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OF
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GOVERNMENT NOTICE NO 500

His Excellency the Acting Governor has approved of the following Bill being introduced at the next session of the Legislative Council

G R SANDFORD,
for Colonial Secretary

A BILL TO ESTABLISH A CODE OF CRIMINAL LAW.

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

PART I. GENERAL PROVISIONS

CHAPTER I

PRELIMINARY

Short title and commencement

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

Commencement of Code and its operation in lieu of the Indian Penal Code

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

Saving of certain laws

3 Nothing in this Code shall affect—

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

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

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

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

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

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

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

CHAPTER II *INTERPRETATION*

General rule of construction of Code

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

5 In this Code, unless the context otherwise requires—

Interpretation

“Colony” means the Colony and Protectorate of Kenya,

“court” means a court of competent jurisdiction,

“dangerous harm” means harm endangering life,

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

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

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

“harm” means any bodily hurt, disease or disorder whether permanent or temporary,

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

“knowingly” used in connection 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, membrane or sense,

“misdemeanour” means any offence which is not a felony,

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

“night” or “night-time” means the interval between half-past six o’clock in the evening and half-past six o’clock in the morning,

“oath” includes affirmation or declaration,

“offence” is an act, attempt or omission punishable by law,

“Ordinance” includes any orders or rules or regulations made under the authority of any Ordinance,

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

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

- (i) any civil office including the office of Governor, the power of appointing a person to which or of removing from which is vested in His Majesty or in the Governor or in the Governor in Council or in any public Commission or Board, or
- (ii) any office to which a person is appointed or nominated by Ordinance or Statute or by election, or
- (iii) any civil office, the power of appointing to which or removing from which is vested in any person or persons holding an office of any kind included in either of the two last preceding paragraphs of this section, or
- (iv) any office of arbitrator or umpire in any proceeding or matter submitted to arbitration by order or with the sanction of any court, or in pursuance of any Ordinance,

and the said term further includes—

- (i) a justice of the peace,
- (ii) a member of a commission of inquiry appointed under or in pursuance of any Ordinance,
- (iii) any person employed to execute any process of a court, including a native tribunal,
- (iv) all persons belonging to the military or police forces of the Colony,
- (v) all persons in the employment of any government department,
- (vi) a person acting as a minister of religion of whatsoever denomination in so far as he performs functions in respect of the notification of intending marriage or in respect of the solemnisation of marriage, or in respect of the making or keeping of any register or certificate of marriage, birth, baptism, death or burial, but not in any other respect,
- (vii) a person in the employ of a local authority,

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

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

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

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

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

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

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

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

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

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

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

CHAPTER III

TERRITORIAL APPLICATION OF THIS CODE

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

Extent of jurisdiction of Colonial courts

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

Offences committed partly within and partly beyond the jurisdiction

CHAPTER IV

GENERAL RULES AS TO CRIMINAL RESPONSIBILITY

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

Ignorance of law

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

Bona fide claim of right

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

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

Mistake of fact

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

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

Presumption of sanity

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

Insanity

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

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

Intoxication

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

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

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

Immature age

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

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

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

Judicial officers

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

Compulsion.

17 A person is not criminally responsible for an offence if it is committed by two or more offenders, and if the act is done or omitted only because during the whole of the time in which it is being done or omitted the person is

compelled to do or omit to do the act by threats on the part of the other offender or offenders instantly to kill him or do him grievous bodily harm if he refuses, but threats of future injury do not excuse any offence

18 An act or omission which would otherwise be an offence may 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

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

20 A person cannot be twice criminally responsible 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

CHAPTER V

PARTIES TO OFFENCES

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

- (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 fourth case he may be charged either with himself 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 himself doing the act or making the omission

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

Necessity

Compulsion
by husbandPerson not
to be twice
criminally
responsible
for same
offencePrincipal
offendersOffences
committed
by joint
offenders in
prosecution
of common
purpose

Counselling
another to
commit an
offence

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

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

CHAPTER VI

PUNISHMENTS

Different
kinds of
punishments

24 The following punishments may be inflicted by a court —

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

(6) Finding security to keep the peace and be of good behaviour, or to come up for judgment

Sentence of
death

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

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

Imprisonment

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

(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

Corporal
punishment

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

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

- (a) Females
- (b) Males sentenced to death,
- (c) Males whom the court considers to be more than forty-five years of age

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Compensation

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

Costs

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

Security for keeping the peace

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

Security for coming up for judgment

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

General punishment for misdemeanours

33 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

Sentences cumulative unless otherwise ordered

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

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 or a police officer or use other reasonable endeavours to prevent the commission of the offence,
is guilty of the felony termed misprision of treason, and is liable to imprisonment for life

Concealment
of treason

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

Treasonable
felonies

(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 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 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

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

Promoting
native war

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

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

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.

Aiding soldiers or policemen in acts of mutiny

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,

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

Inducing soldiers or policemen to desert

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,

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.

Aiding prisoners of war to escape

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.

Definition of overt act

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.

Seditious conspiracy and libel

46 Any person who—

(1) 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

(2) advisedly publishes any words or document with a seditious intention,
is guilty of a misdemeanour

47 For the purposes of the last preceding section 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 His Majesty's subjects or natives 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 His Majesty's subjects or natives of the Colony, or to promote feelings of ill-will and hostility between different classes of the population of the Colony

Seditious intention defined

Provided that it shall be lawful for any person—

Innocent intention

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

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

(c) to excite in good faith His Majesty's subjects, or natives 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

48 Any person who—

Unlawful oaths to commit capital offences

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

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

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

49 Any person who—

Other unlawful oaths to commit offences

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

(a) to engage in any mutinous or seditious enterprise,

(b) to commit any offence not punishable with death,

(c) to disturb the public peace,

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

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

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

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

(2) takes any such oath or engagement, not being compelled to do so,
is guilty of a felony, and is liable to imprisonment for seven years

**Compulsion
how far a
defence**

50 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
drillir**

51 (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

CHAPTER VIII

OFFENCES AFFECTING RELATIONS WITH FOREIGN STATES AND EXTERNAL INQUILLITY

**Defamation
of foreign
princes**

52 Any person who, without such justification or excuse as would be sufficient in the case of the defamation of a private person, publishes anything intended to be read, or any sign or visible representation, tending to degrade, revile or expose to hatred or contempt any foreign prince, potentate, ambassador or other foreign dignitary with intent to disturb peace and friendship between the United Kingdom or the Colony and the country to which such prince potentate, ambassador or dignitary belongs, is guilty of a misdemeanour

**Foreign
enlistment**

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

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

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

(c) who, being a British subject, quits or goes on board any ship 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 ship with a view of quitting the Colony with the like intent, or

(d) who, being the master or owner of any ship, knowingly either takes on board, or engages to take on board, or has on board such ship 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 ship, or issues or delivers any commission for any ship

Provided that a person building, causing to be built, or equipping a ship 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 ship, 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 ship shall not be despatched, delivered, or removed without the licence of His Majesty until the termination of such war as aforesaid

54 Any person who is guilty of piracy or any crime connected with or Piracy 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

55 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

Definitions—
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

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

Riot

56 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

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

Punishment of riot

58 Any magistrate or, in his absence, any police officer of or above the rank of assistant superintendent, or any commissioned officer in the military forces of the Colony, in whose view twelve or more persons are riotously

Making proclamation for rioters to disperse

assembled, or who apprehends that a riot is about to be committed by twelve or more persons assembled within his view, may make or cause to be made a proclamation in the King's name, in such form as he thinks fit, commanding the rioters or persons so assembled to disperse peaceably

Dispersion of rioters after proclamation made

59 If upon the expiration of a reasonable time after such proclamation made, or after the making of such proclamation has been prevented by force, twelve or more persons continue riotously assembled together, any person authorised to make proclamation, or any police officer, or any other person acting in aid of such person or police officer, may do all things necessary for dispersing the persons so continuing assembled, or for apprehending them or any of them, and, if any person makes resistance, may use all such force as is reasonably necessary for overcoming such resistance, and shall not be liable in any criminal or civil proceeding for having, by the use of such force, caused harm or death to any person

Rioting after proclamation

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

Preventing or obstructing the making of proclamation

61 Any person who forcibly prevents or obstructs the making of such proclamation as is in section 58 mentioned, is guilty of a felony, and is liable to imprisonment for ten years, and if the making of the proclamation is so prevented, every person who, knowing that it has been so prevented, takes or continues to take part in the riot or assembly, is liable to imprisonment for five years

Rioters demolishing buildings, etc

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

Rioters injuring buildings, machinery, etc

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

Riotously preventing the sailing of ship

64 All persons are guilty of a misdemeanour who, being riotously assembled, unlawfully and with force prevent, hinder, or obstruct the loading or unloading, or the sailing or navigating of any vessel, or unlawfully and with force board any vessel with intent to do so

Going armed in public

65 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

66 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

67 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

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

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

70 Any person who—

Threatening violence

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

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

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

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

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

Division II—Offences Against the Administration of Lawful Authority

CHAPTER X

CORRUPTION AND THE ABUSE OF OFFICE

72 Any person who—

Official corruption

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

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

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

73 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 award 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**

74 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**

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

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

False claims by officials

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

Abuse of office

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

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

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

False certificates by public officers

78 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

79 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

80 Any person who—

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

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

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

CHAPTER XI

OFFENCES RELATING TO THE ADMINISTRATION OF JUSTICE

Perjury and subornation of perjury

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

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

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

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

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

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

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

82 Any person who commits perjury or suborns perjury is liable to **Punishment of perjury** imprisonment for seven years

83 A person cannot be convicted of committing perjury or of **Evidence on charge of perjury** subornation of perjury solely upon the evidence of one witness, as to the falsity of any statement alleged to be false

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

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

(2) knowingly makes use of such fabricated evidence,
is guilty of a misdemeanour, and is liable to imprisonment for seven years

85 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**

86 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**

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

88 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

Conspiracy to defeat justice and interference with witnesses

Compounding felonies

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

Compounding penal actions

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

Advertisements for stolen property

91 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.

CHAPTER XII***RESCUES, ESCAPES AND OBSTRUCTING OFFICERS OF COURT OF LAW*****Rescue**

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

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

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

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

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

Escape

93 Any person who, being in lawful custody for any criminal offence, escapes from such custody—

(a) is, if he is charged with, or has been convicted of, felony, guilty of a felony, and is liable to imprisonment for seven years, with or without corporal punishment, and

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

Aiding prisoners to escape

94 Any person who—

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

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

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

95 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, returns, conceals, or disposes of such property, is guilty of a felony, and is liable to imprisonment for three years

Removal, etc.,
of property
under lawful
seizure

96 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

Obstructing
court officers

CHAPTER XIII

MISCELLANEOUS OFFENCES AGAINST PUBLIC AUTHORITY

97 Any public officer 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

Frauds and
breaches of
trust by public
officers

98 Every public officer 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 firmness and activity may be expected to encounter, is guilty of a misdemeanour

Neglect of
official duty

99 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

100 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

101 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

102 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

103 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

Trespassing on
burial places

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.

Uttering words with the intent to wound religious feelings

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

CHAPTER XV OFFENCES AGAINST MORALITY

Definition of rape

105 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 impersonating her husband, is guilty of the felony termed rape.

Punishment of rape

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

Attempt

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

Abduction

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

Abduction of girls under sixteen

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

Indecent assaults on females

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

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

Provided that it shall be a sufficient defence to any charge under this subsection if it shall be made to appear to the court, jury or assessors 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) Any person who is found in any dwelling-house or in any verandah or passage attached thereto or in any yard, garden or other land adjacent to or within the curtilage of such dwelling-house with intent indecently to insult or annoy any female inmate of such dwelling-house is guilty of a misdemeanour, and is liable to imprisonment for one year.

