to search an arrested person does not include the right to examine his private person.

(4) Notwithstanding the other provisions of this section, any police officer or other person making an arrest may in any case take from the person arrested any offensive weapons which he has about his person.

(5) Where any property has been taken under this section from a person charged before a court of competent jurisdiction with any offence, a report shall be made by the police to such court of the fact of such property having been taken from the person charged and of the particulars of such property, and the court, shall, if of opinion that the property or any portion thereof can be returned consistently with the interests of justice and with the safe custody of the person charged, direct such property, or any portion thereof, to be returned to the person charged or to such other person as he may direct.

(6) Where any property has been taken from a person under this section, and the person is not charged before any court but is released on the ground that there is no sufficient reason to believe that he has committed any offence, any property so taken from him shall be restored to him.

17. Any person who is arrested, whether with or without a warrant, shall be taken with all reasonable dispatch to a police station, or other place for the reception of arrested persons, and shall without delay be informed of the charge against him. Any such person while in custody shall be given reasonable facilities for obtaining legal advice, taking steps to furnish bail, and otherwise making arrangements for his defence or release.

Arrest without warrant.

18. 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 Navy or Army 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 (Protectorate) Ordinance, 1905, or the Fugitive Offenders Act, 1881, or otherwise, liable to be apprehended and detained in the Colony;
- (h) any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of housebreaking;
- (i) any person for whom he has reasonable cause to believe a warrant of arrest has been issued by a court of competent jurisdiction in the Colony.

19. Any officer in charge of a police station may in like manner arrest or cause to be arrested—

- (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.

Arrest of vagabonds, habitual robbers, etc.

20. In any case where power of arrest without a warrant is vested solely in an officer in charge of a police station, such officer may cause the arrest to be effected (otherwise than in his presence) by any officer subordinate to him by delivering to the officer required to make the arrest an order in writing specifying the person to be arrested and the cause for which the arrest is to be made.

Procedure when officer in charge of police station deposes subordinate to arrest without warrant.

21. (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.

Refusal to give name and residence.

(2) When the true name and residence of such person have been ascertained he shall be released on his executing a recognizance, with or without sureties, to appear before a magistrate if so required:

Provided that if such person is not resident in the Colony the recognizance 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 recognizance or, if so required, to furnish sufficient sureties, he shall forthwith be taken before the nearest magistrate having jurisdiction.

Arrest by
private
person.

22. 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.

Arrest by
owners of
property.

23. 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.

24. (1) Any private person arresting any other person without a warrant shall without unnecessary delay make over the person so arrested to a police officer, or in the absence of a police officer shall take such person to the nearest police station.

(2) If there is reason to believe that such person comes under the provisions of section 18, a police officer shall re-arrest him.

(3) If there is reason to believe that he has committed a non-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 21. If there is no sufficient reason to believe that he has committed any offence he shall be at once released.

Bail of
person
arrested
without a
warrant.

25. (1) When any person has been taken into custody without a warrant for an offence other than an offence punishable with death, the officer in charge of the police station or other place for the reception of arrested persons to which such person is brought shall at once enquire into the case, and if, when the inquiry is completed, there is no sufficient reason to believe that the person has committed any offence he shall be released forthwith.

(2) If upon such inquiry there is reason to believe that the person arrested has committed an offence and, if the offence does not appear to be of a serious nature, such officer may, and shall, if it does not appear practicable to bring such person before an appropriate subordinate court within twenty-four hours after he was taken into custody, release the person on his executing a recognizance, with or without sureties for a reasonable amount, to appear before a subordinate court at a time and place named in the recognizance.

(3) If, on a person being so taken into custody as aforesaid, it appears to the officer aforesaid that the inquiry into the case cannot be completed forthwith, he may release the said person on his entering into a recognizance, with or without sureties for a reasonable amount, to appear at such police station and at such times as are named in the recognizance, unless he previously receives notice in writing from the officer of police in charge of that police station that his attendance is not required, and any such recognizance may be enforced as if it were a recognizance conditional for the appearance of the said person before a subordinate court for the place in which the police station named in the recognizance is situate.

(4) Where any person so taken into custody as aforesaid shall be retained in custody, he shall be brought before a subordinate court at the earliest time practicable, whether or not the police inquiries are completed.

26. 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.

27. 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.

28. Within the local limits of his jurisdiction any magistrate may arrest or direct the arrest in his presence of any person whose arrest upon a warrant he could have lawfully ordered if the facts known to him at the time of making or directing the arrest had been stated before him on oath by some other person. Arrest by magistrate.

Escape and Retaking.

29. 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.

30. The provisions of sections 12 and 13 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. Provisions of sections 12 and 13 to apply to arrests under section 29.

31. 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 telegraph or public property.

PREVENTION OF OFFENCES.

Security for keeping the Peace and for Good Behaviour.

32. (1) Whenever a magistrate 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 provided, require such person to show cause why he should not be ordered to execute a recognizance, with or without sureties, for keeping the peace for such period, not exceeding one year, as the magistrate thinks fit. Security for keeping the peace.

(2) Proceedings shall not be taken under this section unless either the person informed against, or the place where the breach of the peace or disturbance is apprehended, is within the local limits of such magistrate's jurisdiction.

Security for good behaviour from vagrants and suspected persons.

33. Whenever a magistrate is informed on oath that any person is taking precautions to conceal his presence within the local limits of such magistrate's jurisdiction, and that there is reason to believe that such person is taking such precautions with a view to committing any offence, such magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a recognizance, 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.

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

- (a) is by habit a robber, house-breaker or thief; or
- (b) is by habit a receiver of stolen property, knowing the same to have been stolen; or
- (c) habitually protects or harbours thieves, or aids in the concealment or disposal of stolen property; or
- (d) habitually commits or attempts to commit, or aids or abets in the commission of, any offence punishable under Chapters XXX, XXXIII or XXXVI of the Criminal 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 recognizance, with sureties, for his good behaviour for such period, not exceeding three years, as the magistrate thinks fit.

Order to be made.

35. When a magistrate acting under section 32, 33 or 34 deems it necessary to require any person to show cause under such section, he shall make an order in writing setting forth—

- (a) the substance of the information received;
- (b) the amount of the recognizances 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.

Procedure in respect of person present in court.

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

37. If such person is not so 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.

38. Every summons or warrant issued under the last preceding section shall be accompanied by a copy of the order made under section 35, 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 35 to
accompany
summons or
warrant.

39. 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 recognizance for keeping the peace or maintaining good behaviour, and may permit him to appear by an advocate.

Power to
dispense with
personal
attendance

40. (1) When an order under section 35 has been read or explained under section 36 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 37, 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) Pending the completion of the inquiry under subsection (1), the magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquility or the commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct the person in respect of whom the order under section 35 has been made to execute a recognizance, with or without sureties, for keeping the peace or maintaining good behaviour until the conclusion of the inquiry, and may detain him in custody until such recognizance is executed or, in default of execution, until the inquiry is concluded:

Provided that—

- (a) no person against whom proceedings are being taken under section 32 shall be directed to execute a recognizance for maintaining good behaviour, and
- (b) the conditions of such recognizance, whether as to the amount thereof or as to the provision of sureties or the

number thereof or the pecuniary extent of their liability, shall not be more onerous than those specified in the order under section 35, and

(c) no person shall be remanded in custody under the powers conferred by this section for a period exceeding fifteen days at a time.

(4) For the purposes of this section the fact that a person comes within the provisions of section 34 may be proved by evidence of general repute or otherwise.

(5) 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.

41. (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 recognizance, 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 35;

(b) the amount of every recognizance 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 court shall not require the minor to execute the recognizance but in like manner shall require a relative, guardian or other fit person to enter into a recognizance, with or without sureties, that the child shall keep the peace or be of good behaviour.

(2) Any person ordered to give security for keeping the peace or maintaining good behaviour under this section may appeal to the Supreme Court, and the provisions of Part IX (relating to appeals) shall apply to every such appeal.

Discharge of person informed against.

42. If on an inquiry under section 40 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 recognizance, the magistrate shall make an entry on the record to that effect, and, if such person is in custody only for the purposes of the inquiry, shall release him, or, if such person is not in custody, shall discharge him.

Proceedings in all cases subsequent to Order to furnish Security.

Commencement of period for which security is required.

43. (1) If any person in respect of whom an order requiring security is made under section 41 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.

44. The recognizance 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 anywhere within the Colony at any time during the continuance of the recognizance of any offence punishable with imprisonment, shall be deemed to constitute a breach of the recognizance. Contents of recognizance

45. 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. Power to reject sureties.

46. (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. Procedure on failure of person to give security.

(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.

47. Whenever a magistrate who has made an order under section 41 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 to release persons imprisoned for failure to give security.

Power of Supreme Court to cancel recognizance. **48.** The Supreme Court may at any time, for sufficient reasons to be recorded in writing, cancel any recognizance for keeping the peace or for good behaviour executed under any of the preceding sections by order of any court.

Discharge of sureties. **49.** (1) Any surety for the peaceable conduct or good behaviour of another person may at any time apply to a magistrate to cancel any recognizance 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 recognizance and shall order such person to give, for the unexpired portion of the term of such recognizance, fresh security of the same description as the original security. Every such order shall for the purposes of sections 44, 45, 46 and 47 be deemed to be an order made under section 41.

PREVENTIVE ACTION OF THE POLICE.

Police to prevent cognizable offences. **50.** 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. **51.** 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. **52.** 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. **53.** 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. **54.** 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.

55. 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.

Accused person to be sent to district where offence committed.

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

Removal of accused person under warrant.

57. The Supreme Court may exercise its criminal jurisdiction at any place where it has power to hold sittings:

Powers of Supreme Court.

Provided that, except under the provisions of the Coroners' Ordinance, 1899, and the provisions of section 35 of the Supreme Court Ordinance, 1889, 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 upon information before the Supreme Court.

58. Subject to the provisions of section 57 and to the powers of transfer conferred by section 66 every offence shall be inquired into or tried by a court within the local limits of whose jurisdiction it was committed.

Ordinary place of inquiry and trial.

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

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

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

Trial where offence is connected with another offence.

61. 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

Trial where place of offence is uncertain.

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.

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

Offence committed on a journey.

Supreme Court to decide in cases of doubt.

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

Court to be open.

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

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

Transfer of Cases.

Transfer of case where the matter is outside jurisdiction.

65. (1) If upon the hearing of any proceedings under this Code it appears that the cause or matter is outside the limits of the jurisdiction of the court, such court shall, on being satisfied that it has no jurisdiction, direct the case to be transferred to the court having 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 and shall give a warrant for that purpose to such officer, and shall deliver to him the complaint or charge sheet 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 or charge sheet 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.

66. (1) Whenever it is made to appear to the Supreme Court—

Power of
Supreme
Court to
change
venue.

- (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 the more speedy or satisfactory administration of justice; or
- (e) that such an order is otherwise 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;
- (iv) that an accused person committed to itself for trial be tried summarily under Part VI by any court (including the court which committed the accused) in other respects competent to try the offence in respect of which the accused stands committed.

(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 Legal Adviser, be supported by affidavit.

(4) Every accused person making any such application shall give to the Legal Adviser 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 recognizance, with or without sureties, conditioned that he will, if convicted, pay the costs of the prosecutor.

CONTROL OF CROWN IN CRIMINAL PROCEEDINGS.

Power of
Legal
Adviser to
enter *nolle
prosequi*.

67. (1) In any criminal case and at any stage thereof before verdict or judgment, as the case may be, the Legal Adviser 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 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.

Withdrawal
from
prosecution
in trials
before
subordinate
courts.

68. (1) In any trial or inquiry before a subordinate court any prosecutor, with the consent of the court, or on the instructions of the Legal Adviser at any time before judgment is pronounced or an order of committal is made, may withdraw from the prosecution of any person either generally or in respect of any one or more of the offences with which he is charged; and upon such withdrawal—

- (a) if it is made in the course of any inquiry under Part VII, the accused person shall be discharged in respect of such offence or offences, or
- (b) if it is made in the course of a trial—
 - (i) before the accused person is called upon to make his defence, he shall be discharged in respect of such offence or offences; or
 - (ii) after the accused person is called upon to make his defence, he shall be acquitted in respect of such offence or offences:

Provided that in any trial before a subordinate court in which the prosecution in respect of any offence is withdrawn before the accused is called upon to make his defence, the court may in its discretion order the accused to be acquitted if the court is satisfied upon the merits of the case that such order is proper.

(2) A discharge of an accused person under this section shall not operate as a bar to subsequent proceedings against him on account of the same facts.

INSTITUTION OF PROCEEDINGS

69. (1) Criminal proceedings may be instituted before any subordinate court in either of the following ways—

Methods of instituting criminal proceedings.

- (a) By making a complaint and applying for the issue of either a warrant or a summons in the manner herein-after mentioned; or
- (b) By bringing a person arrested without a warrant before the court upon a charge contained in a charge sheet specifying the name and occupation of the person charged, the charge against him and the time when and the place where the offence is alleged to have been committed. The charge sheet shall be signed by the police officer or public prosecutor in charge of the case.

(2) The validity of any proceedings instituted or purporting to be instituted in pursuance of sub-section (1) shall not be affected either by any defect in the complaint or charge sheet or by the fact that a summons or warrant was issued without any complaint, or, in a case of a warrant, without a complaint on oath.

70. (1) Any person who believes from a reasonable and probable cause that an offence has been committed by any person may make a complaint thereof to a magistrate who has jurisdiction to try or inquire into the alleged offence, or within the local limits of whose jurisdiction the person accused is alleged to reside or be.

Making a complaint.

(2) Every complaint shall be made orally or in writing.

Form of complaint.

(3) Upon receiving any such complaint the magistrate may in his discretion refuse to issue process, recording his reasons for such refusal, or may issue either a summons or warrant as he shall deem fit, to compel the attendance of the accused person before the subordinate court which such magistrate is empowered to hold, or if the offence appears to be one which he is not empowered to try or inquire into, before some other competent court having jurisdiction in the same area:

Issue of process on complaint.

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

(4) Any summons or warrant may be issued on any day, including a Sunday.

Process to issue on any day.

Issue of Summons.

71. (1) Every summons issued by a court under section 70 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.

Form and contents of summons.

(2) Every summons shall be directed to the person summoned and shall require him to appear at a time and place to be therein appointed before a court having jurisdiction to inquire

into and deal with the complaint. It shall state shortly the offence with which the person against whom it is issued is charged.

Service of
summons.

72. (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.

73. 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 employer 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

74. 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.

75. Where the person summoned is in the active service of the Government, 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 72 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.

76. 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.

77. 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.

78. (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.

79. (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. A statement to this effect shall be contained in the summons. 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 personal attendance of the accused, and, if necessary, enforce such attendance by warrant in manner herein-after provided. But no such warrant shall be issued unless a complaint 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 herein-after 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.

Issue of Warrant of Arrest.

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

Summons
disobeyed.

81. 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 79, 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 is or has been made upon oath.

Form,
contents and
duration of
warrant of
arrest.

82. (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.

83. (1) Any court on issuing a warrant for the arrest of any person in respect of any offence other than murder or treason, may, if it thinks fit by indorsement on the warrant, direct that the person named in the warrant, on arrest, be released on his entering into a recognizance in such amount as may be specified, with or without sureties, for his appearance before such court and at such time as the indorsement shall state.

(2) The indorsement shall specify—

- (a) the number of sureties (if any),
- (b) the amount in which they and the person named in the warrant are respectively to be bound,
- (c) the court before which the person arrested is to attend, and
- (d) the time at which he is to attend, including an undertaking to appear at such subsequent times as he may be directed by such court.

(3) Where such an indorsement is made, the officer in charge of any police station to which on arrest the person named in the warrant is brought shall release him upon his entering into a recognizance with or without sureties approved by that officer, in accordance with the indorsement, conditioned for his appearance before the court, and at the time and place named in the recognizance.

(4) Whenever security is taken under this section the officer who takes the recognizance shall cause it to be forwarded to the court before which the person named in the warrant is bound to appear.

Warrants,
to whom
directed.

84. (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.

85. 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.

Execution of warrant directed to police officer.

86. The police officer or other person executing a warrant of arrest shall (subject to the provisions of section 83 as to security) without unnecessary delay bring the person arrested before the court before which he is required by the warrant or the requirements of section 91, as the case may be, to produce such person.

Person arrested to be brought before the court without delay.

87. A warrant of arrest may be executed at any place in the Colony.

Where warrant of arrest may be executed.

88. 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.

Forwarding of warrants for execution outside jurisdiction.

89. The magistrate to whom a warrant is forwarded, under section 88, 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.

Magistrate to indorse warrant.

90. (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.

Procedure in case of warrant directed to police officer for execution outside jurisdiction.

(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.

91. (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 83, 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 an offence punishable with death, and he is ready and willing to give bail to the satisfaction of such magistrate, or if a direction has been indorsed under section 83 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 recognizance 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 83.

Miscellaneous Provisions regarding Processes.

Irregularities
in processes.

92. (1) Any irregularity or defect in the substance or form of a summons or warrant, and any variance between a summons or warrant and the written complaint, or between a summons or warrant and the evidence adduced at any inquiry or trial on the part of the prosecution against an accused person whose attendance has been procured by such summons or warrant, 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 in the manner hereinafter mentioned.

Process not
avoided by
death, etc.

(2) A warrant, summons or other process issued by a judge or magistrate under this Code or otherwise shall not be avoided or invalidated by reason of the judge or magistrate who signed the same dying or ceasing to hold office or have jurisdiction.

Power to
take
recognizance
for
appearance.

93. 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 recognizance, with or without sureties, for his appearance in such court.

Where such recognizance is taken from a person accused on complaint, the taking of the recognizance shall be deemed to be the issue of process against him upon such complaint.

94. When any person who is bound by any recognizance 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.

Arrest for breach of recognizance for appearance.

95. (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.

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

(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.

(3) The court shall not exercise its power under this section if it appears that by reason of the petty nature of the offence charged or other similar reason it is undesirable to order the prisoner's production, or if it appears that it would be necessary under the provisions of section 55 or 65 to send a prisoner so produced out of the local limits of the jurisdiction of such court.

(4) Any refusal of a court to exercise its powers under this section shall not prejudice the right of a prosecutor to apply to the Supreme Court under section 302.

96. 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 by any court, or by a justice of the peace, whether against an accused person or not, 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.

Provision of this Part generally applicable to summonses and warrants: powers of justices of the peace.

SEARCH WARRANTS.

97. (1) Any magistrate who is satisfied, by proof upon oath, that there is reasonable ground for believing that there is in any building, vessel, carriage, box, receptacle, or place—

When search warrant may be issued and proceedings thereunder.

- (a) anything upon or in respect of which any offence has been or is suspected to have been committed, for which, according to any law for the time being in force, the offender may be arrested without warrant; or
- (b) anything which there is reasonable ground for believing will afford evidence as to the commission of any such offence; or
- (c) anything which there is reasonable ground for believing is intended to be used for the purpose of committing any offence against the person for which, according to any law for the time being in force, the offender may be arrested without warrant,

may at any time issue a warrant under his hand authorizing any constable to search such building, vessel, carriage, box, receptacle or place for any such thing, and to seize and carry it before the magistrate issuing the warrant or some other magistrate to be by him dealt with according to law.

Search for and disposal of gunpowder, etc.

(2) If the thing to be searched for is gunpowder or any other explosive or dangerous or noxious substance or thing, the person making the search shall have the same powers and protection as are given by any law for the time being in force to any person lawfully authorised to search for any such thing, and the thing itself shall be disposed of in the manner as directed by any such law or, in default of such direction, as the Commissioner of Police may direct.

Execution of search warrant.

98. Every search warrant may be issued and executed on any day, including 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.

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

99. (1) Whenever any building or other place liable to search is closed, any person residing in or being in charge of such building or place shall, on demand of the police officer or other person executing the search warrant, and on production of the warrant allow him free ingress thereto and egress therefrom and afford all reasonable facilities for a search therein.

(2) If ingress into or egress from such building or other place cannot be so obtained, the police officer or other person executing the search warrant may proceed in the manner prescribed by section 12 or 13.

(3) Where any person in or about such building or place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched. If such person is a woman the provisions of section 16 (2) shall be observed.

Detention of articles seized.

100. (1) When any thing is seized under a search warrant and brought before any magistrate, he may detain or cause it to be detained, taking reasonable care that it is preserved till the conclusion of the case; and if any appeal is made, he may order it further to be detained for the purpose of or pending an appeal. If no appeal is made, the magistrate shall direct such thing to be restored to the person from whom it was taken, except in the cases hereinafter mentioned, unless he is authorised or required by law to dispose of it otherwise.

Forged bank note, etc.

(2) If, under any such warrant, there is brought before any magistrate any forged bank note, bank note paper, or instrument, or any thing the possession of which, in the absence of lawful excuse, is an offence according to any law for the time being in force, the magistrate may direct such thing to be detained for production in evidence or to be otherwise dealt with as the case may require.

(3) If, under any such warrant, there is brought before any magistrate any counterfeit coin or other thing, the possession of which, with knowledge of its nature and without lawful excuse, is an offence according to any law for the time being in force, every such thing shall be delivered up to the Commissioner of Police, or to any person authorised by him to receive the same, as soon as it has been produced in evidence, or as soon as it appears that it will not be required to be so produced.

101. The provisions of sections 82 (1) and (3), 84, 85, 87, 88, 89, 90 and 92 shall, so far as may be, apply to all search warrants issued under section 97.

Counterfeit
coin.
Provisions
applicable
to search
warrants.

PROVISIONS AS TO BAIL AND RECOGNIZANCES GENERALLY.

102. (1) When any person, other than a person accused of an offence punishable with death, appears or is brought before any court on any process or after being arrested without a warrant, and is prepared at any time or at any stage of the proceedings to give bail, such person may in the discretion of the court be released upon his entering in the manner herein-after provided into a recognizance, with or without a surety or sureties, conditioned for his appearance before such court at the time and place mentioned in the recognizance.

The grant of
bail by
courts.

(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 this section or in section 25 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.

103. (1) When, as respects any recognizance, the amount has been fixed in which the sureties (if any) are to be bound, the recognizance need not be entered into before the court, but may, subject to any rules made in pursuance of this Code, be entered into by the parties before any other court or before any clerk of a court, or before a superintendent or inspector of police or other officer of police of equal or superior rank or in charge of any police station, or where any of the parties is in prison, before the superintendent or other keeper of such prison; and thereupon all the consequences of law shall ensue, and the provisions of this Code with respect to recognizances taken before a court shall apply, as if the recognizance had been entered into before the said court.

General
provisions
as to
recogniz-
ances.

(2) Where as a condition of the release of any person he is required to enter into a recognizance with sureties, the recognizance of the sureties may be taken separately and either before or after the recognizances of the principal and if so taken the recognizances of the principal and sureties shall be as binding as if they had been taken together and at the same time.

(3) A recognizance for the appearance of any person before the court may be conditioned for his appearance at every time and place to which, during the course of the proceedings, the hearing may be from time to time adjourned, without prejudice,

however, to the power of the court to vary the order at any subsequent hearing.

Release from custody. **104.** (1) Where the execution of a recognizance is a condition of the release of any person that person shall be released as soon as the recognizance has been executed and if he is in prison or police custody, the court shall issue an order of release to the officer in charge of the prison or other place of detention and such officer on receipt of the order shall release him

(2) Nothing in this section or in section 102 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 recognizance was executed.

Deposit instead of recognizance. **105.** When any person is required by any court or officer to execute a recognizance, with or without sureties, such court or officer may, except in the case of a recognizance 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 recognizance, as security for the due performance of the conditions imposed on him by the court or officer requiring the execution of the recognizance. Upon the breach of any such conditions, proceedings under section 110 may be taken for the forfeiture of the deposit in the same manner and to the same extent as if a recognizance for the amount of the deposit had in fact been executed.

Variation of a recognizance. **106.** If at any time after a recognizance has been entered into, it appears to the court that for any reason the sureties are unsuitable or that having regard to all the circumstances of the case, the amount of the recognizance is insufficient, such court may issue a summons or warrant for the appearance of the principal, and upon him coming before the court, may order him to execute a fresh recognizance in another amount or with other surety or sureties, as the case may be.

Application for discharge by sureties. **107.** (1) Any surety for the appearance or behaviour of any person may at any time apply to a magistrate to discharge the recognizance either wholly or so far as it relates to the applicant.

(2) On such application being made the magistrate shall issue a summons or warrant of arrest directing that the person in respect of whom the applicant is bound, shall appear or be brought before him.

(3) On the appearance of such person, the magistrate shall direct the recognizance 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.

Recognizances in respect of minors. **108.** When in any case the person in respect of whom a court makes an order requiring that a recognizance be entered into, is a minor, the court shall not require the minor to execute the recognizance but shall require a relative, guardian or other

fit person with or without sureties to execute a recognizance conditioned that the child shall do what is required under the court's order.

109. When any court is satisfied on oath that any person bound by recognizance to appear before any court or police officer 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. Persons bound by recognizance absconding may be committed.

110. (1) Whenever it is proved to the satisfaction of a court by which a recognizance under this Code has been taken, or when the recognizance is for appearance before a court, to the satisfaction of such court, that such recognizance has been forfeited, the court shall record the grounds of such proof, and may call upon any person bound by such recognizance to pay the penalty thereof, or to show cause why it should not be paid. Forfeiture of recognizance

(2) If sufficient cause is not shown and the penalty is not paid, the court may proceed to recover the same by forfeiting any sum deposited in pursuance of section 105 or by issuing a warrant for the attachment and sale of the movable property belonging to such person or his estate if he be dead.

(3) Such warrant may be executed within the local limits of the jurisdiction of the court which issued it; and it shall authorise the attachment and sale of any movable property belonging to such person without such limits, when indorsed by any magistrate within the local limits of whose jurisdiction such property is found.

(4) If such penalty is not paid and cannot be recovered by such attachment and sale, the person so bound shall be liable, by order of the court which issued the warrant, to imprisonment without hard labour for a term which may extend to six months.

(5) The court may, at its discretion, remit any portion of the penalty mentioned and enforce payment in part only.

(6) Where a surety to a recognizance dies before the recognizance is forfeited, his estate shall be discharged from all liability in respect of the recognizance.

(7) When any person who has furnished security is convicted of an offence the commission of which constitutes a breach of the conditions of his recognizance, a certified copy of the judgment of the court by which he was convicted of such offence may be used as evidence in proceedings under this section against his surety or sureties, and, if such certified copy is so used, the court shall presume that such offence was committed by him unless the contrary is proved.

(8) All orders passed under this section by any magistrate shall be appealable to and may be reviewed by the Supreme Court.

111. When any surety to a recognizance becomes insolvent or dies or when any recognizance is forfeited under the provisions of section 110, the court may order the person from whom such Ordering of fresh security upon original order.

recognizance was demanded to furnish fresh security in accordance with the directions of the original order, and, if such security is not furnished, such court may proceed as if there has been default in complying with such original order.

Power to direct levy of amount due on certain recognizances. **112.** The Supreme Court may direct any magistrate to levy the amount due on a recognizance entered into before the Supreme Court.

GENERAL PROVISIONS AS TO CHARGES.

Joinder of charges. **113.** For every distinct offence of which any person is accused there shall be a separate charge or count, and every such charge or count shall be tried separately except in 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, whether they are offences committed against the same person or not, 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.

Joinder of accused.