Defilement of girls under 16 years of age

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

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

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

Defilement of idiots or imbeciles

112 Any person who, knowing a woman or girl to be an idiot or imbecile, has or attempts to have unlawful carnal knowledge of her under

circumstances not amounting to rape but which prove that the offender knew at the time of the commission of the offence that the woman or girl was an idiot or imbecile, is guilty of a felony, and is liable to imprisonment for fourteen years, with or without corporal punishment

113 Any person who—

(1) procures or attempts to procure any girl or woman under the age of twenty-one years, not being a common prostitute or of known immoral character, to have unlawful carnal connection, 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, if a male person, 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

114 Any person who—

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

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

115 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

116 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

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

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

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

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

Detention with intent or in brothel

- 117** Any person who detains any woman or girl against her will—
 (1) in or upon any premises with intent that she may be unlawfully and carnally known by any man, whether any particular man or generally, or
 (2) in any brothel,
 is guilty of a misdemeanour

Constructive detention by withholding clothes

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

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

Power of search

118 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

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

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

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

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

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

119 (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) 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 male person residing in or frequenting the house is living wholly or in part on the earnings of the prostitute, the magistrate may issue a warrant authorising any police officer to enter and search the house and to arrest that male person

(3) 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

120 Every woman 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

Woman aiding etc , for gain prostitution of another woman

121 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

Brothels

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

Conspiracy to defile

123 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

Attempts to procure abortion

124 Any woman who, with intent to procure her own miscarriage, whether she is or is not with child, 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

The like by woman with child

125 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

Supplying drugs or instruments to procure abortion

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

Knowledge of age of female immaterial

Unnatural offences**127** Any person who—

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

(2) has carnal knowledge of an animal, or

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

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

Attempt to commit unnatural offences

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

White woman having connection with natives

129 (1) Any white woman who voluntarily permits any native to have unlawful carnal connection with her is guilty of a misdemeanour, and is liable to imprisonment for five years

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

(3) Any native having or attempting to have unlawful carnal connection with any white woman under circumstances not amounting to rape or attempted rape is guilty of a misdemeanour and is liable to imprisonment for five years

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

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

(6) For the purposes of this section—

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

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

Incest by males

130 (1) Any male person who has carnal knowledge of a female person, who is to his knowledge his grand-daughter, daughter, sister, or mother, is guilty of a felony, and is liable to imprisonment for five years

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

Consent immaterial

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

Attempt

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

Order for guardianship

(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

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

131 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

Incest by females

132 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

Test of relationship

133 (1) If, on the trial of any information or charge for rape, the court or jury is or are satisfied that the defendant is guilty of an offence under section 130 of this Code, but is or are not satisfied that the defendant is guilty of rape, the court or jury, as the case may be, may acquit the defendant of rape and find him guilty of an offence under section 130, and he shall be liable to be punished accordingly

Conviction of incest lawful on charge of rape

(2) If, on the trial of any information or charge for an offence under section 130 of this Code, the court or jury is or are satisfied that the defendant is guilty of any offence under sections 111 or 112, but is or are not satisfied that the defendant is guilty of an offence under section 130, the court or jury may acquit the defendant of an offence under section 130 and find him guilty of an offence under sections 111 or 112, and he shall be liable to be punished accordingly

Conviction of unlawful carnal knowledge on charge of incest

134 No prosecution for an offence under sections 130 or 131 of this Code shall be commenced without the sanction of the Attorney General

Sanction of Attorney General

135 The Governor in Council may from time to time by proclamation declare that the provisions of sections 130 and 131 of this Code shall not apply to the members of any race, sect, or tribe in the Colony or to any part of such race, sect, or tribe

Power of Governor in Council to exempt any race, tribe or sect from provisions of sections 130 and 131

CHAPTER XVI

OFFENCES RELATING TO MARRIAGE AND DOMESTIC OBLIGATIONS

136 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

Fraudulent pretence of marriage

137 Any person who, having a husband or wife living, marries in any case in which such marriage 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

Bigamy

138 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

Marriage ceremony fraudulently gone through without lawful marriage

139 Any person who being the parent, guardian or other person having the lawful care or charge of a child under the age of twelve 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

Neglecting
to provide
food, etc., for
children

Master not
providing
for servants or
apprentices

Child stealing

Common
nuisance

Gaming houses

140 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

141 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

142 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,

(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

143 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

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

144 (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" includes roulette, every game of dice except backgammon, every game of cards which is not a game of skill, and any game the chances of which are not alike favourable to all the players, including the banker or other person or persons by whom the game is managed or against whom the other players stake, play or bet

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

(4) Any person other than the persons mentioned in sub-section (1) who is found in a common gaming house shall be deemed, unless the contrary is proved, to be there for the purpose of unlawful gaming, and is guilty

of a misdemeanour, and is liable to a fine of five pounds for the first offence, and for each subsequent offence to a fine of twenty pounds or imprisonment for three months, or to both such fine and imprisonment

145 Any house, room or place which is used for any of the purposes following, that is to say— Betting houses

(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

146 (1) Any person who opens, keeps, or uses any place for carrying Lotteries on a lottery of any kind whatever is guilty of a misdemeanour

(2) Any person who prints or publishes or causes to be printed or published, any advertisement or other notice of or relating to any lottery, or of or relating to the sale of any ticket or chance or of any share in any ticket or chance in any lottery, is liable to a fine of fifty pounds

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

147 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 144, 145 and 146 is to be taken to be the keeper thereof, whether he is or is not the real keeper Keeper of premises defined

148 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 whatever, 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

Traffic in obscene publications

(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.

Idle and disorderly persons

149 The following persons—

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

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

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

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

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

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

Rogues and vagabonds

150 The following persons—

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

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

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

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

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

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

Wearing of uniform without authority, prohibited

151 (1) Any person who, not being a person serving in His Majesty's naval, military or air forces or in any constabulary or police force in the United Kingdom, or in any British possession, or in any country under the protection of His Majesty or in respect of which His Majesty has accepted a mandate, wears without the permission of the Governor the uniform of any of those forces or any dress having the appearance or bearing any of the regimental or other distinctive marks of such uniform, is guilty of a misdemeanour, and is liable to imprisonment for one month or to a fine of ten pounds

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

(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

(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

Forfeiture of
uniform, etc.,
on conviction

152 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

Offences
against public
health—
Negligent act
likely to spread
infection of
disease dan-
gerous to life

153 Any person who adulterates any article of food or drink, so as to make such article noxious as food or drink, 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

Adulteration
of food or
drink intended
for sale

154 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

Sale of noxious
food or drink

155 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

Adulteration
of drugs

156 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

Sale of
adulterated
drugs

157 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 water

158 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

Fouling air

Offensive trades

159 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

Definition of libel

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

Definition of defamatory matter

161 (1) Matter is defamatory which imputes to a person any crime, or misconduct in any public office, or which is likely to injure him in his occupation, calling, or office, or to expose him to general hatred, contempt, or ridicule

(2) In this section "crime" means any offence punishable under this Code, and any act punishable under any Ordinance or Statute in force within the Colony, and also any act, wheresoever committed, which if committed by a person within the Colony would be punishable under any Ordinance or Statute in force within the Colony

Definition of publication

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

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

Definition of unlawful publication

163 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

Cases in which publication of defamatory matter is absolutely privileged

164 (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—

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

(b) if the matter is published in the Executive Council or the Legislative Council by the Governor or by any member of such Councils, or

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

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

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

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

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

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

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

Cases in which publication of defamatory matter is conditionally privileged

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

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

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

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

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

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

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

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

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

Explanation as to good faith

166 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

Presumption as to good faith

167 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

Manslaughter

168 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

169 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

170 Any person convicted of murder shall be sentenced to death

Punishment of manslaughter

171 Any person who commits the felony of manslaughter is liable to imprisonment for life

Malice aforethought

172 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

173 Any person who causes the death of another is presumed to have wilfully murdered him unless the circumstances are such as to raise a contrary presumption

Presumption
that killing is
murder

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

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

Killing on
provocation

175 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

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

Causing death
defined

(a) if he inflicts bodily injury on another which causes 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 a 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 violence or threat of violence he causes a person to do some act which caused his own death, such act being a mode of avoiding such violence or threats which under the circumstances would appear natural to the person injured,

(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

177 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

178 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

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

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

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

CHAPTER XX

DUTIES RELATING TO THE PRESERVATION OF LIFE AND HEALTH

Responsibility
of person who
has charge of
another

179 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 is held to have caused any consequences which result to the life or health of the other person by reason of any omission to perform that duty

Duty of head
of family

180 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 is held to have caused any consequences which result to 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
masters

181 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 is held to have caused any consequences which result to the life or health of the servant or apprentice by reason of any omission to perform that duty

Duty of
persons doing
dangerous acts

182 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 is held to have caused any consequences which result to 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

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

CHAPTER XXI

*OFFENCES CONNECTED WITH MURDER AND SUICIDE***184** Any person who—

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

Attempt to
murder

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

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

185. 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 punishmentAttempt to
murder by
convict**186** Any person who becomes an accessory after the fact to murder is guilty of a felony, and is liable to imprisonment for seven yearsAccessory
after the fact
to murder**187** 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 yearsWritten
threats to
murder**188** 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 yearsConspiracy to
murder**189** Any person who—

Aiding suicide

(1) procures another to kill himself, or

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

(3) aids another in killing himself,

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

190 Any person who attempts to kill himself is guilty of a mis-demeanourAttempting
suicide**191** 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 misdemeanourConcealing
the birth of
children

CHAPTER XXII

*OFFENCES ENDANGERING LIFE OR HEALTH***192** 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 punishmentDisabling in
order to
commit
felony or mis
demeanour**193** 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 lifeStupefying
in order to
commit
felony or mis
demeanour**194** 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—Acts intended
to cause
grievous harm
or prevent
arrest

(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

195 Any person who unlawfully—

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

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

Intentionally endangering safety of persons travelling by railway

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

- (1) places anything on the railway, or
 (2) deals with the railway, or with anything whatever upon or near the railway, in such a manner as to affect or endanger the free and safe use of the railway or the safety of any such person, or
 (3) shoots or throws anything at, into, or upon or causes anything to come into contact with any person or thing on the railway, or
 (4) shows any light or signal, or in any way deals with any existing light or signal, upon or near the railway, or
 (5) by any omission to do any act which it is his duty to do causes the safety of any such person to be endangered,

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

Grievous harm

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

Attempting to injure by explosive substances

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

Maliciously administering poison with intent to harm

199 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 some grievous harm, is guilty of a felony, and is liable to imprisonment for fourteen years

Wounding and similar acts

200 Any person who—

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

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

Failure to supply necessaries

201 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

CHAPTER XXIII

CRIMINAL RECKLESSNESS AND NEGLIGENCE

202 Any person who in a manner so rash or negligent as to endanger human life or to be likely to cause harm to any other person—

Reckless and negligent acts

(a) drives any vehicle or rides on any public way, or

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

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

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

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

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

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

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

is guilty of a misdemeanour

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

Other negligent acts causing harm

204 Any person who, by any unlawful act or omission not specified in section 196 of this Code, causes the safety of any person travelling by any railway to be endangered, is guilty of a misdemeanour

Endangering safety of persons travelling by railway

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

Exhibition of false light, mark or buoy

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

Conveying person by water for hire in unsafe or overloaded vessel

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

Danger or obstruction in public way or line of navigation

CHAPTER XXIV

ASSAULTS

208 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

Common assault

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

Assaults causing actual bodily harm

Assaults on persons protecting wreck

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

Assaults punishable with two years imprisonment

211 Any person who—

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

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

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

(d) assaults, resists, or obstructs any person engaged in such 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

CHAPTER XXV

OFFENCES AGAINST LIBERTY

Definition of kidnapping from the Colony

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

Definition of kidnapping from lawful guardianship

213 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 the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship

Definition of abduction

214 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

Punishment for kidnapping

215 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

Kidnapping or abducting in order to murder

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

Kidnapping or abducting with intent to confine person

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

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

218. 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

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

Wrongfully concealing or keeping in confinement kidnapped or abducted person

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

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

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

Buying or disposing of any person as a slave

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

Habitual dealing in slaves

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

Unlawful compulsory labour

Division V —Offences Relating to Property

CHAPTER XXVI

THEFT

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

Things capable of being stolen

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

Every tame animal, whether tame by nature or wild by nature and 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

225 (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

226 (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

227 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 of any part of the proceeds of such security, or of such mortgage, pledge, or other disposition, shall be applied to any purpose or paid to any person specified in the direction, such money and proceeds are deemed to be the property of the person for whom the money, security, or power of attorney was received until the direction has been complied with

Funds, etc., received by agents for sale

228 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 the 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

229 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

230 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
persons having
an interest in
the thing stolen

231 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

232 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 five years

General
punishment
for theft

233 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

234 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

235 If the thing stolen is any of the things following, that is to say a horse, mare, gelding, ass, mule, camel, bull, cow, ox, ram, ewe, wether, goat, or pig, or the young of any such animal, the offender is liable to imprisonment for seven years

Stealing cattle

236 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

237 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

238 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

239 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

240 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

Stealing by tenants or lodgers

241 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 after previous conviction

242 If the offender, before committing the theft, had been convicted of a theft punishable under section 232, he is liable to imprisonment for seven years

Concealing registers

243 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 wills

244 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

CHAPTER XXVII

OFFENCES ALLIED TO STEALING

243 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

244 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

245 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

246 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

247 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

248 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

249 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

CHAPTER XXVIII

ROBBERY AND EXTORTION

250 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"

251 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

252 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

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

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

Attempts at
extortion by
threats

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

- (1) accuses or threatens to accuse any person of committing any felony or misdemeanour, or of offering or making any solicitation or threat to any person as an inducement to commit or permit the commission of any felony or misdemeanour, or
- (2) threatens that any person shall be accused by any other person of any felony or misdemeanour, or of any such act, or
- (3) knowing the contents of the writing, causes any person to receive any writing containing any such accusation or threat as aforesaid, is guilty of a felony, and if the accusation or threat of accusation is of—
 - (a) an offence for which the punishment of death or imprisonment for life may be inflicted, or
 - (b) any of the offences defined in Chapter XV, or an attempt to commit any of such offences, or
 - (c) an assault with intent to have carnal knowledge of any person against the order of nature, or an unlawful and indecent assault upon a male person, or
 - (d) a solicitation or threat offered or made to any person as an inducement to commit or permit the commission of any of the offences aforesaid,

the offender is liable to imprisonment for fourteen years

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

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

Procuring
execution of
deeds, etc
by threats

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

- (a) to execute, make, accept, indorse, alter, or destroy the whole or any part of any valuable security, or
- (b) to write, impress, or affix any name or 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

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

CHAPTER XXIX

BURGLARY, HOUSEBREAKING AND SIMILAR OFFENCES

Definitions

258 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

259 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

260 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

Entering dwelling house with intent to commit felony

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

261 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,

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

Breaking into building and committing felony

262 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

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

Persons found armed etc, with intent to commit felony

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

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

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

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

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

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

(g) being in any building whatever by day with intent to commit a felony therein, and having taken precautions to conceal his presence,
is guilty of a felony, and is liable to imprisonment for three years

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

CHAPTER XXX

*FALSE PRETENCES***Definition of false pretence**

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

Obtaining goods by false pretences

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

Obtaining execution of a security by false pretences

266 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, impress, or affix any name or 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

Cheat ing

267 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

268 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, sells or removes any part of his property since 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

269 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

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

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

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

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

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

Pretending to exercise witchcraft or tell fortunes

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

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

Obtaining registration, etc, by false pretence

CHAPTER XXXI

RECEIVING PROPERTY STOLEN OR UNLAWFULLY OBTAINED AND LIKE OFFENCES

273 (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 fourteen years

Receiving stolen property, etc

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

Receiving property unlawfully obtained

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

Person suspected of having or conveying stolen property

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

Receiving after change of ownership

CHAPTER XXXII

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

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

Trustees fraudulently disposing of trust property

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

- (a) trustees upon express trusts created by a deed, will, or instrument in writing, whether for a public or private or charitable purpose,
- (b) trustees appointed by or under the authority of an Ordinance or Statute for any such purpose,
- (c) persons upon whom the duties of any such trust as aforesaid devolve,
- (d) executors and administrators

277 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

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

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

- (a) destroys, alters, mutilates or falsifies any book, document, valuable security or account, which belongs to the corporation or company, or any entry in any such book, document, or account, or is privy to any such act, or
- (b) makes, or is privy to making, any false entry in any such book, document, or account, or
- (c) omits, or is privy to omitting, any material particular from any such book, document or account,

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

False statements by officials of companies

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

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

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

Fraudulent false accounting

279 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—

- (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

False accounting by public officer

280 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

Division VI —Malicious Injuries to Property.

CHAPTER XXXIII

OFFENCES CAUSING INJURY TO PROPERTY

Arson

281 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

282 Any person who—

Attempts to commit arson

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

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

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

283 Any person who wilfully and unlawfully sets fire to—

Setting fire to crops and growing plants

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

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

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

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

284 Any person who—

Attempting to set fire to crops, etc

(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

285 Any person who—

Casting away ships

(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 life, with or without corporal punishment

286 Any person who attempts unlawfully to cast away or destroy a vessel, whether completed or not, or attempts unlawfully to do any act tending to the immediate loss or destruction of a vessel in distress, is guilty of a felony, and is liable to imprisonment for fourteen years, with or without corporal punishment

Attempts to cast away ships

287 Any person who wilfully and unlawfully kills, maims, or wounds any animal capable of being stolen is guilty of an offence

Injuring animals

If the animal in question is a horse, mare, gelding, ass, mule, camel, bull, cow, ox, goat, pig, ram, ewe, wether, or ostrich, or the young of any such animal, the offender is guilty of a felony, and is liable to imprisonment for seven years

In any other case the offender is guilty of a misdemeanour

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

Punishment for malicious injuries in general

(2) If the property in question is a dwelling-house or a vessel, and the injury is caused by the explosion of any explosive substance, and if—

In special cases — 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, with or without corporal punishment

River bank
or wall, or
navigation
works, or
bridges

- (3) (a) If the property in question is a bank or wall of a river, canal, aqueduct, reservoir, or inland water, or work which appertains to a dock, reservoir, or inland water, and the injury causes actual danger of inundation or damage to any land or building, or
- (b) if the property in question is a railway or is a bridge, viaduct, or aqueduct which is constructed over a highway, railway, or canal, or over which a railway, highway, or canal passes, and the property is destroyed, or
- (c) if the property in question, being a railway, or being any such bridge, viaduct, or aqueduct, is damaged, and the damage is done with intent to render the railway, bridge, viaduct, or aqueduct, or the highway, railway, or canal passing over or under the same, or any part thereof, dangerous or impassable, and the same or any part thereof is thereby rendered dangerous or impassable,

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

Wills and
registers

- (4) If the property in question is a testamentary instrument, whether the testator is living or dead, or a register which is authorised or required by law to be kept for authenticating or recording the title to any property, or for recording births, baptisms, marriages, deaths, or burials, or a copy of any part of any such register which is required by law to be sent to any public officer, the offender is guilty of a felony, and is liable to imprisonment for fourteen years

Wrecks

- (5) If the property in question is a vessel in distress or wrecked, or stranded, or anything which belongs to such vessel, the offender is guilty of a felony, and is liable to imprisonment for seven years

Railways

- (6) If the property in question is any part of a railway, or any work connected with a railway, the offender is guilty of a felony, and is liable to imprisonment for fourteen years

Other things of
special value

- (7) (a) If the property in question, being a vessel, whether completed or not, is destroyed, or
- (b) if the property in question, being a vessel, whether completed or not, is damaged, and the damage is done with intent to destroy it or render it useless, or
- (c) if the property in question is a light, beacon, buoy, mark, or signal, used for the purposes of navigation, or for the guidance of persons engaged in navigation, or
- (d) if the property in question is a bank or wall of a river, canal, aqueduct, reservoir, or inland water, or a work which appertains to a dock, canal, aqueduct, reservoir, or inland water, or which is used for the purposes of lading or unlading goods, or
- (e) if the property in question, being a railway, or being a bridge, viaduct, or aqueduct which is constructed over a highway, railway, or canal, or over which a highway, railway, or canal passes, is damaged, and the damage is done with intent to render the railway, bridge, viaduct, or aqueduct, or the highway, railway, or canal passing over or under the same, or any part thereof, dangerous or impassable, or
- (f) if the property in question, being anything in process of manufacture, or an agricultural or manufacturing machine, or a manufacturing implement, or a machine or appliance used or intended to be used for performing any process connected with the preparation of any agricultural or pastoral produce, is destroyed, or
- (g) if the property in question, being any such thing, machine, implement, or appliance, as last aforesaid, is damaged, and the damage is done with intent to destroy the thing in question or to render it useless, or

- (h) if the property in question is a shaft or a passage of a mine, and the injury is done with intent to damage the mine or to obstruct its working, or
- (i) if the property in question is a machine, appliance, apparatus, building, erection, bridge, or road, appertaining to or used with a mine, whether the thing in question is completed or not, or
- (j) if the property in question, being a rope, chain, or tackle, of whatever material, which is used in a mine, or upon any way or work appertaining to or used with a mine, is destroyed, or
- (k) if the property in question, being any such rope, chain, or tackle as last aforesaid, is damaged, and the damage is done with intent to destroy the thing in question or to render it useless, or
- (l) if the property in question is a well, or bole 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

- (8) If the property in question is a document which is deposited or kept in a public office, or which is evidence of title to any land or estate in land, the offender is guilty of a felony, and is liable to imprisonment for seven years

Deeds and records

- 289** 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

Attempts to destroy property by explosives

- 290** 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

Communicating infectious diseases to animals

- 291** 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

292 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

Wilful damage, etc., to survey and boundary marks

- (2) being under an obligation to maintain or repair any boundary mark made or erected as aforesaid, neglects or refuses to repair the same, or

- (3) wilfully removes, defaces or injures any mark erected by an intending applicant for any lease, licence or right under an Ordinance relating to mines or minerals,

is guilty of a misdemeanour, and is liable to imprisonment for three months or to a fine of twenty pounds, and may further be ordered by the court to pay the cost of repairing or replacing the survey mark or boundary mark and of making any survey rendered necessary by the offender's act or neglect

293 Any person who—

- (1) wilfully damages, injures or obstructs any work, way, road, building, turnstile, gate, toll bar, fence, weighing machine, engine, tender, carriage, wagon, truck, material, or plant, acquired for or belonging to any railway works, or

Penalties for damage, etc., to railway works

- (2) pulls up, removes, defaces, or destroys, or in any way interferes with, any poles, stakes, flags, pegs, lines, marks, or anything driven or placed in or upon the ground, trees, stones, or buildings, or any other material, belonging to any railway works, or

- (3) commits any nuisance or trespass in or upon any land, buildings, or premises, acquired for or belonging to any railway works, or
 (4) wilfully molests, hinders, or obstructs the officer in charge of any railway or his assistants or workmen in the execution of any work done or to be done in reference to the construction or maintenance of any such railway,

is guilty of a misdemeanour, and is liable to imprisonment for three months or to a fine of twenty pounds

I threats to burn, etc

- 294** 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 ship or vessel, or to kill, maim, or wound any cattle, is guilty of a felony, and is liable to imprisonment for ten years

Division VII—Forgery, Coining, Counterfeiting and similar offences

CHAPTER XXXIV

DEFINITIONS

Definition of forgery

- 295** Forgery is the making of a false document with intent to defraud

Document

- 296** The term document in this division of this Code does not include a trade mark or any other sign used in connection with articles of commerce though they may be written or printed

Making a false document

- 297** Any person makes a false document who—

- (a) makes a document purporting to be what in fact it is not,
- (b) alters a document without authority in such a manner that if the alteration had been authorised it would have altered the effect of the document,
- (c) introduces into a document without authority whilst it is being drawn up matter which if it had been authorised would have altered the effect of the document,
- (d) signs a document—
 - (i) in the name of any person without his authority whether such name is or is not the same as that of the person signing,
 - (ii) in the name of any fictitious person alleged to exist whether the fictitious person is or is not alleged to be of the same name as the person signing,
 - (iii) in the name represented as being the name of a different person from that of the person signing it and intended to be mistaken for the name of that person,
 - (iv) in the name of a person personated by the person signing the document, provided that the effect of the instrument depends upon the identity between the person signing the document and the person whom he professes to be

Intent to defraud

- 298** 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

299 Any person who forges any document is guilty of an offence which, unless otherwise stated, is a felony, and he is liable, unless owing to the circumstances of the forgery or the nature of the thing forged some other punishment is provided, to imprisonment for three years

300 Any person who forges any will, document of title to land, judicial record, power of attorney, bank note, currency note, bill of exchange, promissory note or other negotiable instrument, policy of insurance, cheque or other authority for the payment of money by a person carrying on business as a banker, is liable to imprisonment for life

301 Any person who forges any judicial or official document is liable to imprisonment for ten years

302 Any person who—

Imprisonment
for seven years

(1) forges any stamp whether impressed or adhesive used for the purposes of revenue by any Government, or

(2) without lawful excuse, the proof whereof shall lie upon him, makes or has knowingly in his possession any dye or instrument capable of making the impression of any such stamp, or

(3) fraudulently cuts, tears in any way, or removes from any material any stamp used for purposes of revenue 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

303 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

304 Any person who knowingly utters as and for a subsisting and effectual document, any document which has by any lawful authority been considered 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

305 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

Obliterating crossings on cheques

306 Any person who, with intent to defraud—
 (1) obliterates, adds to, or alters the crossing on a cheque, or
 (2) knowingly utters a crossed cheque, the crossing on which has been obliterated, added to, or altered,
 is guilty of a felony, and is liable to imprisonment for seven years

Making documents without authority

307 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 prouration 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

308 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 bank notes

309 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, 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

310 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

311 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

312 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

313 Any person who knowingly and with intent to procure the same to be inserted in a register of births, deaths, or marriages, makes any false statement touching any matter required by law to be registered in any such register, is guilty of a felony, and is liable to imprisonment for three years

CHAPTER XXXVI

OFFENCES RELATING TO COIN

Definitions

314 In this chapter—
 the term “current” applied to 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,

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

315 Any person who makes or begins to make any counterfeit coin is guilty of a felony Counterfeiting
coin

If the offence is committed with respect to current coin, he is liable to imprisonment for life

If the offence is committed with respect to coin of a foreign Sovereign or State, he is liable to imprisonment for seven years

316 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

If the offence is committed with respect to current coin, he is liable to imprisonment for life

If the offence is committed with respect to coin of a foreign Sovereign or State, he is liable to imprisonment for seven years

317 Any person who deals with any current coin in such a manner as to diminish its weight with intent that when so dealt with it may pass as current coin, is guilty of a felony, and is liable to imprisonment for seven years Clipping

318 Any person who unlawfully has in his possession or disposes of any filings, or clippings of gold or silver, or any gold or silver in bullion, dust, solution, or any other state, obtained by dealing with current 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 Possession of
clippings