114. The following persons may be charged and tried together, namely—

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

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

(c) persons accused of more than one offence of the same kind within the meaning of section 113 (a) committed by them jointly within the period of twelve months;

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

(e) persons accused of an offence under Chapters XXVI to XXXI of the Criminal Code and persons accused of receiving or retaining, or assisting in the disposal or concealment of property, possession of which is alleged to have been transferred by any such offence committed by the first-named persons, or of abetment of or attempting to commit any such last-named offence;

(f) persons accused of offences under sections 295 and 296 of the Criminal Code or any of those sections in

respect of property the possession of which has been transferred by one offence; and

- (g) persons accused of any offence under Chapter XXXVI of the Criminal Code relating to counterfeit coin, and persons accused of any other offence under the said chapter relating to the same coin, or of abetment of or attempting to commit any such offence.

115. Notwithstanding the provisions of sections 113 and 114 where before any trial or at any stage of a trial, the court is of opinion that the person accused may be prejudiced or embarrassed in his defence by reason of being charged with more than one offence in the same complaint, charge sheet or information, or that for any reason it is desirable to direct that any person should be tried separately, for any one or more offences charged in a complaint, charge sheet or information, the court may order a separate trial of any count or counts of such complaint, charge sheet or information. Separate trial if accused likely to be prejudiced by joinder.

116. (1) Subject to the special rules as to informations by the Legal Adviser hereinafter mentioned, every charge, complaint, summons, warrant or other document laid, issued or made for the purpose of or in connection with any proceedings before any court for an offence, shall be sufficient if it contains a statement of the specific offence with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the charge. Statement of charges in necessary documents.

(2) The statement of the 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 is one created by statute, shall contain a reference to the section of the statute.

(3) After the statement of the offence, necessary particulars of the offence shall be set out in ordinary language, in which the use of technical terms shall not be required.

(4) The following rules shall be applicable in all cases in which it may be necessary to refer to the ownership or description of property in any complaint, summons, warrant, charge sheet or information:— Ownership or description.

- (i) If the property belonged to or was in possession of more than one person, whether as partners in trade or otherwise, it may be laid in the name of one of such persons and another or others. This rule applies to joint-stock companies, clubs, societies, joint tenants, tenants in common, parceners and trustees; Joint owners.
- (ii) Property of a joint-stock company, club or society having a recognised manager or agent in the Colony or a recognised secretary, may be laid as the property of such secretary, manager, or agent, and others, without naming the secretary, manager or agent; Joint-stock company, etc.
- (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; Public department.

Coins and bank or currency notes.

- (iv) Coin and bank or currency notes may be described as money, and any averment as to any money, so far as regards the description of the property, shall be sustained by proof of any amount of coin or of any bank or currency note, although the particular species of coin of which such amount was composed, or the particular nature of the bank or currency note shall not be proved; and in cases of stealing 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.

PREVIOUS CONVICTION OR ACQUITTAL.

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

117. (1) A person who has been once tried by a court of competent jurisdiction for an offence and convicted or acquitted of such offence shall not be liable to be tried again on the same facts for the same offence or any other offence of which he could have been lawfully convicted at the first trial.

May be tried again on separate charge.

(2) 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 113.

Consequences supervening or not known at time of former trial.

(3) 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.

(4) 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

118. (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.

119. (1) Proceedings for the trial of any person, who is not a British subject, or a British protected person, 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. Leave of Governor necessary before prosecution 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 complaint, charge sheet 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.

120. (1) If it is made to appear that material evidence can be given by or is in the possession of any person, it shall be lawful Summons for witness

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 subject to just exceptions all documents and writings in his possession or power which may be specified or otherwise sufficiently described in the summons.

Warrant for witness who disobeys summons.

121. 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.

122. If the court is satisfied by evidence on oath that any person can give material evidence and 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.

123. When any witness is arrested under a warrant the court may, on his furnishing security by recognizance with or without a surety or sureties, 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.

124. (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.

125. (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 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.

126. Any court may at any stage of any inquiry, trial or other proceeding under this Code call any person 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. Power to call and recall witnesses.

127. 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.

128. (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 affirmed; or
- (b) having been sworn or affirmed, 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) when lawfully required to do so refuses to sign his deposition,

without in any such case offering any lawful or reasonably 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.

129. (1) Any document purporting to be an original report under the hand of any Government medical practitioner, analyst or chemical examiner upon any substance or thing duly submitted to him for examination or analysis and report in the course of Analyst's report to be evidence in all courts.

any proceeding under this Code, may, if it is directed to the court or is produced by any police officer to whom it is directed or someone acting on his behalf, be used as evidence of the facts therein stated in any inquiry, trial or other proceeding under this Code.

Medical practitioner's report to be evidence in subordinate courts. (2) Any document purporting to be an original report under the hand of a Government registered or licensed medical practitioner relating to the nature or extent of the injuries of any person certified to have been examined by such practitioner, may, if it is directed to the court or is produced by any police officer to whom it is addressed or by someone acting on his behalf, be admitted as evidence of the facts therein stated in any trial before a subordinate court.

Presumption as to signature. (3) The court 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.

Right of court to call person making a report. (4) Upon receiving such report in evidence the court may, if it thinks such a course proper for the ends of justice, summon and examine such medical practitioner, analyst or chemical examiner as a witness.

PROCEDURE IN CASE OF THE LUNACY OR OTHER INCAPACITY OF AN ACCUSED PERSON.

Accused apparently insane and incapable of making his defence. 130. (1) When in the course of a trial or preliminary inquiry the court has reason to believe that the accused is of unsound mind and consequently incapable of making his defence, it shall cause such person to be medically examined and shall thereafter take medical and any other available evidence regarding the state of the accused's mind.

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

(3) If the case is one in which bail may be taken, the court may then 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 at a stated time or when required before the court or such officer as the court may appoint in that behalf.

(4) If the case is one in which bail may not be taken, or if sufficient security is not given, the court shall order the accused to be detained in safe custody in such place and manner as it may think fit and shall transmit the court record or a certified copy thereof to the Colonial Secretary:

Provided that no order for the confinement of the accused in a place of detention shall be made otherwise than in accordance with the provisions of the Lunatics' Detention Ordinance, 1917.

(5) Upon consideration of the record, the Governor may by warrant under his hand directed to the court order that the accused be confined as a criminal lunatic in a place of detention appointed for the confinement of lunatics under the provisions of the Lunatics' Detention Ordinance, 1917, or other suitable place, and the court shall give any directions necessary to carry out such order. Any such warrant of the Governor shall be sufficient authority for the detention of such accused person until the Governor shall make further order in the matter or until the court finding him incapable of making his defence shall order him to be brought again before it in the manner provided by sections 131 and 132.

131. If any person confined in a place of detention or other place of custody by the Governor's order under section 130 is found by the medical officer in charge of such place to be capable of making his defence, such medical officer shall forthwith forward a certificate to that effect to the court which recorded the finding under section 130 in respect of such person. Such court shall thereupon order the removal of such person from the place where he is detained and shall cause him to be brought in custody before it in the manner prescribed by the next succeeding section. Any certificate given under this section may be given in evidence without further proof in any further proceedings under the next succeeding section unless it is proved that the medical officer purporting to sign it did not in fact sign it.

132. Whenever any preliminary inquiry or trial is postponed the court may at any time resume the preliminary inquiry 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 inquiry 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.

133. When the accused person appears to be of sound mind at the time of a trial or preliminary inquiry, 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.

134. (1) Where any act or omission is charged against any person as an offence, and it is given in evidence on the trial of such person for that offence, that he was insane so as not to be responsible according to law for his actions, at the time when the act was done or omission made, then if it appears to the court before which such person is tried, that he did the act or made the omission charged, but was insane as aforesaid at the time when he did or made the same, the court shall return a special

verdict to the effect that the accused was guilty of the act or omission charged against him but was insane as aforesaid, at the time when he did the act or made the omission.

(2) When such special verdict is found the court shall forward the court record or a certified copy thereof to the Colonial Secretary and shall order the accused to be kept in custody as a criminal lunatic, in such place and in such manner as the court shall direct till His Majesty's pleasure shall be known, and it shall be lawful for the Governor to signify His Majesty's pleasure by warrant under his hand and for the Governor therein and from time to time, to give such order for the safe custody of the said person during pleasure, in such place of detention, prison or other suitable place of safe custody and in such manner as the Governor may deem fit.

The regula-
tion of places
of confine-
ment for
criminal
lunatics.

135. (1) It shall be lawful for the Governor to make rules prescribing special places of confinement for criminal lunatics, the government and management of such places, the duties and conduct of the officers thereof and the care and treatment of the persons confined therein.

(2) The Governor may from time to time by warrant direct the transfer of any criminal lunatic detained in any prison, asylum or other place to some other prison, asylum or place, and such criminal lunatic shall accordingly be received and detained in the place to which he is so transferred.

Escape and
retaking of
criminal
lunatics.

136. In case of escape of any criminal lunatic confined in any place under a warrant of the Governor issued under section 130, 134 or 135, he may be retaken at any time by the superintendent of such place or any officer or servant belonging thereto, or any person assisting such superintendent, officer, or servant in this behalf, or any other person authorised in writing in this behalf by an officer in charge of a police station or such superintendent, and upon being retaken he may be conveyed to and received and detained in such place.

Periodical
reports
concerning
criminal
lunatics.

137. (1) The superintendent of any place in which any criminal lunatic is detained shall make a report to the Colonial Secretary at such times (and at least once a year) and containing such particulars as the Colonial Secretary may require, of the condition and circumstances of every criminal lunatic in such place; and the Governor shall, at least once in every two years during which a criminal lunatic is detained, take into consideration the condition, history, and circumstances of such lunatic, and determine whether he ought to be discharged or otherwise dealt with.

Release of
criminal
lunatics.

(2) The Governor by warrant may absolutely discharge any criminal lunatic, and may also discharge any criminal lunatic conditionally, that is to say, on such conditions as to the duration of such discharge and otherwise as the Governor may think fit.

(3) Where in pursuance of this section a criminal lunatic has been discharged conditionally, if any of the conditions of such discharge appear to the Governor to be broken, or the conditional

discharge is revoked, the Governor may by warrant direct him to be taken into custody, and to be conveyed to some place named in the warrant; and he may thereupon be taken in like manner as if he had escaped from such place, and shall be received and detained therein as if he had been removed thereto in pursuance of the provisions of section 135.

138. 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.

Procedure when accused does not understand proceedings.

COSTS AND COMPENSATION.

139. (1) It shall be lawful for any court to order any person convicted before it of an offence to pay to the public or private prosecutor, as the case may be, such reasonable costs as to such court may seem fit, in addition to any other penalty imposed:

Costs against accused.

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.

(2) It shall be lawful for any court that 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 complaint of a private prosecutor, to order such private prosecutor to pay to the accused such reasonable costs as to such court may seem fit:

Costs against private prosecutor.

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 court shall consider that the private prosecutor acted *bona fide* and 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 141.

140. 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 the Judge to His Majesty's Court of Appeal for West Africa. The appellate court shall have power to give such costs of the appeal as it shall deem reasonable.

Order to pay costs appealable.

141. (1) If, in any case instituted upon complaint, one or more persons is or are accused before a magistrate of any offence and the magistrate by whom the case is heard discharges or acquits all or any of the accused, and is of opinion that the accusation against them or any of them was false and either frivolous or vexatious, the magistrate may, by his order of discharge or acquittal, if the person upon whose complaint the

Compensation in case of false and vexatious charge.

accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one, or, if such person is not present, direct the issue of a summons to him to appear and show cause as aforesaid.

(2) The magistrate shall record and consider any cause which such complainant may show, and if he is satisfied that the accusation was false and either frivolous or vexatious may, for reasons to be recorded, direct that compensation to such an amount not exceeding five pounds as he may determine, be paid by such complainant to the accused or to each or any of them.

(3) No person who has been directed to pay compensation under this section shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made by him:

Provided that any amount paid to an accused person under this section shall be taken into account in awarding compensation to such person in any subsequent civil suit relating to the same matter.

(4) A complainant who has been ordered under sub-section (2) to pay compensation may appeal from the order, in so far as the order relates to the payment of the compensation, as if such complainant had been convicted on a trial held by such magistrate.

(5) When an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub-section (4), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided and, where such order is made in a case which is not so subject to appeal, the compensation shall not be paid before the expiration of one month from the date of the order.

Compensation for material loss or personal injury.

142. (1) When any accused person is convicted by any court of any offence not punishable with death and it appears from the evidence that some other person, whether or not he is the prosecutor or a witness in the case, has suffered material loss or personal injury in consequence of the offence committed and that substantial compensation is, in the opinion of the court, recoverable by that person by civil suit, such court may, in its discretion and in addition to any other lawful punishment, order the convicted person to pay to that other person such compensation as the court deems fair and reasonable:

Provided that in no case shall the amount awarded exceed twenty-five pounds.

(2) When any person is convicted of any offences under Chapters XXVI to XXXI of the Criminal Code, the power conferred by sub-section (1) shall be deemed to include a power to award compensation to any *bona-fide* purchaser of any property in relation to which the offence was committed for the loss of such property if the same is restored to the possession of the person entitled thereto.

(3) Any order for compensation under this section shall be subject to appeal and no payment of compensation 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.

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

143. 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 a fine 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 in the manner provided under section 31 of the Criminal Code. Costs and compensation to be specified in order, how recoverable

RESTITUTION OF PROPERTY.

144. 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— Property found on accused person.

- (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:

Provided that no order shall be made under paragraph (b) hereof if the court is satisfied that the property does not belong to the person on whom it was found.

145. (1) If any person guilty of an offence as is mentioned in Chapters XXVI to XXXI of the Criminal Code, in stealing, taking, obtaining, extorting, converting, or disposing of, or in knowingly receiving any property, is prosecuted to conviction by or on behalf of the owner of such property, the property shall be restored to the owner or his representative. Property stolen.