319 Any person who utters any counterfeit coin, knowing it to be counterfeit, is guilty of a misdemeanour Uttering
counterfeit coin

If the offence is committed with respect to current coin, he is liable to imprisonment for two years

If the offence is committed with respect to coin of a foreign Sovereign or State, he is liable to imprisonment for one year

Repeated uttering

320 Any person who—

(1) utters any counterfeit current coin knowing it to be counterfeit, and at the time of such uttering has in his possession any other counterfeit current coin, or

(2) utters any counterfeit current 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 current coin, knowing it to be counterfeit, or

(3) has in his possession three or more pieces of counterfeit current 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 foreign coin or metal as current coin

321 Any person who, with intent to defraud, utters as and for current coin—

(a) any coin which is not current coin, or

(b) any medal or piece of metal, whether a coin or not, which is of less value than the current coin as and for which it is uttered,

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

Exporting counterfeit coin

322 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

CHAPTER XXXVII

COUNTERFEIT STAMPS

Possession of die used for purpose of making stamps

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

(1) makes or mends, or begins or prepares to make or mend, or uses, or knowingly has in his possession, or disposes of any die, plate or instrument capable of making an impression resembling that made by any die, plate or instrument used for the purpose of making any stamp, whether impressed or adhesive, which is used for the purposes of the public revenue or of the Posts and Telegraphs department in the Colony or in any part of His Majesty's dominions, or in any country under the protection of His Majesty or in respect of which His Majesty has accepted a mandate, or in any foreign country, or capable of producing in or on paper any words, figures, letters, marks or lines resembling any words, figures, letters, marks or lines used in or on any paper specially provided by the proper authority for any such purpose, or

(2) knowingly has in his possession or disposes of any paper or other material which has on it the impression of any such die, plate or instrument, or any paper which has on it or in it any such words, figures, letters, marks or lines as aforesaid, or

(3) fraudulently, and with intent that use may be made of any such stamp as aforesaid, or of any part of it, removes the stamp from any material in any way whatever, or

(4) fraudulently, and with intent that use may be made of any part of such stamp, mutilates the stamp, or

(5) fraudulently fixes or places upon any material or upon any such stamp, any stamp or part of a stamp which has been in any way removed from any other material, or out of or from any other stamp, or

(6) fraudulently, and with intent that use may be made of any such stamp which has been already impressed upon or attached to any material, erases or otherwise removes, either really or apparently, from such material anything whatever written on it, or

(7) knowingly has in his possession or disposes of anything obtained or prepared by any such unlawful act as aforesaid,
is guilty of a felony, and is liable to imprisonment for seven years

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

Paper and dies for postage stamps

(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, are forfeited to His Majesty

For the purposes of this section a stamp purporting to denote a rate of postage of any country is to be taken to be a stamp used for postal purposes in that country until the contrary is shown

CHAPTER XXXVIII

COUNTERFEITING TRADE MARKS

325 A trade mark is—

Trade marks defined

(a) a mark lawfully used by any person to denote any chattel to be an article or thing of the manufacture, workmanship, production, or merchandise of such person or to be an article or thing of any peculiar or particular description made or sold by such person,

(b) any mark or sign which in pursuance of any law in force for the time being relating to registered designs is to be put or placed upon or attached to any chattel or article during the existence or continuance of any copyright or other sole right acquired under the provision of such law

326 Any person who does any of the following things with intent to defraud or to enable another to defraud any person, that is to say—

Counterfeiting trade marks misdemeanour

(a) forges or counterfeits any trade-mark,

(b) applies any trade mark or any forged or counterfeit trade mark, to any chattel or article, not being the merchandise of any person whose trade mark is so forged or counterfeited,

(c) applies any trade mark or any forged or counterfeited trade mark to any chattel or article not being the particular or peculiar description of merchandise denoted or intended to be denoted by such trade mark or by such forged or counterfeited trade mark,

(d) applies any trade mark or any forged or counterfeited trade mark to any thing intended for any purpose of trade or manufacture, or in, on, or with which any chattel or article is intended to be sold, or is sold or offered or exposed for sale,

(e) encloses or places any chattel or article in, upon, under, or with any thing to which any trade mark has been falsely applied, or to which any forged or counterfeit trade mark has been applied,

(f) applies or attaches any chattel or article to any case, cover, reel, ticket, label, or other thing to which any trade mark has been falsely applied, or to which any false or counterfeit trade mark has been applied,

(g) encloses, places, or attaches any chattel or article in, upon, under, with, or to any thing having thereon any trade mark of any other person,

is guilty of a misdemeanour

Every person committing any such misdemeanour as aforesaid forfeits to His Majesty—

all chattels and articles to which any such trade mark or counterfeit trade mark is applied or caused or procured to be applied,

every instrument for applying any such trade mark or counterfeit trade mark in his possession or power,

the chattels and articles and the things mentioned in paragraphs (d), (e), and (g), and all similar things made to be used in like manner in his possession or power

CHAPTER XXXIX

PERSONATION

Personation in general

327 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

328 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

Personation of a person named in a certificate

329 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

Lending, etc., certificate for personation

330 Any person who, being a person to whom any document has been issued by lawful authority whereby he is certified to be a person possessed of any qualification recognised by law for any purpose, or to be the holder of any office, or to be entitled to exercise any profession, trade, or business, or to be entitled to any right or privilege, or to enjoy any rank or status, sells, gives, or lends the document to another person with intent that that other may represent himself to be the person named therein, is guilty of a misdemeanour

Personation of person named in a testimonial of character

331 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.

332 Any person who, being a person to whom any such document as is mentioned in the last preceding section has been given, gives, sells, or lends such document to another person with the intent that that other person may utter such document for the purpose of obtaining any employment, is guilty of a misdemeanour

Lending, etc,
testimonial for
personation

Division VIII.—Attempts and Conspiracies to Commit Crimes, and Accessories after the fact

CHAPTER XL ATTEMPTS

333 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

334 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

335 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

336 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

337 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

338 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

339 Any person who conspires with another to effect any of the purposes following, that is to say—

Other
conspiracies

- (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

ACCESSORIES AFTER THE FACT

Definition of accessories after the fact

340 A person who receives or assists another who is, to his knowledge, guilty of an offence, in order to enable him to escape punishment, is said to become an accessory after the fact to the offence

A wife does not become an accessory after the fact to an offence of which her husband is guilty by receiving or assisting him in order to enable him to escape punishment, or by receiving or assisting, in her husband's presence and by his authority, another person who is guilty of an offence in the commission of which her husband has taken part, in order to enable that other person to escape punishment, nor does a husband become an accessory after the fact to an offence of which his wife is guilty by receiving or assisting her in order to enable her to escape punishment

Punishment of accessories after the fact to felonies

341 Any person who becomes an accessory after the fact to a felony is guilty of a felony, and is liable, if no other punishment is provided, to imprisonment for three years

Punishment of accessories after the fact to misdemeanours

342 Any person who becomes an accessory after the fact to a misdemeanour is guilty of a misdemeanour

Repeal

343 The Uniforms Ordinance (Chapter 65 of the Revised Edition) and the Criminal Law Amendment Ordinance (Chapter 78 of the Revised Edition) are hereby repealed

OBJECTS AND REASONS

The object of this Bill is to establish a Code of Criminal Law for the Colony based on English law and to replace the Indian Penal Code as applied to the Colony by such Code

The chief reason for which the principles and practice of English law are to be substituted for those now applied in Kenya is given by the Secretary of State, in his despatch No 380 of the 10th May, 1927, which contains the following sentence :—

"As regards the general question of policy involved in the introduction of these Codes, I am advised that officers will find it easier to apply a code which employs the terms and principles with which they are familiar in England than one in which the terms and principles have been discarded for others of doubtful import "

The Bill was originally prepared in the Legal Department of the Colonial Office by the direction of the Secretary of State with a view to enactment in all the East African Dependencies. In 1926, the Conference of Law Officers of the East African Dependencies reported on the draft Code among other matters. In April, 1928, the Attorneys General of Kenya, Tanganyika and Uganda again met at Mombasa and suggested amendments (not involving any departure from the principles on which the draft was based) which were required to meet the special circumstances in the various Dependencies and the Bill, as now presented, has, as regards general principles, been accepted by all the Dependencies concerned. The Bill in its present form has the approval of the Secretary of State who has directed its introduction into the Legislative Councils of Kenya, Tanganyika and Uganda. The Secretary of State has drawn special attention to the desirability of the Code being in identical language in all the Dependencies concerned, so that a decision of the Court of Appeal for Eastern Africa may be of real guidance to all the territories concerned.

It will be seen from the attached comparative table of sections that the Bill follows, in the main, the Criminal Code of Nigeria, which in turn follows the English law, with such variations and additions as are necessary for local conditions. Certain clauses are drawn from the Indian Penal Code and our local Ordinances and in a few instances from St Lucia.

Provision has been made that in case an offender undergoes the whole of imprisonment in default of payment of a fine, no court will issue a distress warrant unless for special reasons to be recorded in writing.

In view of Ordinance No XV of 1926, rape has been made an offence punishable by death or imprisonment for life and in addition corporal punishment. Most of the sections of the Criminal Law Amendment Ordinance (Chapter 78 of the Revised Edition) have been incorporated in the Bill, and the provisions of the Criminal Law Amendment Ordinance, 1928, have also been incorporated.

Provision has been made for the punishment of incest as is done by the English Punishment of Incest Act, 1908. Incest is not an offence under the Indian Penal Code. Power is taken to declare that the provisions regarding the punishment of incest shall not apply to the members of any race, sect or tribe in the Colony.

Clause 148 gives effect to the International Convention for the Suppression of the Circulation of and Traffic in Obscene Publications of 1923 to which adherence has been given by this Government

Clause 170 provides that any person convicted of murder must be sentenced to death. This is an innovation so far as Kenya is concerned, as the law at present in force provides for the alternative punishment of death or imprisonment for life. The Secretary of State has pointed out that there are the strongest possible objections to providing any alternative sentence for murder and it is therefore proposed to alter our law so as to bring it into consonance with the law of England

— —

Comparative Table of Sections.

Clause of the Bill	Corresponding Section of Criminal Code of Nigeria	Corresponding Section of other Law
1	—	New
2	—	New
3	—	New
4	—	New
5	—	New and Nigeria
6	—	New
7	—	Indian Penal Code, section 3
8	22	
9	23	
10	24	
11	25	
12	27	
13	28	
14	29	
15	30	
16	31	
17	—	New
18	—	New
19	33	
20	16	
21	7	
22	8	
23	9	
24	17	
25	—	Criminal Procedure Ordinance, section 297 (1) and (3)
26	—	New
27	18	Criminal Procedure Ordinance, section 311
28	—	New
29	18 (3)	
30	—	New
31	18 (11)	
32	18 (12)	
33	—	New
34	19	
35	—	New
36	38	
37	40	
38	41	
39	42	
40	43	
41	44	
42	45	
43	46	
44	48	
45	49	
46	58	
47	50 and 51	
48	53	
49	54	
50	55	
51	57	
52	60	
53	—	The British Protectorates Neutrality Order in Council, 1904
54	—	New
55	69	
56	70	
57	71	
58	72	
59	73	
60	74	
61	75	
62	76	
63	77	
64	—	New

COMPARATIVE TABLE OF SECTIONS—(Contd.)

Clause of the Bill	Corresponding Section of Criminal Code of Nigeria	Corresponding Section of other Law
65	80	
66	81	
67	82	
68	83	
69	84	
70	86	
71	87	
72	98	
73	99	
74	100	
75	102	
76	103	
77	104	
78	105	
79	107	
80	108	
81	117	
82	118	
83	119	
84	120	
85	191 and 192	
86	122	
87	123	
88	124, 125 and 126	
89	127	
90	128	
91	129	
92	134	
93	135	
94	136	
95	144	
96	145	
97	—	New
98	—	New
99	202	
100	203	
101	—	Indian Penal Code, section 295
102	—	“ “ , ” 296
103	—	“ “ , ” 297
104	—	“ “ , ” 298
105	357	
106	358	
107	359	
108	361	
109	362	
110	360	
111	—	Ordinance XV of 1928
112	—	New
113	223	Kenya, Chapter 78, section 8
114	224	“ “ 78 ” 9
115	—	“ “ 78 ” 10
116	—	“ “ 78 ” 11
117	—	“ “ 78 ” 12
118	—	“ “ 78 ” 13
119	—	“ “ 73 ” 14
120	—	“ “ 78 ” 15
121	235	
122	227	
123	228	
124	229	
125	230	
126	233	
127	214	
128	215	
129	—	Kenya, Chapter 78, section 4
130	—	Punishment of Incest Act, 1908
131	—	“ “ ” ”
132	—	“ “ ” ”
133	—	“ “ ” ”
134	—	“ “ ” ”
135	—	New
136	—	Indian Penal Code, section 473

COMPARATIVE TABLE OF SECTIONS—(Contd.)

Clause of the Bill	Corresponding Section of Criminal Code of Nigeria	Corresponding Section of other Law
137	370	
138	—	Indian Penal Code, section 496
139	372	
140	301	
141	302	Offences Against Persons Act, 1861, 26
142	371	
143	234	
144	236	
145	239	
146	240	
147	241	
148	—	International Convention of 1923
149	249 and 231	
150	250	
151	—	Kenya, Chapter 65
152	247 (2)	
153	243 (2)	
154	243 (1)	
155	—	New
156	—	New
157	245	
158	247 (1)	
159	—	New
160	—	St Lucia, section 184
161	—	„ „ 185
162	—	„ „ 186
163	—	„ „ 187
164	—	„ „ 188
165	—	„ „ 158
166	—	„ „ 190
167	—	„ „ 191
168	—	New
169	—	New
170	—	New
171	375	
172	—	New
173	—	New
174	318	
175	283	
176	—	New
177	307	
178	314	
179	300	
180	301	
181	302	
182	303	
183	304	
184	320	
185	321	
186	322	
187	323	
188	324	
189	326	
190	327	
191	329	
192	330	
193	331	
194	332	
195	333	
196	334	
197	335	
198	336	
199	337	
200	338	
201	339	
202	343 (1)	
203	344	
204	346	
205	454	
206	343 (2)	
207	—	New
208	351	

COMPARATIVE TABLE OF SECTIONS—(Contd.)

Clause of the Bill	Corresponding Section of Criminal Code of Nigeria	Corresponding Section of other Law
209	355	
210	354	
211	356	
212	—	Indian Penal Code, section 360
213	—	" " " "
214	—	" " " "
215	—	" " " "
216	—	" " " "
217	—	" " " "
218	—	" " " "
219	—	" " " "
220	—	" " " "
221	—	" " " "
222	—	" " " "
223	—	" " " "
224	382	
225	383	
226	384	
227	385	
228	386	
229	387	
230	388	
231	389	
232	390	
233	390 (1)	
234	390 (2)	
235	390 (3)	
236	390 (4)	
237	390 (5)	
238	390 (6)	
239	390 (7)	
240	390 (8)	
241	390 (10)	
242	390 (11)	
243	391	
244	392	
245	393	
246	394	
247	395	
248	396	
249	400	
250	401	
251	402	
252	403	
253	405	
254	407	
255	408	
256	409	
257	406	
258	410	
259	411 and 415	
260	412 and 416	
261	413	
262	414	
263	417	
264	418	
265	419	
266	420	
267	421	
268	—	Debtors Act, 1869, section 13
269	422	
270	423	
271	424	
272	425	
273	—	Indian Penal Code, section 411
274	—	New
275	429	
276	434	
277	435	
278	436	
279	438	
280	439	

COMPARATIVE TABLE OF SECTIONS—(Contd.)

Clause of the Bill	Corresponding Section of Criminal Code of Nigeria	Corresponding Section of other Law
281	443	
282	444	
283	445	
284	446	
285	447	
286	448	
287	450	
288	451	
289	452	
290	456	
291	457	
292	458	
293	460	
294	461	Offences Against Persons Act, 1861, section 50
295	—	New
296	—	New
297	—	New
298	—	New
299	—	New
300	—	New
301	—	New
302	—	New
303	468	
304	469	
305	471	
306	472	
307	473	
308	474	
309	475	
310	476	
311	477	
312	478	
313	479	
314	146	
315	147	
316	148	
317	149	
318	150	
319	151	
320	152	
321	157	
322	158	
323	481 (1) and (2)	
324	483	
325	—	New
326	—	New
327	484	
328	485	
329	486	
330	487	
331	488	
332	489	
333	4	
334	508	
335	509	
336	515	
337	516	
338	517	
339	518	
340	10	
341	519	
342	520	
343	—	New

**THE
CRIMINAL PROCEDURE
CODE.**

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SECTION

- 1 —Short title and commencement
- 2 —Interpretation
- 3 —Trial of offences under Penal Code and other laws

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- 29 —Arrest without warrant by subordinate police officer
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SECTION

- 38 —Recapture of person escaping
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 41 —Security for good behaviour from vagrants and suspected persons
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 48 —Power to dispense with personal attendance
 49 —Inquiry as to truth of information
 50 —Order to give security
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 53 —Contents of bond
 54 —Power to reject sureties
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 69 —Trial at place where act done or consequence ensues
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 77 —Idem
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GOVERNMENT NOTICE NO 501

His Excellency the Acting Governor has approved of the following Bill being introduced at the next session of the Legislative Council

G R SANDFORD,
for Colonial Secretary

A BILL

TO MAKE PROVISION FOR THE PROCEDURE TO BE FOLLOWED IN CRIMINAL CASES.

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

PART I —PRELIMINARY

1 This Ordinance may be cited as "the Criminal Procedure Code" (hereinafter referred to as "this Code"), and shall commence and come into operation on such date as the Governor may, by proclamation in the Gazette, appoint

2 In this Code, unless the context otherwise requires— **Interpretation**

"Cognizable offence" means an offence for which a police officer may, in accordance with the First Schedule or under any law for the time being in force, arrest without warrant,

"European" means a person of European origin or descent,

"Native" means any native of Africa not of European or Asiatic extraction, but includes an Arab and a Somali, and also any Beluchi born in Africa,

"Non-cognizable offence" means an offence for which a police officer may not arrest without warrant,

"Officer in charge of a police station" includes, when the officer in charge of the police station is absent from the station-house or unable from illness or other cause to perform his duties, the police officer present at the station-house who is next in rank to such officer, and is above the rank of constable, or, when the Governor so directs, any other police officer so present. For the purpose of this definition a European constable shall be deemed to be above the rank of constable,

"Police officer" includes any member of the Police Force,

"Police station" means a post or place appointed by the Commissioner of Police to be a police station, and includes any local area policed from such station

"Preliminary investigation" means an investigation of a criminal charge held by a subordinate court with a view to the committal of the accused person for trial before the Supreme Court,

"Proclaimed person" and "proclaimed offender" mean any person in respect of whom a proclamation has been published under the provisions of section 111,

" Public prosecutor " means any person appointed under section 82, and includes the Attorney General, the Solicitor General, a Crown Counsel, and any person acting under the directions of the Attorney General ,

" Subordinate court " includes a subordinate native court ,

" Summary trial " means a trial held by a subordinate court under Part VI

Trial of offences under Penal Code

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

Trial of offences under other laws

(2) All offences under any other law shall be inquired into, tried, and otherwise dealt with according to the same provisions, subject, however, to any enactment for the time being in force regulating the manner or place of inquiring into, trying, or otherwise dealing with such offences

Saving power of Supreme Court

(3) Provided, however, and notwithstanding anything in this Code contained, the Supreme Court may, subject to the provisions of any law for the time being in force in the Colony, in exercising its criminal jurisdiction in respect of any matter or thing to which the procedure prescribed by this Code is inapplicable, exercise such jurisdiction according to the course of procedure and practice observed by and before His Majesty's High Court of Justice in England at the date of the coming into operation of this Code

PART II —POWERS OF COURTS

Offences under Penal Code

4 Subject to the other provisions of this Code, any offence under the Penal Code may be tried by the Supreme Court, or by any subordinate court by which such offence is shown in the fifth column of the First Schedule to be triable

Offences under other laws

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

(2) When no court is so mentioned, it may, subject to the other provisions of this Code, be tried by the Supreme Court, or by any subordinate court by which such offence is shown in the fifth column of the First Schedule to be triable

**Sentences which Supreme Court may pass
Sentences which subordinate courts may pass**

6 The Supreme Court may pass any sentence authorised by law

7. Subject to the provisions of Part VII of this Code, subordinate courts of the first, second and third class may, when the accused is a non-native, pass the following sentences, namely —

Subordinate courts of the first class	Imprisonment for a term not exceeding two years Fine not exceeding £300 Corporal punishment
Subordinate courts of the second class	Imprisonment for a term not exceeding six months Fine not exceeding £75 Corporal punishment
Subordinate courts of the third class	Imprisonment for a term not exceeding one month Fine not exceeding £15

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

Combination of sentences

9 (1) Liwalis' and Cadis' courts shall have the same powers in all matters with respect to natives only as a subordinate court of the second class with respect to non-natives

Powers of subordinate native courts

(2) Mudirs' courts shall have the same powers in all matters with respect to natives only as a subordinate court of the third class with respect to non-natives

10 (1) Subordinate courts of the first, second and third class may try natives for any offence under the Penal Code or any other law other than offences under sections 35, 36 and 37 of the Penal Code, murder, manslaughter, rape, or attempts to commit or aiding, abetting, counselling or procuring the commission of any such offences

Powers of subordinate courts over natives

(2) Subordinate courts of the first and second class may pass on any native so tried any sentence authorised by the Penal Code or any other law

(3) Subordinate courts of the third class may pass on any native so tried a sentence of imprisonment for a term not exceeding six months or a fine not exceeding twenty pounds or both

11 (1) No sentence imposed on a native by any subordinate court exceeding six months' imprisonment (whether such sentence shall be a substantive sentence of imprisonment or a sentence of imprisonment in default of payment of a fine or a combination of such sentences) or twelve strokes shall be carried into effect, and no fine exceeding fifty pounds shall be levied, until the record of the case or a certified copy thereof has been transmitted to and the sentence has been confirmed by the Supreme Court

Sentences requiring confirmation by Supreme Court

(2) The Supreme Court may exercise the same powers in confirmation as are conferred upon it in revision by Part XI of this Code

12 (1) Whenever a subordinate court shall pass a sentence which requires confirmation by the Supreme Court under the last preceding section, the court imposing such sentence may in its discretion release the person sentenced on bail pending the order of the Supreme Court

Release on bail pending order of Supreme Court

(2) If the person sentenced is so released on bail as aforesaid, the term of imprisonment shall run from the date upon which such person begins to serve his sentence after confirmation by or other order of the Supreme Court

Provided, however, that the person sentenced may, pending the order of the Supreme Court, elect to serve his sentence from the date upon which he is sentenced by the subordinate court, in which case the term of imprisonment shall run from such date

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

Sentences in cases of conviction of several offences at one trial

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

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

Provided as follows —

(a) In no case shall such person be sentenced to imprisonment for a longer period than fourteen years

(b) If the case is tried by a subordinate court the aggregate punishment shall not exceed twice the amount of punishment which the court is, in the exercise of its ordinary jurisdiction, competent to impose

(3) For the purposes of appeal or confirmation the aggregate of consecutive sentences imposed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence

SPECIAL DISTRICTS

**Appointment
of special
districts**

14 The Governor in Council may, by order, direct that any area in the Colony shall be a special district for the purposes of this Code

**Special powers
to magistrates
in special
districts to
try certain
offences**

15 The Governor may, by appointment in the Gazette, confer upon any officer in charge of a special district, holding a subordinate court of the first or second class, power to try natives for offences under sections 35, 36 and 37 of the Penal Code, and for the offences of murder, manslaughter and rape, and for attempts to commit or aiding, abetting, counselling or procuring the commission of any of such offences

Provided that all such offences shall be tried with the aid of assessors, and shall be inquired into and tried in the manner prescribed for the trial of such offences by the Supreme Court

**Confirmation
of sentences**

16 No sentence of death or sentence of imprisonment exceeding six months or sentence of corporal punishment exceeding twelve strokes imposed under the powers conferred by the last preceding section shall be carried into effect, and no fine exceeding fifty pounds imposed under such powers shall be levied, until the record of the case or a certified copy thereof has been transmitted to and the sentence has been confirmed by the Supreme Court

Provided that no sentence of death shall be carried into effect until, in addition to the confirmation by the Supreme Court, such sentence has been confirmed by the Governor

**Sentence of
death to be
confirmed by
Governor**

17 Whenever a sentence of death shall be confirmed by the Supreme Court under the last preceding section, such court shall forthwith transmit the record of the case or a certified copy thereof to the Governor for his confirmation

**Provisions as
to appeal from
death sentence**

18 When an accused person has been sentenced to death by a subordinate court exercising powers conferred on it under section 15, such court shall on the receipt of the confirmation of such sentence by the Supreme Court, inform him that he may appeal to His Majesty's Court of Appeal for

Eastern Africa as if he had been convicted on a trial held by the Supreme Court and, if he wishes to appeal, inform him that his appeal must be preferred within thirty days from the date on which he is given such information

19 When a sentence of death has been passed by a subordinate court exercising powers conferred on it under section 15, such court shall, on receiving the order in appeal, if any, thereon and the order of confirmation of sentence or other order by the Supreme Court and the Governor, issue a warrant or take such other steps as may be necessary to carry such order or orders into effect

Execution of
death sentence

PART III —GENERAL PROVISIONS

ARREST, ESCAPE AND RETAKING

Arrest generally

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

Arrest, how
made

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

(3) Nothing in this section shall give a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life

21 (1) If any person acting under a warrant of arrest, or any police officer having authority to arrest, has reason to believe that the person to be arrested has entered into or is within any place, the person residing in or being in charge of such place shall, on demand of such person acting as aforesaid or such police officer, allow him free ingress thereto and afford all reasonable facilities for a search therein