(2) In every case in this section referred to the court before whom such offender is convicted shall have power to award from time to time writs of restitution for the said property or to order the restitution thereof in a summary manner:

Provided that where goods have been obtained by fraud or other wrongful means not amounting to stealing, the property in such goods shall not re-vest in the person who was the owner of the goods or his personal representative, by reason only of the conviction of the offender:

And provided that nothing in this section shall apply to the case of any valuable security which has been in good faith paid or discharged by some person liable to the payment thereof, or, being a negotiable instrument, has been in good faith taken or

received by transfer or delivery by some person for a just and valuable consideration without any notice or without any reasonable cause to suspect that the same had been stolen.

In this sub-section the expression "goods" includes all chattels personal other than things in action and money.

(3) On the restitution of any stolen property, if it appears to the court by the evidence that the offender has sold the stolen property to any person, that such person has had no knowledge that the same was stolen, and that any moneys have been taken from the offender on his apprehension, the court may, on the application of such purchaser, order that out of such moneys a sum not exceeding the amount of the proceeds of such sale be delivered to the said purchaser.

(4) The operation of any order under this section shall (unless the court before which the conviction takes place direct to the contrary in any case in which the title to the property is not in dispute) be suspended—

(a) in any case until the time for appeal has elapsed; and

(b) in cases where an appeal is lodged, until the determination of the appeal; and in cases where the operation of any such order is suspended until the determination of the appeal, the order shall not take effect as to the property in question if the conviction is quashed on appeal. The Supreme Court may make provision by rules for securing the safe custody of any property pending the suspension of the operation of any such order of the said provisions.

(5) Any order made under this section shall be subject to appeal and, upon the hearing of such appeal, the court may by order annul or vary any order made on a trial for the restitution of any property to any person, although the conviction is not quashed; and the order, if annulled, shall not take effect, and, if varied, shall take effect as so varied.

MISCELLANEOUS PROVISIONS.

The person accused of any offence may be convicted of attempt.

146. (1) 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.

(2) When a person is charged with an attempt to commit an offence and the evidence establishes the commission of the full offence, the accused may not be convicted of the full offence but may nevertheless be convicted of the attempt.

When offence proved is included in offence charged.

147. Every charge shall be deemed to be divisible into the integral parts legally necessary to constitute the offence charged as described in the enactment creating the offence, and if the evidence shows that some integral parts of the offence charged only are proved, and such parts which are so proved or some of them taken together constitute another offence, the person charged may be convicted of the other offence or of an attempt to commit it.

148. (1) If on any trial for any of the offences mentioned in Chapter XXIX of the Criminal 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.

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

(2) 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 receiving on charge of stealing.

149. (1) 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 Criminal 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 false pretences on charge of stealing and vice-versa.

(2) 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.

150. When a person is charged with any offence under section 255, 256, 257 or 258 of the Criminal 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.

151. (1) When a woman is charged with the murder of her newly-born child, and it is proved that she by any wilful act or omission caused its death, but at the time of the act or omission she had not fully recovered from the effect of giving birth to such child, and that by reason thereof the balance of her mind was then disturbed, she may be convicted of infanticide.

Conviction of infanticide in charge of murder.

(2) When any person is charged with the murder or manslaughter of any child or with infanticide or an offence against section 139 or 140 of the Criminal Code, and it is proved that the person charged is not guilty of murder, manslaughter or infanticide, or of an offence against the said sections, as the case may be, but is shown by the evidence to be guilty of the felony of child destruction, he may be convicted of that felony.

Conviction of child destruction in charge of murder, etc., or infanticide.

(3) When any person is charged with the felony of child destruction, and it is proved that he is not guilty of that felony, but is shown by the evidence to be guilty of an offence against section 139 or 140 of the Criminal Code, he may be convicted of that offence.

Conviction of attempt to procure abortion in charge of child destruction.

(4) When any person is charged with the murder or manslaughter of any child or with infanticide, and it is proved that the person charged is not guilty of murder or manslaughter or infanticide, then if it shall appear in evidence that the child had recently been born and that such person did by some secret disposition of the dead body of such child endeavour to conceal the birth thereof, he may be convicted of an offence against section 206 of the Criminal Code.

Conviction of concealment of birth in charge of murder, etc., or infanticide.

Manslaughter or special verdict in charge of murder. (5) Nothing in this section shall affect the power of the jury upon an information for the murder of a newly-born child to return a verdict for manslaughter or a verdict of guilty but insane.

Person charged with rape may be convicted of kindred offence. **152.** 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 125, 126, 127 or 129 of the Criminal Code and not the offence wherewith the accused is charged, he may be convicted of an offence under section 125, 126, 127 or 129 of the Criminal Code 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 offence.

Conviction of incest lawful on charge of rape. **153.** (1) If, on any trial for rape the facts proved in evidence authorise a conviction for an offence under section 147 of the Criminal Code and not the offence wherewith the accused is charged, he may be convicted of an offence under section 147 of the Criminal Code and he shall be punished as if he had been convicted on a charge or information charging him with that offence.

Conviction of unlawful carnal knowledge, etc., on charge of incest. (2) If, on any trial for an offence under section 147 of the Criminal Code, the facts proved in evidence authorise a conviction for an offence under section 125, 126 or 127 of the Criminal Code, and not the offence wherewith the accused is charged, he may be convicted of an offence under section 125, 126 or 127 of the Criminal Code, and he shall be punished as if he had been convicted on a charge or information charging him with that offence.

Person charged with misdemeanour not to be acquitted if felony proved, unless court so directs. **154.** 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.

Conviction on other charges pending. **155.** Where an accused person is found guilty of an offence, the court may, in passing sentence, take into consideration any other charge of the same kind then pending against the accused person if such person admits the other charge and desires it to be taken into consideration and if the prosecutor of the other charge consents.

Right of accused to be defended. **156.** Subject to the provisions of the Protectorate Ordinance, 1913, 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.

PART V.—Procedure in Trials before Subordinate Courts.

PROVISIONS RELATING TO THE HEARING AND DETERMINATION OF CASES.

Non-appearance of prosecutor at hearing. **157.** If, in any case which a subordinate court has jurisdiction to hear and determine, the accused person comes before the court on a summons, warrant or otherwise, then, if the

prosecutor, having had notice of the time and place appointed for the hearing of the charge, does not appear himself or by his advocate, the court shall discharge the accused person, 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:

Provided that where the accused does not appear personally and pleads guilty in writing or by his advocate under the provisions of section 79 the court may proceed to conviction notwithstanding the absence of the prosecutor or his advocate.

158. If at the time appointed for the hearing of the case both the prosecutor and the accused person appear before the court which is to hear and determine the charge, or if the prosecutor appears himself or by his advocate and the personal attendance of the accused person has been dispensed with under section 79, the court shall proceed to hear the case. Appearance
of both
parties.

159. Before or during the hearing of any case, it shall be lawful for the court in its discretion to adjourn the hearing to a certain time and place to be then appointed and stated in the presence and hearing of the party or parties or their respective advocates then present, and in the meantime the court may suffer the accused person to go at large, or may commit him to prison, or may release him upon his entering into a 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: Adjournment

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

160. (1) If at the time or place to which the hearing or further hearing shall be adjourned, the accused person shall 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 prosecutor or his advocate shall not appear the court may, having regard to the merits of the case, either acquit the accused person or discharge him with or without costs as the court shall think fit. Non-appear-
ance of
parties after
adjournment.

(2) Where a court is satisfied that any person accused of any offence who is bound by recognizance to appear at any hearing or adjourned hearing of the case, is by reason of illness or accident unable at the date of such hearing or further hearing to appear personally before the court, it may, in the absence of the accused person, order a further adjournment for such time as

may be lawful and reasonable and the time conditioned in the accused person's recognizance shall be deemed to be varied accordingly.

(3) 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.

(4) Where any sentence is passed in the accused person's absence under the provisions of sub-section (1) the court shall give directions for the carrying out of such sentence and shall issue its commitment or other warrant therefor, and in addition to authorizing the carrying out of the sentence, such warrant, shall, if necessary, be deemed to authorize the apprehension of the convicted person for the purpose of carrying out the sentence. The person effecting such apprehension shall indorse the date thereof on the back of the warrant and any sentence of imprisonment imposed on a person apprehended on such warrant shall commence from the date of his apprehension.

(5) 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.

161. (1) If the accused person appears personally or, under the provisions of section 79 (1), by his advocate, the substance of the charge contained in the charge sheet or complaint shall be stated and explained to him or, if he is not personally present, to his advocate (if any) and he or his advocate, as the case may be, shall be asked whether he pleads guilty or not guilty. In stating the substance of the charge the court shall state particulars of the date, time and place of the commission of the alleged offence, the person against whom or the thing in respect of which it is alleged to have been committed and the section of law creating the offence.

(2) If the plea is one of guilty, the plea shall be recorded as nearly as possible in the words used, or if there is an admission of guilt by letter under the provisions of section 79 (1) such letter shall be placed on the record and the court shall convict the accused person and pass sentence or make an order against him, unless there shall appear to it sufficient cause to the contrary.

(3) If the plea is one of "not guilty" the court shall proceed to hear the case as hereinafter provided.

(4) If the accused person or his advocate, as the case may be, refuses to plead, or if he does not appear and the court decides to hear the case in his absence under the provisions of section 160 (1), a plea of "not guilty" shall be entered and the plea so entered shall have the same force and effect as if the same had been actually pleaded.

Procedure on
plea of not
guilty.

162. If the accused person does not plead guilty to the charge, the court shall proceed to hear such evidence as the prosecutor may adduce in support of the charge.

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.

163. If at the close of the evidence in support of the charge, it appears to the court that a case is not made out against the accused person sufficiently to require him to make a defence, the court shall, as to that particular charge, either acquit or discharge him as the court shall deem fit. Acquittal or discharge of accused person when no case to answer.

164. (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 call upon him to enter into his defence and shall inform him that, if he so desires, he may give evidence himself on oath or may make a statement. The court shall then hear the accused if he desires to be heard and any evidence he may adduce in his defence. The defence.

(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. Adjournment for defence to call witnesses.

(3) If the accused person shall have examined any witnesses or given any evidence other than as to his character, the court may grant leave to the prosecutor to give or adduce evidence in reply. Evidence in rebuttal.

165. (1) The prosecutor or his advocate shall be entitled to address the court at the commencement of his case and the accused person or his advocate shall be entitled to address the court at the commencement or in conclusion of his case as he thinks fit. Addresses to the court.

(2) Except with the leave of the court, the prosecutor or his advocate shall not in any case be allowed to address the court after the close of the accused's case, nor shall the accused person or his advocate without such leave as aforesaid be entitled to address the court on evidence adduced by the prosecutor in reply.

166. (1) Any variance between facts stated in a summons, complaint or charge sheet and the evidence adduced in support thereof as to the time or place at which the offence or act shall be alleged to have been committed shall not be deemed material if it be proved, in the case of the time, that the complaint or charge sheet was in fact laid within the time limited by law for laying the same and, in the case of the place, that the jurisdiction of the court is not ousted thereby. Variance between charge and evidence.

- (2) Any variation in any other respect between the facts stated in a summons, complaint or charge sheet and the evidence adduced in support thereof shall not be material:

Provided that no accused person shall be convicted of any offence other than that with which he has been charged unless such other offence is one of which he may be lawfully convicted under the provisions of this Code or any other law for the time being in force upon the trial of the offence with which he is charged.

(3) Where any variance as is mentioned in this section shall appear to the court to be such that the accused person has been thereby deceived or misled, it shall be lawful for such court, upon such terms as it shall think fit, to adjourn the hearing of the case to some future day.

(4) Upon any variance such as in this section mentioned appearing, the court may make such amendment of the summons, complaint or charge sheet as it deems fit and may permit any witness to be recalled and further questioned upon any matters relevant to the variance or amended charge.

The
decision.

167. The court, having heard what each party shall have to say as aforesaid and the witnesses and evidence so adduced, shall consider the whole matter and determine the same and shall either convict the accused and pass sentence upon or make an order against him according to law or shall acquit him as the case may be. The court may, if it thinks fit, receive evidence to inform itself as to the sentence proper to be passed and in the event of the court convicting or making an order against an accused person in respect of which an appeal lies to the Supreme Court under the provisions of Part IX, the court shall inform such person of his right to appeal at the time of entering the conviction or making the order.

Drawing up
of conviction
or order.

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

Order of
acquittal bar
to further
procedure.

169. Subject to the other provisions of this Code, the production of a copy of the order of acquittal, certified by the clerk or other officer of the court, shall without other proof be a bar to any subsequent charge for the same matter against the same accused person, unless it is proved that the clerk or officer purporting to certify the same did not in fact certify it.

LIMITATIONS AND EXCEPTIONS RELATING TO TRIALS BEFORE SUBORDINATE COURTS.

Limitation
of time for
summary
trials in
certain cases.

170. 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.

171. (1) If an adult is charged before a subordinate court in Bathurst with an offence punishable by imprisonment of more than three years and such offence is one which such court has power under this Code to try summarily, the court shall address to the accused a question to the following effect, "Do you desire to be tried by a jury or do you consent to the case being dealt with summarily?"; if the accused consents to be dealt with summarily the court shall record his answer and shall forthwith proceed to try him. If the accused does not consent to be tried summarily the court shall follow the procedure hereinafter directed in relation to preliminary inquiries as to offences triable by the Supreme Court.

Consent of accused to be tried summarily in certain cases.

(2) If, in the course of a trial before a subordinate court, it appears to the magistrate at any stage of the proceedings before the signing of judgment that the case is one which ought to be tried by the Supreme Court, the magistrate shall stop the proceedings as a trial and shall proceed with the hearing of the case as a preliminary inquiry in accordance with the provisions of Part VI in the following manner:—

Procedure in case of offence proving unsuitable for summary trial.

- (a) the magistrate shall expunge from the record the accused's answer to the charge; and
- (b) if the accused person had already been called upon to enter into his defence, the magistrate shall expunge the minutes of the defence from the record and shall recall all the prosecution witnesses for compliance with section 175 and thereafter shall follow the procedure for an inquiry as from the close of the prosecution case; or
- (c) if the defence had not been entered upon, the witnesses already examined shall be recalled for the purpose of compliance with the provisions of section 175 and thereafter the matter shall proceed as an inquiry.

(3) In determining whether a case is suitable for summary trial the magistrate shall take into consideration any representation made in the presence of the accused by or on behalf of the prosecutor, any circumstances which render the offence of a grave or serious character, all other circumstances of the case (including the adequacy of the punishment the court has power to inflict), and, if the court has already determined upon the evidence that the accused ought to be convicted, but not otherwise, the character and antecedents of the accused.

Determination of unsuitability.

(4) A subordinate court shall not deal summarily with any case where the prosecution is being carried on by the Legal Adviser without his consent.

Public prosecutions.

(5) In this section the expression "adult" means a person who is, in the opinion of the court before which he is charged, of the age of sixteen years or upwards.

PART VI.—Provisions relating to the Committal of Accused Persons for Trial before the Supreme Court.

PRELIMINARY INQUIRY BY SUBORDINATE COURTS.

172. A subordinate court of the first or second class may commit any person for trial to the Supreme Court.

Power to commit for trial.

- Court to hold preliminary inquiry.** **173.** 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.
- Accused person to be informed of charge.** **174.** A magistrate conducting a preliminary inquiry shall at the commencement of such inquiry read over to the accused person the charge or charges set out in the complaint or charge sheet in respect of which the inquiry is being held but upon such reading over the accused person shall not be required to make any reply thereto; if any such reply is made it shall not be recorded by the magistrate.
- Depositions.** **175.** (1) The court shall, in the presence of the accused, 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.
- Application of sections 159 and 166.** **176.** The provisions of sections 159 and 166 shall apply to any proceedings under this Part.
- Charge to be read to accused after close of prosecution case.** **177.** 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 180, 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.
- Provisions as to taking statement of accused person.** **178.** (1) The magistrate shall then address to the accused 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.

179. (1) Immediately after complying with the requirements of section 178 relating to the statement of the accused, and whether the accused has or has not made a statement, the court shall ask the accused whether he desires to give evidence on his own behalf and whether he desires to call witnesses.

(2) If the accused in answer to the question states that he wishes to give evidence but not to call witnesses, the court shall proceed to take forthwith the evidence of the accused, and after the conclusion of the evidence of the accused, his advocate shall be heard on his behalf if he so desires.

(3) If the accused in answer to the question states that he desires to give evidence on his own behalf and to call witnesses, or to call witnesses only, the court shall proceed to take either forthwith, or, if a speech is to be made by an advocate on behalf of the accused, after the conclusion of that speech, the evidence of the accused, if he desires to give evidence himself, and of any witness called by him who knows anything relating to the facts and circumstances of the case or anything tending to prove the innocence of the accused.

(4) 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.

(5) Evidence given by the accused or any such witness as aforesaid under this sub-section shall be taken down in writing and the provision of sections 175 and 183 shall apply in the case of witnesses for the defence as they apply in the cases of witnesses for the prosecution, except that the court shall not bind over to attend the trial any witness who is a witness merely to the character of the accused.

(6) Where the accused elects to give evidence on oath, the court shall warn him that any such evidence may be given in evidence upon his trial and shall record that such warning was given before the accused was sworn or affirmed.

Discharge of
accused
person.

180. 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 in respect of which that accused person has been discharged as aforesaid, it may appear that the accused person has committed.

Commitment
for trial.

181. 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.

Summary
adjudication.

182. 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 V, hear and finally determine the matter:

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.

Witnesses
to be bound
over.

183. 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, every witness other than witnesses merely as to character 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 Legal Adviser.

Refusal to be
bound over.

184. If a person refuses to enter into such recognizance, the court may commit him to prison 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.

185. 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 two pence 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.

PRESERVATION OF TESTIMONY IN CERTAIN CASES.

186. 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. Taking the depositions of persons dangerously ill.

187. 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. Notices to be given.

188. If the statement relates to an offence for which any person is then or subsequently committed for trial, it shall be transmitted to the Clerk of Courts, and a copy thereof shall be transmitted to the Legal Adviser. Transmission of statements.

189. Upon the trial of any offender or offence to which such statement so taken may relate. if the person who made the statement shall be proved to be dead or if it shall be proved that there is no reasonable probability that such person will ever be able to travel or to give evidence. it shall be lawful to read such statement in evidence either for or against the accused person, without further proof thereof, if the same purports to be signed by the magistrate by or before whom it purports to be taken and provided that it be proved to the satisfaction of the court that reasonable notice of the intention to take such statement was served upon the person (whether prosecutor or accused) against whom it is proposed to be read in evidence and that such person or his advocate had or might have had if he had chosen to be present. full opportunity of cross-examining the person who made the same. Use of statement in evidence.

PROCEEDINGS AFTER COMMITTAL FOR TRIAL.

Transmission of records to Supreme Court and Legal Adviser. **190.** In the event of a committal for trial the complaint or charge sheet, the depositions, the statement of the accused person, the recognizances 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 Clerk of Courts, and an authenticated copy of the complaint or charge sheet, depositions, statement and documents aforesaid shall be also transmitted to the Legal Adviser.

Legal Adviser's power to direct re-opening of inquiry. **191.** (1) At any time after the receipt of the depositions and other documents mentioned in section 190 and before the information is filed, the Legal Adviser may, if he thinks fit, refer back the case to the court which committed the accused for trial with directions to re-open the inquiry for the purpose of making further investigation and taking further evidence, and with such other directions as he may think proper. If a case is referred back as herein provided, the inquiry shall be re-opened, and the case shall be dealt with in all respects as if the accused person had not been committed for trial.

Legal Adviser's power to direct the taking of further depositions. (2) After the receipt of the authenticated copy of the depositions and other documents mentioned in section 190 and before the trial before the Supreme Court, the Legal Adviser may, if he thinks fit, and without referring the whole case back in pursuance of sub-section (1) require the court which committed the accused or, if he is in prison, any other court having jurisdiction in the place where the accused then is, to take the deposition of any specified witnesses whom the Legal Adviser shall consider to be material or necessary witnesses for the prosecution or defence who have not already been bound over to give evidence at the trial. Any witness so examined shall be bound over to appear to give evidence at the trial in pursuance of section 183.

Method of signifying Legal Adviser's directions. **192.** Any directions given by the Legal Adviser under section 191 shall be in writing under his hand and shall be transmitted by him through the Clerk of Courts to the court to which they are addressed, and shall be complied with by such court:

Provided that the Legal Adviser may at any time add to, alter, or revoke any such directions.

Procedure on re-opening of inquiry. **193.** When a case which has been committed is remitted to a subordinate court by an order of the Supreme Court under the provisions of section 66 (1) (iv), or when the Legal Adviser directs that an inquiry shall be re-opened or that depositions of additional witnesses be taken, the following provisions shall have effect, that is to say:—

(a) Where the accused person is in custody, the court shall by an order in writing direct the superintendent of the prison having the custody of such accused person to convey him or cause him to be conveyed to the place named in such order for the purpose of being brought before such court;

- (b) Where the accused person is on bail, the court shall issue a summons for his attendance at a time and place named in such summons. If the accused person does not attend in obedience to such summons, the court shall issue a warrant for his apprehension;
- (c) Thereafter the proceedings shall be continued under the provisions of Part V or Part VI of this Code, as the case may be, and, if under the first mentioned Part in the same manner as if the court had itself formed an opinion in terms of section 182.

194. If, after the receipt of the authenticated copy of the depositions as aforesaid, the Legal Adviser 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 Legal Adviser shall be filed in the registry of the Supreme Court:

Provided that an information may be filed under the provisions of this section in respect of any offence founded on the facts disclosed in the depositions, although the accused person has not been committed for trial in respect of any such offence.

195. (1) The Judge shall fix a date for the trial of all persons committed for trial before the Supreme Court, and shall fix as early a date therefor as circumstances and the provisions of this Code allow.

(2) Notice of such date shall forthwith be given by the Clerk of Courts to the court which committed the accused for trial and such court shall cause notice of the date fixed for trial to be served upon or otherwise brought to the notice of all witnesses bound over by it to appear at the trial.

196. The Clerk of Courts 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 day on 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 ____ .”

197. The Clerk of Courts 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

five 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.

Return of
service.

198. The officer serving the copy or copies of the information and notice or notices of trial shall forthwith make to the Clerk of Courts a return of the mode of service thereof, and, if such is the case, shall certify that the nature and exigency of the information and notice or notices have been explained to the person on whom they have been served in a language which he understands.

Postpone-
ment of
trial.

199. 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 such day as it may think fit, and to respite the recognizances of the accused and witnesses, in which case the respited recognizances shall have the same force and effect as fresh recognizances to appear and give evidence at such subsequent sessions would have had.

RULES AS TO INFORMATIONS BY THE LEGAL ADVISER.

Informations
by Legal
Adviser.

200. All informations drawn up in pursuance of section 194 of this Code shall be in the name of and signed by the Legal Adviser, and when so signed shall be as valid and effectual in all respects as an indictment presented by a Grand Jury in England.

Form of
information.

201. 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:—

IN THE SUPREME COURT OF THE COLONY OF THE GAMBIA AT

The day of , 19 .

The Court is informed by the Legal Adviser on behalf of our Lord the King that A.B. is charged with the following offence (or offences).

General pro-
visions as to
informations

202. 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.

- (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 circumstance in each case.
- (vi) Where an information contains more than one count, the counts shall be numbered consecutively.
- (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. Provision as to statutory offences.

- (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 persons. (5) 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. (6) 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. (7) 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. (8) 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. (9) 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 Judge of the Supreme Court. **203.** The Judge of the Supreme Court may, with the approval of the Legislative 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 VII.—Procedure in Trials before the Supreme Court.

ARRAIGNMENT.

- Pleading to information. **204.** 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 Clerk of Courts, 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.

205. 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. Objections to information to be taken at once.

206. (1) Where, before a trial upon information or at any stage of such trial, it appears to the court that the information is defective, or that an order should be made under section 115 for a separate trial, 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. Orders for amendment of information, separate trial, and postponement of trial.

(2) 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 proceedings in connection therewith as having been filed in the amended form.

(3) 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.

(4) 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 the court may order that the jury are to be discharged from giving a verdict 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 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.

(5) 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 an information.

207. An information shall be quashed either on a motion made before the accused pleads or on a motion made in arrest of judgment, on any of the grounds upon which an indictment would be quashed according to the law in force in England at the date of coming into operation of this Code.

A written statement of every such motion shall be delivered to the Clerk of Courts by or on behalf of the accused and shall be entered upon the record.

Procedure where accused is charged in information with previous conviction.

208. Where an information contains a count charging a person with an offence and a further count that he is by reason of a previous conviction liable to enhanced punishment or to punishment of a different kind for such subsequent offence, the procedure shall be as follows, namely:—

- (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 shall then hear evidence concerning such previous conviction and shall record a finding on the count which charges it; in such case 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 shall inquire concerning such previous conviction or convictions at the same time that they inquire concerning such subsequent offence.

Plea of "not guilty."

209. 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.

210. 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.

211. 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 Clerk of Courts or other officer of the court to enter a plea of "not guilty" on behalf of such accused person, and the plea so entered shall have the same force and effect as if such accused person had actually pleaded the same; or else the court shall thereupon proceed to try whether the accused person be of sound or unsound mind, and, if he shall be found of sound mind, shall proceed with the trial, and if he shall be found of unsound mind, and consequently incapable of making his defence, shall proceed in the manner provided by section 130.

212. (1) If the accused pleads "guilty" the plea shall be recorded and he may be convicted thereon.

(2) Where an accused person is arraigned on an information for any offence and can lawfully be convicted on such information of some other offence not charged in such information, he may plead "not guilty" of the offence charged in the information but "guilty" of such other offence and upon such plea of guilty the court may, with the consent of the Legal Adviser, acquit the accused of the offence with which he is charged and convict him of the other offence to which he pleads guilty.

213. If the accused pleads "not guilty," or if a plea of "not guilty" is entered in accordance with the provisions of section 211, the court shall proceed to choose jurors as hereinafter directed, and to try the case:

Provided that, subject to the right of objection hereinafter mentioned, the same jury may try as many accused persons successively as the court thinks fit.

214. If, from the absence of witnesses or any other reasonable cause to be recorded in the proceedings, the court considers it necessary or advisable to postpone the commencement of or to adjourn any trial, the court may from time to time postpone or adjourn the same on such terms as it thinks fit for such time as it considers reasonable, and may by warrant remand the accused to some prison or other place of security.

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

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

TRIAL BY JURY.

Choosing
the jury.

215. 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 Clerk of Courts 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:

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.

Deficiency
of jurors.

216. 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.

Warning
accused to
challenge.

217. 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."

Peremptory
challenges

218. 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 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.

219. Challenges for causes 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.

220. Every challenge for cause, if objected to by the opposite party, shall be tried and determined by the court without a ^{Trial of} jury, and the person challenged shall be examined on oath, ^{challenges} and shall be required to answer on oath all lawful questions ^{for cause} relating to the trial of the challenge.

221. (1) When the jurors have been chosen they shall be ^{Appointment} sworn. ^{of foreman.}

(2) When the jurors have been sworn they shall appoint one of their number to be foreman.

(3) If a majority of the jury do not agree in the appointment of a foreman within such time as to the court seems reasonable, he shall be appointed by the court.

222. The foreman shall preside at the meetings of the jury ^{Duty of} for consideration and ask any information from the court that ^{foreman.} is required by the jury or any of the jurors.