Search of
place entered
by person
sought to be
arrested

(2) If ingress to such place cannot be obtained under the preceding sub-section, it shall be lawful in any case for a person acting under a warrant, and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity to escape, for a police officer, to enter such place and search therein, and, in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance

Provided that if any such place is an apartment in the actual occupancy of a woman (not being the person to be arrested) who, according to custom, does not appear in public, such person or police officer shall, before entering such apartment, give notice to the woman that she is at liberty to withdraw, and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it

22 Any police officer or other person authorised to make an arrest may break open any outer or inner door or window 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
open doors and
windows for
purposes of
liberation

No unnecessary restraint **23** The person arrested shall not be subjected to more restraint than is necessary to prevent his escape

- Search of arrested persons **24** Whenever a person is arrested—
 (a) by a police officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail but the person arrested cannot furnish bail, or
 (b) without warrant, or by a private person under a warrant, and the person arrested cannot legally be admitted to bail or is unable to furnish bail,

the police officer making the arrest or, when the arrest is made by a private person, the police officer to whom he makes over the person arrested may search such person and place in safe custody all articles, other than necessary wearing apparel, found upon him

Mode of searching women **25** Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency

Power to seize offensive weapons **26** The officer or other person making any arrest may take from the person arrested any offensive weapons which he has about his person, and shall deliver all weapons so taken to the court or officer before which or whom the officer or person making the arrest is required by law to produce the person arrested

Arrest without warrant

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

- (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 who has been proclaimed as an offender under section 111,
- (e) any person whom he suspects upon reasonable grounds of being a deserter from His Majesty's Army or Navy,
- (f) any person whom he finds lying or loitering in any highway, yard or other place during the night and whom he suspects upon reasonable grounds of having committed or being about to commit a felony,
- (g) any person whom he suspects upon reasonable grounds of having been concerned in any act committed at any place out of the Colony which, if committed in the Colony, would have been punishable as an offence, and for which he is, under the Fugitive Criminals Surrender Ordinance or the Fugitive Offenders Act, 1881, or otherwise, liable to be apprehended and detained in the Colony,

- (h) any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person any implement of housebreaking
- (i) any released convict committing a breach of any provision prescribed by section 337 or of any rule made thereunder

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

- (a) any person found taking precautions to conceal his presence within the limits of such station under circumstances which afford reason to believe that he is taking such precautions with a view to committing a cognizable offence,
- (b) any person within the limits of such station who has no ostensible means of subsistence or who cannot give a satisfactory account of himself,
- (c) any person who is by repute an habitual robber, house-breaker, or thief, or an habitual receiver of stolen property knowing it to be stolen, or who by repute habitually commits extortion or in order to the committing of extortion habitually puts or attempts to put persons in fear of injury

29 When any officer in charge of a police station requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing specifying the person to be arrested and the offence or other cause for which the arrest is to be made

Arrest of vagabonds, habitual robbers, etc

30 (1) When any person who in the presence of a police officer has committed or has been accused of committing a non-cognizable offence refuses on the demand of such officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained

Procedure when police officer deputes subordinate to arrest without warrant

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

Refusal to give name and residence

Provided that if such person is not resident in the Colony the bond shall be secured by a surety or sureties resident in the Colony

(3) Should the true name and residence of such person not be ascertained within twenty-four hours from the time of arrest, or should he fail to execute the bond or, if so required, to furnish sufficient sureties, he shall forthwith be forwarded to the nearest magistrate having jurisdiction

31 A police officer making an arrest without a warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail take or send the person arrested before a magistrate having jurisdiction in the case or before an officer in charge of a police station

Disposal of persons arrested by police officer

Arrest by private person

32 (1) Any private person may arrest any person who in his view commits a cognizable offence, or whom he reasonably suspects of having committed a felony, or who has been proclaimed as an offender under section 111

(2) Persons found committing any offence involving injury to property may be arrested without a warrant by the owner of the property or his servants or persons authorised by him

Disposal of person arrested by private person

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

(2) If there is reason to believe that such person comes under the provisions of section 27, a police officer shall re-arrest him

(3) If there is reason to believe that he has committed a non-cognizable offence, and he refuses on the demand of a police officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 30. If there is no sufficient reason to believe that he has committed any offence he shall be at once released

Detention of persons arrested without warrant

34 When any person has been taken into custody without a warrant for an offence other than murder, treason or rape, the officer in charge of the police station to which such person shall be brought may in any case and shall, if it does not appear practicable to bring such person before an appropriate subordinate court within twenty-four hours after he was so taken into custody, inquire into the case, and, unless the offence appears to the officer to be of a serious nature, release the person on his executing a bond, with or without sureties for a reasonable amount to appear before a subordinate court at a time and place to be named in the bond but where such person is retained in custody he shall be brought before a subordinate court as soon as practicable

Police to report apprehensions

35 Officers in charge of police stations shall report to the nearest magistrate the cases of all persons arrested without warrant within the limits of their respective stations whether such persons have been admitted to bail or otherwise

Offence committed in magistrate's presence

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

Arrest by magistrate

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

*Escape and Retaking***Recapture of person escaping**

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

39 The provisions of sections 21 and 22 shall apply to arrests under the last preceding section although the person making any such arrest is not acting under a warrant and is not a police officer having authority to arrest

Provision of section, 21 and 22 to apply to arrests under section 38

PREVENTION OF OFFENCES

Security for keeping the Peace and for Good Behaviour

40 (1) Whenever a magistrate empowered to hold a subordinate court of the first class is informed 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 bond, with or without sureties, for keeping the peace for such period, not exceeding one year, as the magistrate thinks fit to fix

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

(3) When any magistrate not empowered to proceed under sub-section (1) has reason to believe that any person is likely to commit a breach of the peace or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity, and that such breach of the peace or disturbance cannot be prevented otherwise than by detaining such person in custody, such magistrate may after recording his reasons, issue a warrant for his arrest (if he is not already in custody or before the court), and may send him before a magistrate empowered to deal with the case, with a copy of his reasons

(4) A magistrate before whom a person is sent under this section may in his discretion detain such person in custody until the completion of the inquiry hereinafter prescribed

41 Whenever a magistrate empowered to hold a subordinate court of the first class receives information—

Security for good behaviour from vagrants and suspected persons

- (a) 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, or
- (b) that there is within such limits a person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself,

such magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period not exceeding one year, as the magistrate thinks fit to fix

42 Whenever a magistrate empowered to hold a subordinate court of the first class receives information that any person within the local limits of his jurisdiction—

Security for good behaviour from habitual offenders

- (a) is by habit a robber house-breaker or thief, or
- (b) is by habit a receiver of stolen property knowing the same to have been stolen, or

- (c) habitually protects or harbours thieves, or aids in the concealment or disposal of stolen property, or
- (d) habitually commits or attempts to commit, or aids or abets in the commission of, any offence punishable under Chapters XXX, XXXIII or XXXVI of the Penal Code, or
- (e) habitually commits or attempts to commit, or aids or abets in the commission of, offences involving a breach of the peace, or
- (f) is so desperate and dangerous as to render his being at large without security hazardous to the community,

such magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond with sureties, for his good behaviour for such period, not exceeding three years, as the magistrate thinks fit to fix

Proviso as to
European
vagrants
Cap. 63

43 The provisions of the two last preceding sections shall not apply to Europeans in cases where they may be dealt with under the Vagrancy Ordinance or any Ordinance amending or substituted for such Ordinance

Order to
be made

44 When a magistrate acting under section 40, section 41 or section 42 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 bond to be executed,
- (c) the term for which it is to be in force, and
- (d) the number, character and class of sureties, if any, required

Procedure in
respect of
person present
in court

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

Summons or
warrant in
case of person
not so present

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

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

Copy of order
under section
44 to
accompany
summons or
warrant

47 Every summons or warrant issued under the last preceding section shall be accompanied by a copy of the order made under section 44, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with or arrested under the same

Power to
dispense with
personal
attendance

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

49 (1) When an order under section 44 has been read or explained under section 45 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 46, the magistrate shall proceed to inquire into the truth of the information upon which the action has been taken, and to take such further evidence as may appear necessary

Inquiry as to
truth of
information

(2) Such inquiry shall be made, as nearly as may be practicable, in the manner hereinafter prescribed for conducting trials and recording evidence in trials before subordinate courts

(3) For the purposes of this section the fact that a person is an habitual offender may be proved by evidence of general repute or otherwise

(4) Where two or more persons have been associated together in the matter under inquiry, they may be dealt with in the same or separate inquiries as the magistrate thinks just

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

Order to give
security

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 44,

(b) the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive,

(c) when the person in respect of whom the inquiry is made is a minor, the bond shall be executed only by his sureties

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

51 If on an inquiry under section 49 it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, the magistrate shall make an entry on the record to that effect, and, if such person is in custody only for the purposes of the inquiry, shall release him, or, if such person is not in custody, shall discharge him

Discharge of
person
informed
against

*Proceedings in all cases subsequent to Order to furnish
Security*

52 (1) If any person in respect of whom an order requiring security is made under section 44 or section 50 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

Commence-
ment of
period for
which security
is required

(2) In other cases such period shall commence on the date of such order unless the magistrate, for sufficient reason, fixes a later date.

Contents of bond

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

Power to reject sureties

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

Procedure on failure of person to give security

55 (1) If any person ordered to give security as aforesaid does not give such security on or before the date on which the period for which such security is to be given commences, he shall, except in the case mentioned in the next succeeding sub-section be committed to prison, or, if he is already in prison, be detained in prison until such period expires or until within such period he gives the security to the court or magistrate who made the order requiring it

(2) When such person has been ordered by a magistrate to give security for a period exceeding one year, such magistrate shall, if such person does not give such security as aforesaid, issue a warrant directing him to be detained in prison pending the orders of the Supreme Court, and the proceedings shall be laid as soon as conveniently may be before such court

(3) The Supreme Court, after examining such proceedings and requiring from the magistrate any further information or evidence which it thinks necessary may make such order in the case as it thinks fit

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

(5) If the security is tendered to the officer in charge of the prison he shall forthwith refer the matter to the court or magistrate who made the order and shall await the orders of such court or magistrate

(6) Imprisonment for failure to give security for keeping the peace shall be without hard labour

(7) Imprisonment for failure to give security for good behaviour may be with or without hard labour as the court or magistrate in each case directs

Power to release persons imprisoned for failure to give security

56 Whenever a magistrate empowered to hold a subordinate court of the first class is of opinion that any person imprisoned for failing to give security may be released without hazard to the community such magistrate shall make an immediate report of the case for the orders of the Supreme Court, and such court may, if it thinks fit, order such person to be discharged

Power of Supreme Court to cancel bond

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

Discharge of sureties

58 (1) Any surety for the peaceable conduct or good behaviour of another person may at any time apply to a magistrate empowered to hold a subordinate court of the first class to cancel any bond executed under any of the preceding sections within the local limits of his jurisdiction

(2) On such application being made, the magistrate shall issue his summons or warrant, as he thinks fit, requiring the person for whom such surety is bound to appear or to be brought before him

(3) When such person appears or is brought before the magistrate, such magistrate shall cancel the bond and shall order such person to give, for the unexpired portion of the term of such bond fresh security of the same description as the original security. Every such order shall for the purposes of sections 53, 54, 55 and 56 be deemed to be an order made under section 50

PREVENTIVE ACTION OF THE POLICE

59 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

Police to prevent cognizable offences

60 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

Information of design to commit such offences

61 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

Arrest to prevent such offences

62 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

Prevention of injury to public property

PART IV — PROVISIONS RELATING TO ALL CRIMINAL INVESTIGATIONS

PLACE OF INQUIRY OR TRIAL

63 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

General authority of courts of the Colony

64 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

65 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

Removal of accused person under warrant

whom it is directed to receive and detain the person therein named and to carry him and deliver him up to the court within whose district the offence was committed or may be tried

Powers of Supreme Court

66 The Supreme Court may inquire of and try any offence subject to its jurisdiction at any place where it has power to hold sittings

Provided that, except under section 81, no criminal case shall be brought under the cognizance of the Supreme Court unless the same shall have been previously investigated by a subordinate court and the accused person shall have been committed for trial before the Supreme Court

Place and date of session, of the Supreme Court

67 (1) For the exercise of its original criminal jurisdiction the Supreme Court shall hold sittings at such places and on such days as the Chief Justice may direct

(2) The registrar of the Supreme Court shall ordinarily give notice beforehand of all such sittings

Ordinary place of inquiry and trial

68 Subject to the provisions of section 66 and to the powers of transfer conferred by sections 76 and 78, every offence shall ordinarily be inquired into and tried by a court within the local limits of whose jurisdiction it was committed

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

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

Trial where offence is connected with another offence

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

Trial where place of offence is uncertain

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

when an offence is committed partly in one local area and partly in another, or

when an offence is a continuing one, and continues to be committed in more local areas than one, or

when it consists of several acts done in different local areas,

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

Offence committed on a journey

72 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

Supreme Court to decide in cases of doubt

73 Whenever any doubt arises as to the court by which any offence should be inquired into or tried, the Supreme Court may decide by which court the offence shall be inquired into or tried