223. The jury having been sworn to give a true verdict ^{Giving the} according to the evidence upon the issues to be tried by them, ^{accused in} the proper officer of the court shall inform them of the charge set ^{charge.} forth in the information, and of their duty as jurors upon the trial.

224. If in the course of a trial by jury, at any time before ^{Illness of} the delivery of the verdict, any juror dies or is discharged by ^{juror.} the court as being through illness incapable of continuing to act or for any other reason, the jury shall nevertheless, so long as the number of its members is not reduced by more than one, be considered as remaining for all the purposes of that trial properly constituted, and the trial shall proceed and a verdict may be given accordingly.

225. If during a trial the accused person in the opinion ^{Illness of} of the court becomes incapable, through sickness or other sufficient ^{accused.} cause, of remaining at the bar, the court may discharge the jury and adjourn the trial.

226. (1) It shall not be necessary in any case to keep the ^{Keeping} jury together during any adjournment prior to the close of ^{jury} the Judge's summing up; but it shall be lawful for the court, ^{together.} 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.

227. 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.

CASE FOR THE PROSECUTION.

Opening of case for prosecution.

228. When the jurors 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.

229. 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:

Provided that where in pursuance of section 129 a medical practitioner's or analyst's report has been tendered as evidence at the preliminary inquiry it shall not be necessary for the prosecution to give notice to the accused of its intention to call the writer of the report as a witness.

Cross-examination of witnesses for the prosecution.

230. 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.

231. 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 of a witness for the defence as to the character only of the accused 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 who cannot be found or who is 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 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.

232. The statement or evidence on oath (if any) of the accused person duly recorded by or before the committing court and whether signed by the accused or not, may be given in evidence without further proof thereof by the prosecution unless it is proved that the magistrate purporting to sign it did not in fact sign it. Where the prosecution does not put in such statement or evidence, the Judge, on the application of the defence, may order the statement or evidence to be read at the conclusion of the prosecution evidence as part of the prosecution case. Proof of statement of accused in lower court.

233. It shall be lawful for the Judge to consider at the conclusion of the case for the prosecution whether there is any case for submission to the jury and if the Judge shall be of opinion that there is no evidence that the accused has committed any offence of which he could be lawfully convicted on the information upon which he is being tried the Judge shall forthwith direct the jury to enter a verdict of not guilty and shall acquit the accused. At conclusion of prosecution case, Judge may consider if there is a case to answer.

CASE FOR THE DEFENCE.

234. At the conclusion of the evidence for the prosecution and after the statement or evidence on oath (if any) of the accused person before the committing court has been given in evidence the court shall in cases where the accused person is not defended by an advocate inform him of his right to address the court, to give evidence on his own behalf or to make an unsworn statement and to call witnesses in his defence and in all cases shall require him or his advocate to state whether it is intended to call any witnesses as to fact other than the accused person himself. Upon being informed thereof the Judge shall record the same and shall then observe the appropriate procedure set out in the following section. At close of prosecution case, Judge to inform undefended accused of his rights.

235. (1) Where the accused person is not defended by an advocate and states that he does not intend to call any witness as to the facts except himself, the court shall forthwith call upon Procedure to be followed where accused is undefended.

the accused person to make his statement or give evidence on oath as to the facts and after his cross-examination (if any), he shall be permitted to address the court if he so desires and to call any witnesses as to character.

(2) Where the accused person is not defended by advocate but states that he intends to call witnesses (other than himself) as to the facts, the court shall call upon him to open his case if he so desires. The accused shall then make his own unsworn statement or give his evidence on oath, and thereafter he shall call his witnesses (including witnesses as to character). At the conclusion of the evidence for the defence the accused shall be permitted to sum up his case to the court and the advocate for the prosecution shall be entitled to reply.

Where
accused is
defended.

(3) Where the accused is defended by an advocate who states that no witness as to the facts will be called except the accused, the court shall require the accused to make his unsworn statement or give his evidence, as the case may be. Thereafter the advocate for the prosecution may address the court and the advocate for the defence may reply and shall then call his witnesses (if any) as to the character of the accused.

(4) Where the accused is defended by an advocate who states that he intends to call witnesses as to the facts other than the accused person, the court shall call upon the accused's advocate to open his case and shall then require the accused, if he so desires, to make his own unsworn statement or give his evidence on oath, as the case may be, and thereafter to call his witnesses (including witnesses as to character). At the conclusion of the evidence for the defence, the advocate for the accused may address the court and the advocate for the prosecution may reply.

(5) In any case where two or more accused are jointly tried and some accused are defended by counsel and others are not, the court shall for the purposes of procedure deem all the accused to be defended by counsel.

Crown right
of reply.

(6) Notwithstanding anything in this section contained, the Legal Adviser when appearing personally for the prosecution shall in all cases have the right of reply.

Additional
witnesses for
the defence.

236. The accused person shall be allowed to examine any witness not previously bound over to give evidence under the provisions of section 183, and shall, if he apprehends that any such witness will not attend the trial voluntarily, be entitled to apply for the issue of process to compel such witness's attendance :

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

Evidence by
prosecution
in rebuttal.

237. Notwithstanding anything contained in section 235, at the close of the evidence for the defence, or, where it is sought

to rebut evidence of good character, after such evidence of good character has been given, the court may, in its discretion, on the application of the advocate for prosecution, grant him leave to call evidence to disprove any new facts set up by the defence. Where such evidence in rebuttal is given, the advocate for the defence shall be entitled to comment on the evidence so given.

CLOSE OF HEARING.

238. When, in a trial before a jury, the case on both sides is closed, the Judge shall sum up the law and evidence in the case. Summing up
by Judge.

239. (1) It is the duty of the Judge—

Duty of
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.

240. It is the duty of the jury—

Duty of 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. **241.** 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. **242.** 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. **243.** 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. **244.** (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. **245.** 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. **246.** (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:
 Provided that—
 (a) a verdict of a majority of two-thirds of a jury shall be held, taken to be, and received by the Court as the verdict of the whole jury; and
 (b) in all cases of murder, or where the jury shall consist of any number of persons less than twelve, the verdict of such jury shall be unanimous.
- Court may take verdict of two-thirds. **247.** 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.
- Retrial of accused after discharge of jury.

PASSING SENTENCE.

248. If the jury find the accused person guilty, or if the accused person pleads guilty, it shall be the duty of the Clerk of Courts or other officer of the court to ask him whether he has anything to say why sentence should not be passed upon him according to law, but the omission so to ask him shall have no effect on the validity of the proceedings. Calling upon the accused.

249. (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. Motion in arrest of judgment.

(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, but such discharge shall not operate as a bar to any subsequent proceedings against him on the same facts.

250. 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. Sentence.

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

252. 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. Objections cured by verdict.

253. 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, and, in case of a plea of guilty, the court may refer to the depositions. Evidence for arriving at a proper sentence.

PART VIII.—Sentences and their Execution.**SENTENCE OF DEATH.**

- 254.** When any person is sentenced to death, the sentence shall direct that he shall be hanged by the neck till he is dead.
- 255.** 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.
- 256.** A certificate under the hand of the Clerk of Courts 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.
- 257.** (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 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 Judge, or his successor in office, the terms of any decision to which he may come thereon, and the Judge, or his successor in office, 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 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 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.
- (5) The Governor-in-Council may from time to time make and, when made, alter or revoke rules to be observed on the

Sentence of death.

Accused to be informed of right to appeal.

Authority for detention.

Record and report to be sent to Governor.

Governor-in-Council may make rules.

execution of judgment of death as he may from time to time deem expedient for the purpose, as well of guarding against any abuse in such execution as also of giving greater solemnity thereto, and of making known without the prison walls that such execution is taking or has taken place.

258. (1) Where a woman is convicted of an offence punishable with death, the question whether the woman is pregnant or not shall be determined by the court or jury (if the trial has been by jury) upon such evidence as may be laid before it either on the part of the woman or on the part of the Crown, and the court or jury shall find that the woman is not pregnant unless it is proved affirmatively to the satisfaction of the court or jury that she is pregnant. Inquiry into pregnancy of woman convicted of offence punishable with death.

(2) Where on proceedings under this section a verdict is found that the woman is not pregnant, and in consequence she is sentenced to death, the woman may appeal to the Court of Appeal for West Africa and that Court, if satisfied that the finding should be set aside, shall quash the sentence passed on her and instead thereof pass the sentence of imprisonment prescribed by section 28 (3) of the Criminal Code.

(3) The rights conferred by this section on a woman convicted of an offence punishable with death shall be in substitution for the right to allege in stay of execution that she is quick with child and the last-mentioned right shall cease as from the commencement of this Code.

OTHER SENTENCES.

259. Where a person is sentenced to a term of imprisonment, the court which sentenced him shall issue a warrant of commitment ordering that the sentence shall be carried out in any prison within the Colony, and such warrant shall be full authority to the police and prison officers to take, convey and keep such person and to all other persons for carrying into effect the sentence described in such warrant. The warrant shall be under the seal of the court and shall be signed either by the Judge or magistrate who imposed the sentence or by his successor in office. Subject to the provisions of any law to the contrary, a sentence of imprisonment shall be deemed to commence from and to include the whole of the day of the date on which it is pronounced. When the accused person is confined in a prison in pursuance of the warrant, the superintendent in charge of the prison shall have the custody of the warrant and upon the release of the prisoner, the superintendent shall indorse the date of his release on the warrant and shall return the warrant to the court which issued it. Warrants to be issued in respect of sentences of imprisonment.

260. Where a court adjudges money to be paid by an accused person, for fine, penalty, compensation, costs or otherwise, and the person is then and there before the court, the court may order him to be searched and any money found on him on apprehension or when so searched or which may be found on him when taken to prison in default of payment of the sum so adjudged to be paid, may, unless the court otherwise directs, be Persons sentenced to fine may be searched for money to pay fine.

applied towards the payment of the sum so adjudged to be paid, and the surplus, if any, shall be returned to him:

Provided that the money shall not be so applied if the court is satisfied that the money does not belong to the person on whom it was found, or that the loss of the money will be more injurious to his family than his imprisonment.

Levy of fine
etc., by
distress.

261. (1) Whenever a person has been ordered to pay any sum by way of fine, costs, compensation or otherwise, the court making the order may, subject to the provisions of section 264 and in addition to any other powers conferred by section 262 or otherwise, take action to recover such sum by levying the same on the movable and immovable property of the person ordered to pay the same by distress and sale under a distress warrant.

(2) The wearing apparel and bedding of a person and his family, and, to the value of five pounds, the tools and implements of his trade, shall not be taken under a distress issued under this section. If there is sufficient movable property available to satisfy the warrant, no immovable property shall be sold.

(3) Where a person pays or tenders to the person charged with the execution of a warrant of distress the sum mentioned in such warrant, or produces the receipt for the same of the court issuing the warrant, and also pays the amount of the costs and charges of such distress up to the time of such payment or tender, the warrant shall not be executed.

(4) No warrant shall be issued or executed if the person ordered to pay the fine, costs, compensation or other penalty, shall have undergone the whole of the imprisonment ordered to be suffered in default of payment.

(5) 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 within the local limits of whose jurisdiction such property was found.

Suspension
of execution
of sentence of
imprisonment
in default of
fine, etc., and
provision for
payment by
instalments.

262. (1) When a person has been ordered only to pay a sum of money by way of fine, costs, compensation or otherwise and is sentenced to imprisonment in default of payment of the sum, and such sum is not paid forthwith, the court may—

(a) order that the sum shall be payable either in full on or before a date not more than thirty days from the date of the order, or in two or three instalments, of which the first shall be payable on or before a date not more than thirty days from the date of the order and the other or others at an interval or at intervals, as the case may be, of not more than thirty days and

(b) suspend the execution of the sentence of imprisonment and release the offender, on the execution by the offender of a recognizance, with or without sureties, as the court thinks fit, conditioned for his appearance before the court on the date or dates on or before which payment of the sum or the instalments thereof, as the case may be, is to be made; and if the amount of the sum or of any instalment as the case may be, is not realised on or before the latest date on which it is payable under the order, the court may direct the sentence of imprisonment to be carried into execution at once.

(2) If the person against whom the order has been made, on being required to enter into a recognizance such as is referred to in sub-section (1), fails to do so, the court may at once pass sentence of imprisonment.

263. 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, subject to such delay as may be necessary having regard to the nature of any order made under section 262, 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 and commitment to be specified in the warrant, are sooner paid. Commitment
for want of
distress.

264. 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 to be specified in the warrant, are sooner paid. Commitment
in lieu of
distress

265. When any person has been committed in default of payment, the sum mentioned in the warrant may be paid, 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. Payment in
full after
commitment.

266. (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. Part
payment
after
commitment.

(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.

267. 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.

PROBATION, ETC., OF OFFENDERS.

Power to
admonish
and release.

268. In any case in which a person is charged with an offence under section 250, 256, 259, 268, 286 or 288 of the Criminal Code or any offence punishable with not more than two years' imprisonment and the court is of the opinion that the charge is proved it may, if the person has not been previously convicted of any offence and if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances in which the offence was committed, instead of convicting him, admonish him and order his release.

Power to
release upon
probation
instead of
sentencing to
punishment.

269. (1) Where any person is charged with an offence not punishable with death and it appears to the court that the charge is proved but that having regard to the age, character, antecedents or physical or mental condition of the offender, and to the circumstances in which the offence was committed or to the trivial nature of the offence, it is expedient that the offender should be released on probation, the court may, instead of convicting and sentencing him at once to any punishment, order that he be released on his entering into a recognizance, with or without sureties, to appear for conviction and sentence when called upon during such period (not exceeding three years) as the court may direct, and in the meantime to keep the peace and be of good behaviour.

(2) The court may, when it makes an order under this section, further order that the offender shall pay costs of the proceedings in the same manner as if a conviction were had against the offender.

(3) A recognizance ordered to be entered into under this section shall, if the court so order, contain a condition that the offender be under the supervision of such person as may be named in the order during the period specified in the order, and such other conditions for securing such supervision as may be specified in the order, and an order requiring the insertion of such conditions as aforesaid in the recognizance is in this section referred to as a probation order.

(4) A recognizance under this section may contain such additional conditions with respect to residence, abstention from intoxicating liquor, and any other matters, as the court may,

having regard to the particular circumstances of the case, consider necessary for preventing a repetition of the same offence or the commission of other offences.

(5) The court by which a probation order is made shall furnish to the offender a notice in writing stating in simple terms the conditions he is required to observe, or if the offender is illiterate shall carefully explain such conditions to him.

270. (1) In every case where a person in respect of whom an order has been made by a subordinate court under section 268 or 269 did not plead guilty or admit the truth of the charge, he shall have a right to appeal against the order on the ground that he was not guilty of the offence charged, in the same manner as if he had been convicted of the offence. Orders under Sections 268 and 269 to be appealable, etc.

On any such appeal the court shall allow the appeal if it thinks that the appellant was not guilty of the offence charged, and in any other case shall dismiss the appeal.

(2) Any order under section 268 or 269 may be made by the Supreme Court when exercising its power of appeal or review.

(3) Where an order is made under section 268 or 269 the order shall for the purpose of re-vesting or restoring stolen property and of enabling the court to make orders as to the restitution or delivery of property to the owner and as to the payment of money upon or in connexion with such restitution or delivery have the like effect as a conviction.

271. (1) If the court before which an offender is bound by his recognizance under section 269 to appear for conviction or sentence or any subordinate court, is informed on oath that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension, or may, if it thinks fit, instead of issuing a warrant in the first instance, issue a summons to the offender and his sureties (if any) requiring him or them to attend at such court and at such time as may be specified in the summons. Provisions in case of offender failing to observe conditions of his recognizance.

(2) The offender, when apprehended, shall, if not brought forthwith before the court before which he is bound by his recognizance to appear for conviction or sentence, be brought before the subordinate court which issued the warrant without delay.

(3) The court before which an offender on apprehension is brought, or before which he appears in pursuance of such summons as aforesaid, may, if it is not the court before which he is bound by his recognizance to appear for conviction or sentence, remand him to custody or on bail until he can be brought before the last-mentioned court.

(4) Where an offender is so remanded to custody or on bail by a subordinate court, that court shall transmit to the court before which the offender is bound to appear under his recogniz-

ance a certificate signed by the magistrate stating that the offender has failed to observe the conditions of the recognizance, together with such particulars of the circumstances of the case as the first-mentioned court may consider expedient, and for the purposes of proceedings in the court to which it is transmitted any such certificate purporting to be signed by a magistrate shall be admissible as evidence that the offender has so failed.

(5) A court before which a person is bound by his recognizance to appear for conviction and sentence, on being satisfied that he has failed to observe any condition of his recognizance, may forthwith, without further proof of his guilt, convict and sentence him for the original offence.

(6) The court before which an offender is brought or appears for failing to observe the conditions of his recognizance may, instead of sentencing him for the original offence under subsection (5) or remanding him to custody or on bail under subsection (3), as the case may be, and without prejudice to the continuance in force of the recognizance, impose on him in respect of such failure a penalty not exceeding ten pounds.

DEFECTS IN ORDER OR WARRANT.

Errors and omissions in orders and warrants.

272. The court may at any time amend any defect in substance or in form in any order or warrant issued for the purpose of or in connection with the carrying out of any such order, and no omission or error as to the time and place, or defect in form in any order or such warrant, 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 IX.—Appeals.

APPEALS FROM SUBORDINATE COURTS.

Appeal to Supreme Court.

273. (1) Save as hereinafter provided, any person convicted on a trial held by any subordinate court may appeal to the Supreme Court.

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

No appeal on plea of guilty.

274. 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.

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 unless such sentence in default is an unlawful one.

275. Every appeal shall be entered within thirty days Limitation. of the date of the order or sentence appealed against.

276. Every appeal shall be made in the form of a petition Petition of in writing presented by the appellant or his advocate, and every appeal. such petition shall (unless the Supreme Court otherwise directs) be accompanied by a copy of the judgment or order appealed against.

277. If the appellant is in prison, he may present his Appellant in petition of appeal and the copies accompanying the same to the prison. officer in charge of the prison, who shall thereupon forward such petition to the Clerk of Courts.

278. (1) On receiving the petition and copy under section Summary 276 the Supreme Court shall peruse the same, and if it considers dismissal that there is no sufficient ground for interfering, it may dismiss of appeal. the appeal summarily:

Provided that no appeal shall be dismissed unless the appellant 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.

279. If the Supreme Court does not dismiss the appeal Notice of summarily, it shall cause notice to be given to the appellant or his time and advocate, and to the Legal Adviser, of the time and place at place of which such appeal shall be heard, and shall furnish the Legal hearing. Adviser with a copy of the proceedings and of the grounds of appeal.

280. (1) The Supreme Court shall then send for the record Powers of of the case, if such record is not already in court. After perusing Supreme such record and hearing the appellant or his advocate, if he Court. appears, and the Legal Adviser, 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
Supreme
Court to be
certified to
lower court

281. (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.

282. (1) After the filing of a petition of appeal by any person entitled to appeal, and pending the hearing of the same, 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 be in confinement, that he be released on bail or on his own recognizance.

(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.

283. (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. ^{Further evidence.}

(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.

284. Every appeal from a subordinate court (except an appeal from a sentence of fine) shall finally abate on the death of the appellants. ^{Abatement of appeals.}

285. 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 West Africa on a matter of law (including severity of sentence) but not on a matter of fact. ^{Appeals to Court of Appeal for West Africa.}

REVIEW.

286. (1) At the end of every month, or at such interval as the Judge of the Supreme Court shall direct, every subordinate court shall forward to the Judge of the Supreme Court, or in his absence, the Legal Adviser, on such form as the Judge may prescribe, a complete list of all criminal proceedings decided by or brought before such court, or before Native Tribunals within the area of jurisdiction of such court during such period, setting out the name of the defendant, the offence with which he was charged, and, if convicted, the date of conviction, and the sentence or order in full. ^{Review of criminal proceedings.}

(2) Notwithstanding the foregoing every subordinate court imposing a sentence of more than three months' imprisonment or a fine of more than twenty pounds shall transmit forthwith to the Judge or in his absence the Legal Adviser a copy of the record.

287. Every list and copy of the record so transmitted shall operate as an appeal on behalf of every convicted person whose name is included therein, and the Judge or Legal Adviser without hearing argument may— ^{Powers on review.}

- (a) amend any judgment which shall have been given contrary to law; or
- (b) set such judgment aside and order an entry to be made in the minutes of the court pronouncing the same that,

in his judgment, the person ought not to have been convicted; or

- (c) subject to any enactment fixing a minimum punishment reduce the amount of any fine, penalty or term of imprisonment which shall appear to him to be excessive although it may not be contrary to law; or
- (d) order further particulars to be given by the subordinate court and pending delivery of such particulars order any person who has been imprisoned to be liberated on bail, or on his own recognizance; or
- (e) make such other order as justice may require; and give all necessary and proper consequential directions for the release of any person imprisoned or the repayment of any fine or other money paid by any person.

Powers not to be exercised when case stated or appeal entered.

288. Where a person convicted before a subordinate court has appealed or has applied for a case to be stated and such application has been granted, the Judge or Legal Adviser shall not exercise the powers conferred on them by the last preceding section.

CASE STATED.

Case stated by subordinate court.

289. After the hearing and determination by any subordinate court of any summons, charge 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.

290. 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 Legal Adviser

291. 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 it by or under the direction of the Legal Adviser, who may require a case to be stated with reference to proceedings to which he was not a party.

292. 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.

293. 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.

294. 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.

295. 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 shall have the same authority to enforce any conviction or order, which may have been affirmed, amended or made by the Supreme Court, as such subordinate court 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. Contents of case stated.

296. No person who has appealed under section 273 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 273.

297. A case stated by a subordinate court shall set out—

- (a) the particulars contained in the charge, summons, complaint or charge sheet;
- (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 prosecutor 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 Legal Adviser may require to be submitted for the opinion of the Supreme Court.

Supreme Court may enlarge time.

298. The Supreme Court may, if it deems fit, enlarge any period of time prescribed by section 275, 289, 290 or 292.

PART X.—Supplementary Provisions.

IRREGULAR PROCEEDINGS.

Proceedings in wrong place.

299. 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.

300. 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 review on account—

- Finding or sentence when reversible by reason of error or omission in charge or other proceedings.
- (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
 - (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.

301. 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.

Distress not illegal nor distrainer a trespasser for defect or want of form in proceedings.

DIRECTIONS IN THE NATURE OF HABEAS CORPUS AND WRITS.

302. (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 or to be examined touching any matter pending before such court-martial or commissioners respectively;
 - (e) that any prisoner within such limits be removed from one custody to another for the purpose of trial; and
 - (f) that the body of a defendant within such limits be brought in on a return of *cepi corpus* to a writ of attachment.

(2) The Supreme Court may from time to time frame rules to regulate the procedure in cases under this section.

Power of the Supreme Court to issue writs. **303.** (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.

(2) The Supreme Court may from time to time frame rules to regulate the procedure in cases under this section.

MISCELLANEOUS.

Persons before whom affidavits may be sworn. **304.** Affidavits and affirmations to be used before the Supreme Court may be sworn and affirmed before the Judge of the Supreme Court or any magistrate or the Clerk of Courts or any justice of the peace or commissioner for oaths.

Shorthand notes of proceedings. **305.** 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.

Copies of proceedings. **306.** 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.

Forms **307.** 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.

REPEAL.

Repeal. **308.** Sections 18, 36, 37 and 38 and sections 53 to 64, both inclusive, and sections 67 and 68 of the Supreme Court Ordinance, 1889; sections 15 to 27, both inclusive, and sections 31 to 38, both inclusive, and Part (A) of the Schedule of the Bathurst Police Court Ordinance, 1916; The Capital Sentence and Punishment Ordinance, 1919; The Imperial Acts Adoption Ordinance, 1931; Sections 11 and 12 and Sections 14 to 17, both inclusive, and the proviso to Section 5 of the Subordinate Courts Ordinance, 1933, are hereby repealed.

FIRST SCHEDULE.

OFFENCES UNDER THE CRIMINAL CODE.

EXPLANATORY NOTE.—The entries in the second and fourth columns of this Schedule headed respectively "Offence" and "Punishment under the Criminal Code," are not intended as definitions of the offences and punishments described in the several corresponding sections of the Criminal Code or even as abstracts of those sections, but merely as references to the subjects of the section, the number of which is given in the first column.

CHAPTER V.—PARTIES TO OFFENCES.

1	2	3	4	5
Section.	Offence.	Whether the police may arrest without warrant or not.	Maximum punishment under the Criminal Code. (N.B.—Under section 29 (3) of the Criminal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. Vide also sections 31 (1) (ii) and 34 of the Criminal Code.)	Court (in addition to the Supreme Court) by which offence is triable.
23	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.
26 (2)	Being an accessory after the fact to a felony.	May arrest without warrant.	Imprisonment for two years.	Subordinate court of the first or second class.
(3)	Being an accessory after the fact to a misdemeanour.	Shall not arrest without warrant.	Imprisonment for one year.	ditto

DIVISION I.

OFFENCES AGAINST PUBLIC ORDER.

CHAPTER VII.—TREASON AND OTHER OFFENCES AGAINST THE SOVEREIGN'S AUTHORITY.

35	Treason	May arrest without warrant.	Death.
36	Instigating foreign invasion.	ditto	ditto
37	Misprision of treason.	ditto	Imprisonment for life.
38	Treasonable felony.	ditto	ditto
39	Promoting native war.	ditto	ditto
41	Inciting to mutiny.	ditto	ditto

FIRST SCHEDULE—*continued.*CHAPTER VII.—TREASON AND OTHER OFFENCES AGAINST THE SOVEREIGN'S AUTHORITY—*continued.*

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Maximum punishment under the Criminal Code. (N.B.—Under section 29 (3) of the Criminal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. Vide also sections 31 (1) (iii) and 34 of the Criminal Code.)	5 Court (in addition to the Supreme Court) by which offence triable.
42	Aiding in acts of mutiny.	Shall not arrest without warrant.	Imprisonment for two years.	Subordinate court of the first or second class.
43	Inducing desertion.	ditto	Imprisonment for six months.	ditto
44 (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.	
46	Seditious conspiracy libel and publication.	May arrest without warrant.	ditto	
46	Seditious conspiracy, libel and publication (after previous conviction).	ditto	Imprisonment for seven years.	
47	Possessing seditious publications.	ditto	Imprisonment for one year.	
55	Administering or taking oath to commit capital offence.	ditto	Imprisonment for life.	
56	Administering or taking other unlawful oaths.	ditto	Imprisonment for seven years.	
58 (1)	Unlawful drilling ...	ditto	ditto	
(2)	Being unlawfully drilled.	ditto	Imprisonment for two years.	

CHAPTER VIII.—OFFENCES AFFECTING RELATIONS WITH FOREIGN STATES AND EXTERNAL TRANQUILLITY.

59	Publishing false reports.	Shall not arrest without warrant.	Imprisonment for two years.	Subordinate court of the first class
60	Defamation of foreign princes.	ditto	ditto	ditto
61	Foreign enlistment.	ditto	ditto	ditto
62	Piracy	May arrest without warrant.	Punishment prescribed by law of England.	

FIRST SCHEDULE—*continued.*

CHAPTER IX.—UNLAWFUL ASSEMBLIES, RIOTS AND OTHER OFFENCES AGAINST PUBLIC TRANQUILITY.

1	2	3	4	5
Section	Offence.	Whether the police may arrest without warrant or not.	Maximum punishment under the Criminal Code. (N.B.—Under section 29 (3) of the Criminal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. <i>Vide</i> also sections 31 (1) (iii) and 34 of the Criminal Code).	Court (in addition to the Supreme Court) by which offence is triable.
64	Managing unlawful society.	May arrest without warrant.	Imprisonment for seven years.	
65	Being member of unlawful society.	ditto	Imprisonment for three years.	Subordinate court of the first class
70	Unlawful assembly.	ditto	Imprisonment for one year without hard labour.	ditto
71	Riot	ditto	Imprisonment for two years.	ditto
74	Rioting after proclamation.	ditto	Imprisonment for five years.	ditto
75	Obstructing proclamation.	ditto	Imprisonment for ten or five years.	ditto
76	Rioters destroying buildings.	ditto	Imprisonment for life.	
77	Rioters injuring buildings.	ditto	Imprisonment for seven years.	Subordinate court of the first class.
78	Riotously interfering with vehicle or vessel.	ditto	Imprisonment for two years.	ditto
79	Going armed in public.	ditto	ditto	ditto
80	Forcible entry ...	ditto	ditto	ditto
81	Forcible detainer ...	ditto	ditto	ditto
82	Committing affray ...	ditto	Imprisonment for one year.	Subordinate court of the first or second class.
83	Challenging to fight a duel.	Shall not arrest without warrant.	Imprisonment for two years.	ditto
84	Threatening violence.	May arrest without warrant.	Imprisonment for one year.	ditto
	If the offence committed in the night.	ditto	Imprisonment for two years.	ditto
85	Assembling for purpose of smuggling.	ditto	Fine of one hundred pounds or imprisonment for six months.	ditto

FIRST SCHEDULE—continued.

DIVISION II.

OFFENCES AGAINST THE ADMINISTRATION OF LAWFUL
AUTHORITY

CHAPTER X —CORRUPTION AND ABUSE OF OFFICE.

1	2	3	4	5
Section	Offence	Whether the police may arrest without warrant or not	Maximum punishment under the Criminal Code (N.B.—Under section 29 (3) of the Criminal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. Vide also sections 31 (1) (m) and 34 of the Criminal Code)	Court (in addition to the Supreme Court) by which offence is triable
86	Official corruption ...	Shall not arrest without warrant	Imprisonment for seven years.	
87	Extortion by public officers.	ditto	Imprisonment for three years.	
88	Receiving property to show favour.	Shall not arrest without warrant	Imprisonment for six months.	Subordinate court of the first class.
89	False claims by officials	ditto	Imprisonment for two years.	ditto
90	Abuse of office ...	ditto	ditto	ditto
90	Abuse of office. (If for purposes of gain)	ditto	Imprisonment for three years	ditto
91	False certificates by public officers	ditto	Imprisonment for two years.	ditto
92	False assumption of authority.	ditto	ditto	ditto
93	Personating public officers	May arrest without warrant	Imprisonment for three years.	ditto
94	Threat of injury to public servant.	Shall not arrest without warrant.	Imprisonment for two years.	ditto

CHAPTER XI —OFFENCES RELATING TO THE ADMINISTRATION OF JUSTICE

95	Perjury or subornation of perjury	Shall not arrest without warrant	Imprisonment for seven years	
97	Fabricating evidence	ditto	Imprisonment for two years	
98	False swearing ..	ditto	Imprisonment for two years.	Subordinate court of the first or second class.

FIRST SCHEDULE—continued.

CHAPTER XI.—OFFENCES RELATING TO THE ADMINISTRATION OF JUSTICE.
—continued.

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Maximum punishment under the Criminal Code. (N.B.—Under section 29 (3) of the Criminal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. Vide also sections 31 (1) (iii) and 34 of the Criminal Code.)	5 Court (in addition to the Supreme Court) by which offence is triable.
99	Deceiving witnesses.	Shall not arrest without warrant.	Imprisonment for two years.	Subordinate court of the first or second class.
100	Destroying evidence	ditto	ditto	ditto
101	Conspiracy to defeat justice and interference with witnesses.	ditto	ditto	
102	Compounding felonies	ditto	ditto	Subordinate court of the first or second class.
103	Compounding penal actions.	ditto	ditto	ditto
104	Advertisements for stolen property.	ditto	ditto	ditto
105 (1)	Contempt of court ...	May arrest without warrant.	Imprisonment for three months.	ditto
(2)	Contempt of court ...	ditto	Fine or in default imprisonment for one month.	Court in face of which contempt is committed.

CHAPTER XII.—RESCUES, ESCAPES, AND OBSTRUCTING OFFICERS OF COURTS OF LAW.

106 (a)	Rescue— 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.	
(b)	If person rescued is imprisoned on a charge or under sentence for any other offence;	ditto	Imprisonment seven years.	Subordinate court of the first class.
(c)	In any other case ...	ditto	Imprisonment two years.	Subordinate court of the first or second class.
107	Escape ...	ditto	ditto	ditto

FIRST SCHEDULE—*continued.*CHAPTER XII.—RESCUES, ESCAPES, AND OBSTRUCTING OFFICERS OF COURTS OF LAW—*continued.*

1	2	3	4	5
Section	Offence	Whether the police may arrest without warrant or not	Maximum punishment under the Criminal Code (<i>N.B.</i> —Under section 29 (3) of the Criminal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment <i>Vide</i> also sections 31 (1) (iii) and 34 of the Criminal Code)	Court (in addition to the Supreme Court) to which offence is triable
108	Aiding prisoners to escape.	May arrest without warrant	Imprisonment for two years.	Subordinate court of the first or second class
109	Removal, etc., of property under lawful seizure	ditto	Imprisonment for three years.	ditto
110	Obstructing court officers	ditto	Imprisonment for one year.	ditto

CHAPTER XIII.—MISCELLANEOUS OFFENCES AGAINST PUBLIC AUTHORITY.

111	Frauds and breaches of trust by public officers.	Shall not arrest without warrant.	Imprisonment for two years.	Subordinate court of the first class
112	Neglect of official duty.	ditto	ditto	ditto
113	False information to public servant.	May arrest without warrant	Imprisonment for six months or fine of £50.	ditto
114	Disobedience of statutory duty	Shall not arrest without warrant.	Imprisonment for two years.	ditto
115	Disobedience of lawful orders	ditto	ditto	ditto

DIVISION III.

OFFENCES INJURIOUS TO THE PUBLIC IN GENERAL.

CHAPTER XIV.—OFFENCES RELATING TO RELIGION.

116	In-sult to religion of any class.	May arrest without warrant.	Imprisonment for two years.	Subordinate court of the first or second class.
117	Disturbing religious assemblies.	ditto	ditto	ditto
118	Trespassing on burial places.	ditto	ditto	ditto
119	Uttering words with intent to wound religious feelings.	Shall not arrest without warrant.	Imprisonment for one year	ditto

FIRST SCHEDULE—continued.

CHAPTER XV.—OFFENCES AGAINST MORALITY.

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Maximum punishment under the Criminal Code. (N.B.—Under section 29 (3) of the Criminal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. Vide also sections 31 (1) (iii) and 34 of the Criminal Code.)	5 Court (in addition to the Supreme Court) by which offence is triable.
121	Rape	May arrest without warrant.	Imprisonment for life.	
122	Attempted rape ...	ditto	Imprisonment for seven years.	
123	Abduction	ditto	Imprisonment for seven years.	Subordinate court of the first class.
124	Abduction of girl under sixteen.	ditto	Imprisonment for two years.	ditto
125 (1)	Indecent assault on females.	ditto	Imprisonment for two years.	ditto
(3)	Indecently insulting or annoying females.	ditto	Imprisonment for one year.	ditto
126 (1)	Defilement of girl under sixteen.	ditto	Imprisonment for fourteen years.	
(2)	Attempted defilement of girl under sixteen.	ditto	Imprisonment for three years.	Subordinate court of the first class.
127	Defilement of an idiot or imbecile.	ditto	Imprisonment for two years.	
128	Procuration	ditto	Imprisonment for two years, with or without corporal punishment.	
129	Procuring defilement by threats or fraud or administering drugs.	ditto	Imprisonment for two years.	Subordinate court of the first class.
130	Householder permitting defilement of girl under thirteen on his premises.	ditto	Imprisonment for five years.	ditto

FIRST SCHEDULE—*continued.*CHAPTER XV.—OFFENCES AGAINST MORALITY—*continued.*

1 Section	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Maximum punishment under the Criminal Code. (N.B.—Under section 29 (3) of the Criminal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. <i>Vide</i> also sections 31 (1) (iii) and 34 of the Criminal Code.)	5 Court (in addition to the Supreme Court) by which offence is triable.
131	Householder permitting defilement of girl under sixteen on his premises.	May arrest without warrant.	Imprisonment for two years.	Subordinate court of the first class
132	Detention with intent or in brothel.	ditto	ditto	ditto
134	Male person living on earnings of prostitution or persistently soliciting.	ditto	ditto	ditto
135	Woman living on earnings of prostitution or aiding, etc., for gain, prostitution of another woman.	ditto	ditto	ditto
137	Keeping a brothel ...	ditto	ditto	ditto
138	Conspiracy to defile...	ditto	Imprisonment for three years.	ditto
139	Attempt to procure abortion.	ditto	Imprisonment for fourteen years.	ditto
140	Woman attempting to procure her own abortion.	ditto	Imprisonment for seven years.	ditto
141	Supplying drugs or instruments to procure abortion.	ditto	Imprisonment for three years.	ditto
143	Unnatural offences ...	ditto	Imprisonment for fourteen years.	ditto
144	Attempt to commit unnatural offence.	ditto	Imprisonment for seven years.	ditto
145	Indecent assault on boys under fourteen.	ditto	ditto	ditto

FIRST SCHEDULE—*continued.*CHAPTER XV.—OFFENCES AGAINST MORALITY—*continued.*

1	2	3	4	5
Section	Offence.	Whether the police may arrest without warrant or not.	Maximum punishment under the Criminal Code. (<i>N.B.</i> —Under section 29 (3) of the Criminal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. <i>Vide</i> also sections 31 (1) (iii) and 34 of the Criminal Code.)	Court (in addition to the Supreme Court) by which offence is triable.
146	Indecent practices between males.	May arrest without warrant.	Imprisonment for five years.	
147 (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.	
148	Incest by females ...	ditto	Imprisonment for five years.	

CHAPTER XVI.—OFFENCES RELATING TO MARRIAGE AND DOMESTIC OBLIGATIONS.

152	Fraudulent pretence of marriage.	May arrest without warrant.	Imprisonment for ten years.	
153	Bigamy	ditto	Imprisonment for five years.	
154	Dishonestly or fraudulently going through ceremony of marriage.	ditto	ditto	
155	Desertion of children.	Shall not arrest without warrant.	Imprisonment for two years.	Subordinate court of the first or second class.
156	Neglecting to provide food, etc., for children.	ditto	ditto	ditto
157	Master not providing for servants or apprentices.	ditto	ditto	ditto
158	Child stealing ...	May arrest without warrant.	Imprisonment for seven years.	Subordinate court of the first class.

FIRST SCHEDULE—continued.

CHAPTER XVII.—NUISANCES AND OFFENCES AGAINST HEALTH AND CONVENIENCE.

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Maximum punishment under the Criminal Code. (N.B.—Under section 29 (3) of the Criminal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. Vide also sections 31 (1) (iii) and 34 of the Criminal Code.)	5 Court (in addition to the Supreme Court) by which offence is triable
159	Committing common nuisance.	Shall not arrest without warrant.	Imprisonment for one year.	Subordinate court of the first or second class.
160 (3)	Keeping common gaming house.	ditto	Imprisonment for two years.	ditto
(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
161	Keeping or permitting the keeping of a common betting house.	ditto	Imprisonment for one year.	ditto
162 (2)	Carrying on a lottery	ditto	Imprisonment for two years.	ditto
(3)	Printing or publishing advertisement relating to a lottery.	ditto	Fine of fifty pounds	ditto
164	Trafficking in obscene publications.	May arrest without warrant.	Imprisonment for two years.	ditto
165	Being an idle or disorderly person.	ditto	Imprisonment for one month or a fine of two pounds, or both.	ditto
166	Being a rogue or vagabond.	ditto	Imprisonment for three months for first offence, and for each subsequent offence imprisonment for one year.	ditto

FIRST SCHEDULE—continued.

CHAPTER XVII.—NUISANCES AND OFFENCES AGAINST HEALTH AND CONVENIENCE—continued.

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Maximum punishment under the Criminal Code. (N.B.—Under section 29 (3) of the Criminal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. Vide also sections 31 (1) (iii) and 34 of the Criminal Code.)	5 Court (in addition to the Supreme Court) by which offence is triable.
167 (1)	Wearing uniform without authority.	May arrest without warrant.	Imprisonment for one month or a fine of ten pounds.	Subordinate court of the first or second class.
(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
168	Doing any act likely to spread infection of dangerous disease.	ditto	Imprisonment for two years.	ditto
169	Adulteration of food or drink intended for sale.	Shall not arrest without warrant.	ditto	ditto
170	Selling, or offering or exposing for sale, noxious food or drink.	ditto	ditto	ditto
171	Adulteration of drugs intended for sale.	ditto	ditto	ditto
172	Selling adulterated drugs.	ditto	ditto	ditto
173	Fouling water of public spring or reservoir.	May arrest without warrant.	ditto	Any magistrate.
174	Making the atmosphere noxious to health.	Shall not arrest without warrant.	ditto	ditto
175	Carrying on offensive trade.	ditto	Imprisonment for one year.	ditto

CHAPTER XVIII.—DEFAMATION.

176	Libel	Shall not arrest without warrant.	Imprisonment for two years.	Subordinate court of the first class.
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