74 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

Court to be open

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

75 (1) If upon the hearing of any complaint it appears that the cause of complaint arose out of the limits of the jurisdiction of the court before which such complaint has been brought, the court may, on being satisfied that it has no jurisdiction, direct the case to be transferred to the court having jurisdiction where the cause of complaint arose

Transfer of case where offence committed outside jurisdiction

(2) If the accused person is in custody and the court directing such transfer thinks it expedient that such custody should be continued, or, if he is not in custody, that he should be placed in such custody, the court shall direct the offender to be taken by a police officer before the court having jurisdiction where the cause of complaint arose, and shall give a warrant for that purpose to such officer, and shall deliver to him the complaint and recognizances, if any, taken by such court, to be delivered to the court before whom the accused person is to be taken, and such complaint and recognizances, if any, shall be treated to all intents and purposes as if they had been taken by such last-mentioned court

(3) If the accused person is not continued or placed in custody as aforesaid, the court shall inform him that it has directed the transfer of the case as aforesaid, and thereupon the provisions of the preceding sub-section respecting the transmission and validity of the documents in the case shall apply

76 Any magistrate holding a subordinate court of the first class—

Transfer of cases between magistrates

(a) may transfer any case of which he has taken cognizance for inquiry or trial to any magistrate holding a subordinate court empowered to inquire into or try such case within the local limits of such first class subordinate court's jurisdiction, and

(b) may direct or empower any magistrate holding a subordinate court of the second or third class or any magistrate holding a native subordinate court who has taken cognizance of any case, and whether evidence has been taken in such case or not, to transfer it for inquiry or trial to himself or to any other specified magistrate within the local limits of his jurisdiction who is competent to try the accused or commit him for trial, and such magistrate may dispose of the case accordingly

77 If in the course of any inquiry or trial before a magistrate the evidence appears to warrant a presumption that the case is one which should be tried or committed for trial by some other magistrate, he shall stay proceedings and submit the case with a brief report thereon to a magistrate holding a subordinate court of the first class, empowered to direct the transfer of the case under the last preceding section

Procedure when after commencement of inquiry or trial magistrate finds case should be transferred to another magistrate

Power of
Supreme Court
to change
venue

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

- (a) that a fair and impartial inquiry or trial cannot be had in any criminal court subordinate thereto, or
- (b) that some question of law of unusual difficulty is likely to arise, or
- (c) that a view of the place in or near which any offence has been committed may be required for the satisfactory inquiry into or trial of the same, or
- (d) that an order under this section will tend to the general convenience of the parties or witnesses, or
- (e) that such an order is expedient for the ends of justice or is required by any provision of this Code,

it may order—

- (i) that any offence be inquired into or tried by any court not empowered under the preceding sections of this Part but in other respects competent to inquire into or try such offence,
- (ii) that any particular criminal case or class of cases be transferred from a criminal court subordinate to its authority to any other such criminal court of equal or superior jurisdiction,
- (iii) that an accused person be committed for trial to itself

(2) The Supreme Court may act either on the report of the lower court or on the application of a party interested or on its own initiative

(3) Every application for the exercise of the power conferred by this section shall be made by motion, which shall, except when the applicant is the Attorney General, be supported by affidavit

(4) Every accused person making any such application shall give to the Attorney General notice in writing of the application, together with a copy of the grounds on which it is made, and no order shall be made on the merits of the application unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application

(5) When an accused person makes any such application the Supreme Court may direct him to execute a bond, with or without sureties, conditioned that he will, if convicted, pay the costs of the prosecutor

CONTROL OF CROWN IN CRIMINAL PROCEEDINGS

Power of
Attorney
General to
enter *nolle
prosequi*

79 (1) In any criminal case and at any stage thereof before verdict or judgment, as the case may be, the Attorney General may enter a *nolle prosequi*, either by stating in court or by informing the court in writing that the Crown intends that the proceedings shall not continue, and thereupon the accused shall be at once discharged in respect of the charge for which the *nolle prosequi* is entered, and if he has been committed to prison shall be released, or if on bail his recognizances shall be discharged, but such discharge of an accused person shall not operate as a bar to any subsequent proceedings against him on account of the same facts

(2) If the accused shall not be before the court when such *nolle prosequi* is entered the registrar or clerk of such court shall forthwith cause notice in writing of the entry of such *nolle prosequi* to be given to the keeper of the prison in which such accused may be detained, and also, if the accused person has been committed for trial, to the subordinate court by which he was so committed and such subordinate court shall forthwith cause a similar notice in writing to be given to any witnesses bound over to prosecute and give evidence and to their sureties (if any) and also to the accused and his sureties in case he shall have been admitted to bail.

80 The Attorney General may order in writing that all or any of the powers vested in him by the last preceding section and by Part VIII of this Code be vested for the time being in the Solicitor General or a Crown Counsel, and the exercise of these powers by the Solicitor General or a Crown Counsel shall then operate as if they had been exercised by the Attorney General

Provided that the Attorney General may in writing revoke any order made by him under this section

81 (1) Notwithstanding anything in this Code contained the Attorney General may, with the previous sanction of the Governor in Council, exhibit to the Supreme Court, against persons subject to the jurisdiction of the Supreme Court, informations for all purposes for which His Majesty's Attorney General for England may exhibit informations on behalf of the Crown in the High Court of Justice in England

(2) Such proceedings may be taken upon every such information as may lawfully be taken in the case of similar informations filed by His Majesty's Attorney General for England so far as the circumstances of the case and the practice and procedure of the Supreme Court will admit

(3) The Supreme Court may make rules for carrying into effect the provisions of this section

Delegation of powers by Attorney-General

Criminal informations by the Attorney-General

APPOINTMENT OF PUBLIC PROSECUTORS AND CONDUCT OF PROSECUTIONS

82 (1) The Governor may appoint generally, or in any case, or for any specified class of cases, in any local area, one or more officers to be called public prosecutors

Power to appoint public prosecutors

(2) In any case committed for trial to the Supreme Court the Attorney General may appoint any advocate of the Supreme Court, or officer of the administration, not being an officer of police below the rank of inspector of police, to be a public prosecutor for the purpose of such case

(3) Every public prosecutor shall be subject to the express directions of the Attorney General

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

Powers of public prosecutors

**Withdrawal
from
prosecution
in trials
before
subordinate
courts**

84 In any trial before a subordinate court any public prosecutor may, with the consent of the court or on the instructions of the Attorney General, at any time before judgment is pronounced, withdraw from the prosecution of any person, and upon such withdrawal—

- (a) if it is made before the accused person is called upon to make his defence, he shall be discharged, but such discharge of an accused person shall not operate as a bar to subsequent proceedings against him on account of the same facts,
- (b) if it is made after the accused person is called upon to make his defence he shall be acquitted

**Permission
to conduct
prosecution**

85 (1) Any magistrate inquiring into or trying any case may permit the prosecution to be conducted by any person, but no person other than a public prosecutor or other officer generally or specially authorised by the Governor in this behalf shall be entitled to do so without permission

(2) Any such person or officer shall have the like power of withdrawing from the prosecution as is provided by the last preceding section, and the provisions of that section shall apply to any withdrawal by such person or officer

(3) Any person conducting the prosecution may do so personally or by an advocate

INSTITUTION OF PROCEEDINGS

Making of Complaint

**Complaint or
charge**

86 (1) Any person who believes from a reasonable and probable cause that an offence has been committed by any person may make a complaint or charge thereof to a magistrate within the local limits of whose jurisdiction either the offence alleged to have been committed is triable or the person accused is alleged to reside or be

(2) Every complaint or charge shall be in writing, or the substance thereof shall be reduced to writing by the magistrate, and shall be signed by the complainant and also by the magistrate

**Issue of
summons or
warrant**

87 (1) The magistrate upon receiving any such complaint or charge may in his discretion issue either a summons or a warrant to compel the attendance of the accused person before a subordinate court having jurisdiction to inquire into or try the offence alleged to have been committed

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

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

(3) Any summons or warrant may be issued on a Sunday

PROCESSES TO COMPEL THE APPEARANCE OF ACCUSED PERSONS

Summons

**Form and
contents of
summons**

88 (1) Every summons issued by a court under this Code shall be in writing, in duplicate signed and sealed by the presiding officer of such court or by such other officer as the Supreme Court may from time to time by rule direct

(2) Every summons shall be directed to the person summoned and shall require him to appear at a time or place to be therein appointed before a court having jurisdiction to inquire into and deal with the complaint or charge. It shall state shortly the offence for which the person against whom it is issued is charged.

89 (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.

90 Where the person summoned cannot by the exercise of due diligence be found, the summons may be served by leaving one of the duplicates for him with some adult male member of his family or with his servant residing with him, and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

91 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.

92 Where the person summoned is in the active service of the Government or of the Kenya and Uganda Railways and Harbours, the court issuing the summons shall ordinarily send it in duplicate to the head of the office in which such person is employed, and such head shall thereupon cause the summons to be served in the manner provided by section 89 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.

93 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. In the latter case service shall be deemed to have been effected when the letter would arrive in ordinary course of post.

94 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.

95 (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 on 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

Power to dispense with personal attendance of accused

96 (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

(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 in manner hereinafter provided

Warrant of Arrest

Warrant after issue of summons

97 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

Summons disobeyed

98 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 96, the court may issue a warrant to apprehend him and cause him to be brought before such court. But no such warrant shall be issued unless a complaint or charge has been made upon oath

Form, contents and duration of warrant of arrest

99 (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

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

(2) The indorsement shall state—

- (a) the number of sureties,
- (b) the amount in which they and the person for whose arrest the warrant is issued are to be respectively bound, and

(c) the time at which he is to attend before the court

(3) Whenever security is taken under this section the officer to whom the warrant is directed shall forward the bond to the court

101 (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

Warrants,
to whom
directed

(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

102 (1) A magistrate empowered to hold a subordinate court of the first class may direct a warrant to any landholder, farmer or manager of land within the local limits of his jurisdiction for the arrest of any escaped convict, proclaimed offender or person who has been accused of a cognizable offence and has eluded pursuit

Warrants may
be directed to
landholders,
etc

(2) Such landholder, farmer or manager shall acknowledge in writing the receipt of the warrant and shall execute it if the person for whose arrest it was issued is in or enters on his land or farm or the land under his charge

(3) When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest police officer, who shall cause him to be taken before a magistrate having jurisdiction, unless security is taken under section 100

103 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
warrants
directed to
police officer

104 The police officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and if so required shall show him the warrant

Notification of
substance of
warrant

105 The police officer or other person executing a warrant of arrest shall (subject to the provisions of section 100 as to security) without unnecessary delay bring the person arrested before the court before which he is required by law to produce such person

Person
arrested to
be brought
before the
court without
delay

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

Where warrant
of arrest may
be executed

107 (1) When a warrant of arrest is to be executed outside the local limits of the jurisdiction of the court issuing the same, such court may, instead of directing such warrant to a police officer, forward the same by post or otherwise to any magistrate within the local limits of whose jurisdiction it is to be executed

Forwarding of
warrants for
execution
outside
jurisdiction

(2) The magistrate to whom such warrant is so forwarded shall indorse his name thereon, and, if practicable, cause it to be executed in the manner hereinbefore provided within the local limits of his jurisdiction

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

108 (1) When a warrant of arrest directed to a police officer is to be executed outside the local limits of the jurisdiction of the court issuing the same, he shall take it for indorsement to a magistrate within the local limits of whose jurisdiction it is to be executed

(2) Such magistrate shall indorse his name thereon, and such indorsement shall be sufficient authority to the police officer to whom the warrant is directed to execute the same within such limits and the local police officers shall, if so required, assist such officer in executing such warrant

(3) Whenever there is reason to believe that the delay occasioned by obtaining the indorsement of the magistrate within the local limits of whose jurisdiction the warrant is to be executed will prevent such execution, the police officer to whom it is directed may execute the same without such indorsement in any place outside the local limits of the jurisdiction of the court which issued it

Procedure on arrest of person outside jurisdiction

109 (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 160 be taken before the magistrate within the local limits of whose jurisdiction the arrest was made

(2) Such magistrate shall, if the person arrested appears to be the person intended by the court which issued the warrant, direct his removal in custody to such court

Provided that if such person has been arrested for an offence other than murder, treason or rape, and he is ready and willing to give bail to the satisfaction of such magistrate, or if a direction has been indorsed under section 100 on the warrant and such person is ready and willing to give the security required by such direction, the magistrate shall take such bail or security, as the case may be, and shall forward the bond to the court which issued the warrant

(3) Nothing in this section shall be deemed to prevent a police officer from taking security under section 100

Irrregularities in warrant

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

Proclamation and Attachment

111 (1) If any court has reason to believe (whether after taking evidence or not) that any person against whom a warrant of arrest has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation

Proclamation
for person
absconding

(2) The proclamation shall be published as follows —

(a) It shall be publicly read in some conspicuous place of the town, village or district in which such person ordinarily resides, or, if such person has no ordinary place of residence in the Colony, in which he was last known to be residing

(b) It shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village or district

(c) A copy thereof shall be affixed to some conspicuous part of the court house

(3) A statement in writing by the court issuing the proclamation to the effect that the proclamation was duly published on a specified day shall be conclusive evidence that the requirements of this section have been complied with and that the proclamation was published on such day

112 (1) The court issuing a proclamation under the last preceding section may at any time order the attachment of any property, movable or immovable or both, belonging to the proclaimed person

Attachment of
property of
proclaimed
person

(2) Such order shall authorise the attachment of any property belonging to the proclaimed person within the local limits of the jurisdiction of the court by which the order is made, and it shall authorise the attachment of any property belonging to such person outside such local limits when indorsed by a judge of the Supreme Court

(3) If the property ordered to be attached is a debt or other movable property, the attachment under this section shall be made—

(a) by seizure, or

(b) by the appointment of a receiver, or

(c) by an order in writing prohibiting the delivery of such property to the proclaimed person or to anyone on his behalf, or

(d) by all or any two of such methods as the court thinks fit

(4) If the property ordered to be attached is immovable, attachment under this section shall be made—

(a) by taking possession, or

(b) by the appointment of a receiver, or

(c) by an order in writing prohibiting the payment of rent or delivery of property to the proclaimed person, or to anyone on his behalf, or

(d) by all or any two of such methods as the court thinks fit

(5) If the property ordered to be attached consists of live stock, or is of a perishable nature the court may if it thinks it expedient, order immediate sale thereof, and in such case the proceeds of the sale shall abide the order of the court

(6) The powers, duties and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under the Civil Procedure Rules, 1927, or any amendment thereof

(7) If the proclaimed person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of the Government, but it shall not be sold until the expiration of six months from the date of attachment unless it is subject to speedy and natural decay or the court considers that the sale would be for the benefit of the owner, in either of which cases the court may cause it to be sold when it shall think fit

**Restoration
of attached
property**

113 (1) If within two years from the date of the attachment any person whose property is or has been at the disposal of the Government under sub-section (7) of the last preceding section appears voluntarily or is apprehended and brought before the court by whose order the property was attached or the Supreme Court, and proves to the satisfaction of such court that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant, and that he had not such notice of the proclamation as to enable him to attend within the time specified therein, such property, or, if the same has been sold, the net proceeds of the sale, or, if part only thereof has been sold, the net proceeds of the sale and the residue of the property, shall, after satisfying therewith all costs incurred in consequence of the attachment, be delivered to him

(2) Any person whose application under this section for the delivery of property or the proceeds of the sale thereof has been rejected by any court may appeal to the Supreme Court, and the provisions of Part XI (relating to appeals) shall apply to every such appeal

Miscellaneous Provisions regarding Processes

**Power to take
bond for
appearance**

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

**Arrest for
breach of
bond for
appearance**

115 When any person who is bound by any bond taken under this Code to appear before a court does not so appear the officer presiding in such court may issue a warrant directing that such person be arrested and produced before him

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

116 (1) Where any person for whose appearance or arrest a court is empowered to issue a summons or warrant is confined in any prison within the local limits of the jurisdiction of such court, the court may issue an order to the officer in charge of such prison requiring him to bring such prisoner in proper custody, at a time to be named in the order before such court

(2) The officer so in charge, on receipt of such order, shall act in accordance therewith, and shall provide for the safe custody of the prisoner during his absence from the prison for the purpose aforesaid

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

Provisions of
this Part
generally
applicable to
summonses and
warrants

Powers of
justices of
the peace

SEARCH WARRANTS

118 Where it is proved on oath to a court that in fact or according to reasonable suspicion anything upon, by or in respect of which an offence has been committed is in any building, ship, carriage, box, receptacle or place, the court may by warrant (called a search warrant) authorise a police officer or other person therein named to search the building, ship, carriage, box, receptacle or place (which shall be named or described in the warrant) for any such thing and, if anything searched for be found, to seize it and carry it before the court issuing the warrant or some other court to be dealt with according to law

Power to issue
search warrant

119 Every search warrant may be issued and executed on a Sunday, and shall be executed between the hours of sunset and sunrise, but the court may, by the warrant, in its discretion, authorise the police officer or other person to whom it is addressed to execute it at any hour

Execution of
search
warrant

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

Persons in
charge of
closed place to
allow ingress

(2) If ingress into such building or other place cannot be so obtained, the police officer or other person executing the search warrant may proceed in the manner prescribed by section 21

(3) Where any person in or about such building or place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched. If such person is a woman the provisions of section 25 shall be observed

121 (1) When any such thing is seized and brought before a court, it may be detained until the conclusion of the case or the investigation reasonable care being taken for its preservation

Detention of
property
seized

(2) If any appeal is made, or if any person is committed for trial, the court may order it to be further detained for the purpose of the appeal or the trial

(3) If no appeal is made, or if no person is committed for trial, the court shall direct such thing to be restored to the person from whom it was taken, unless the court sees fit and is authorised or required by law to dispose of it otherwise

122 The provisions of sections 99 (1) and (3), 101, 103, 106, 107 and 108 shall, so far as may be, apply to all search warrants issued under section 118

Provisions
applicable
to search
warrants

PROVISIONS AS TO BAIL

Bail in certain cases

123 (1) When any person, other than a person accused of murder, treason or rape, is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a court, and is prepared at any time while in the custody of such officer or at any stage of the proceedings before such court to give bail, such person may be admitted to bail

Provided that such officer or court may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided

(2) The amount of bail shall be fixed with due regard to the circumstances of the case and shall not be excessive

(3) The Supreme Court may in any case direct that any person be admitted to bail or that the bail required by a subordinate court or police officer be reduced

Bail bond

124 Before any person is released on bail or on his own recognizance, a bond for such sum as the court or police officer, as the case may be, thinks sufficient shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties, conditioned that such person shall attend at the time and place mentioned in the bond and shall continue so to attend until otherwise directed by the court or police officer, as the case may be

Discharge from custody

125 (1) As soon as the bond has been executed, the person for whose appearance it has been executed shall be released, and when he is in prison the court admitting him to bail shall issue an order of release to the officer in charge of the prison and such officer on receipt of the order shall release him

(2) Nothing in this section or in section 123 shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the bond was executed

Deposit instead of recognizance

126 When any person is required by any court or officer to execute a bond, with or without sureties, such court or officer may, except in the case of a bond for good behaviour, permit him to deposit a sum of money or Government currency notes to such amount as the court or officer may fix in lieu of executing such a bond, and may permit a native to deposit any property

Power to order sufficient bail when that first taken is insufficient

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

Discharge of sureties

128 (1) All or any of the sureties for the appearance and attendance of a person released on bail may at any time apply to a magistrate to discharge the bond either wholly or so far as it relates to the applicant or applicants

(2) On such application being made the magistrate shall issue his warrant of arrest directing that the person so released be brought before him

(3) On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the magistrate shall direct the bond to be discharged either wholly or so far as it relates to the applicant or applicants, and shall call upon such person to find other sufficient sureties, and if he fails to do so may commit him to prison

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

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

131 (1) Whenever any person shall not appear at the time and place mentioned in any recognizance entered into by him, the court may by order indorse such recognizance and declare the same to be forfeited

(2) On the forfeiture of any recognizance the court may issue its warrant of distress for the amount mentioned in such recognizance or for the imprisonment of such person and his surety or sureties for any term not exceeding six months, unless the amount mentioned in such recognizance be sooner paid or levied

(3) A warrant of distress under this section may be executed within the local limits of the jurisdiction of the court which issued it, and it shall authorise the distress and sale of any property belonging to such person without such limits when indorsed by a magistrate holding a subordinate court of the first or second class within the local limits of whose jurisdiction such property is found

132 All orders passed under the last preceding section by any magistrate shall be appealable to and may be revised by the Supreme Court

133 The Supreme Court may direct any magistrate to levy the amount due on a recognizance to appear and attend at the Supreme Court

Death of
surety

Persons bound
by
recognizance
absconding
may be
committed

Forfeiture of
recognizance

Appeal from
and revision
of orders

Power to
direct levy of
amount due on
certain
recognizances

JOINDER OF CHARGES

134 For every distinct offence of which any person is accused there shall be a separate charge or information, and every such charge or information shall be tried separately except in the following cases —

(a) When a person is accused of more offences than one of the same kind committed within one year of each other, he may be charged with and tried at the same time for any number of them not exceeding three

Three offences
of same kind
in one year

(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

Occurring in
one series
of acts

When doubtful what offence has been committed	(c) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused person may be charged with having committed all or any of such offences, and any number of such charges may be tried at once, or he may be charged in the alternative with having committed some one of the said offences
When more than one person accused of same offence	(d) When more persons than one are accused of the same offence, or of different offences committed in the same transaction or when one person is accused of committing any offence and another of aiding and abetting or being accessory to or of attempting to commit such offence, such persons may be charged and tried together or separately as the court thinks fit
Persons convicted or acquitted not to be tried again for same offence	135 A person who has been once tried by a court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal has not been reversed or set aside, not be liable to be tried again on the same facts for the same offence
May be tried again on separate charge	136 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 134
Consequences supervening or not known at time of former trial	137 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	138 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 or acquittal, how proved	139 (1) In any inquiry, trial or other proceeding under this Code, a previous conviction or acquittal may be proved, in addition to any other mode provided by any law for the time being in force— <ul style="list-style-type: none"> (a) by an extract certified, under the hand of the officer having the custody of the records of the court in which such conviction or acquittal was had, to be a copy of the sentence or order, or (b) in case of a conviction, either 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 or acquitted

(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 or acquitted, 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

OFFENCES BY FOREIGNERS WITHIN COLONIAL WATERS

140 (1) Proceedings for the trial of any person, who is not a British subject, for an offence committed on the open sea within three nautical miles of the coast of the Colony measured from low-water mark, shall not be instituted in any court except with the leave of the Governor and upon his certificate that it is expedient that such proceedings should be instituted

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 charge or information that the consent or certificate of the Governor required by this section has been given, and the fact of the same having been given shall be presumed unless disputed by the accused person at the trial. The production of a document purporting to be signed by the Governor and containing such consent and certificate shall be sufficient evidence for all the purposes of this section of the consent and certificate required by this section
- (c) This section shall not prejudice or affect the trial of any act of piracy as defined by the Law of Nations

(3) The term "offence" as used in this section means an act, neglect or default of such a description as would, if committed in England, be punishable on indictment according to the law of England for the time being in force

COMPELLING ATTENDANCE OF WITNESSES

141 (1) If it is made to appear that material evidence can be given by or is in the possession of any person who will not voluntarily attend to give it or will not voluntarily produce the same, it shall be lawful for a court having cognizance of any criminal cause or matter to issue a summons to such person requiring his attendance before such court or requiring him to bring and produce to such court for the purpose of evidence all documents and writings in his possession or power which may be specified or otherwise sufficiently described in the summons

Summons for witness

(2) Nothing in this section shall be deemed to affect the provision of sections 123 and 124 of the Indian Evidence Act, 1872

142 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 who disobeys summons

Warrant for witness in first instance

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

Mode of dealing with witness arrested under warrant

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

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

145 (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

146 (1) Any person summoned to attend as a witness who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the court, or fails to attend after adjournment of the court after being ordered to attend, shall be liable by order of the court to a fine not exceeding twenty pounds

(2) Such fine shall be levied by attachment and sale of any movable property belonging to such witness within the local limits of the jurisdiction of such court

(3) In default of recovery of the fine by attachment and sale the witness may, by order of the court, be imprisoned as a civil prisoner for a term of fifteen days unless such fine is paid before the end of the said term

(4) For good cause shown, the Supreme Court may remit or reduce any fine imposed under this section by a subordinate court

EXAMINATION OF WITNESSES

Power to examine person present in court and to recall witnesses

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

Evidence to be given on oath

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

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

149 (1) Whenever any person, appearing either in obedience to a summons or by virtue of a warrant, or being present in court and being verbally required by the court to give evidence—
Refractory
witnesses

- (a) refuses to be sworn, or
- (b) having been sworn, refuses to answer any question put to him, or
- (c) refuses or neglects to produce any document or thing which he is required to produce, or
- (d) refuses to sign his deposition,

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

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

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

150 (1) Any document purporting to be a report under the hand of any Government analyst, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code
Report of
Government
analyst

(2) When any report is so used the court may, if it thinks fit, summon and examine the analyst as to the subject-matter thereof

151 In any inquiry or trial the wife or husband of the person charged shall be a competent witness for the prosecution or defence without the consent of such person—
Cases when
wife or
husband may
be called
without the
consent of the
accused

- (a) in any case where the wife or husband of a person charged may, under the Common Law of England, be called as a witness without the consent of such person,
- (b) in any case where such person is charged with an offence under Chapter XV of the Penal Code,
- (c) in any case where such person is charged in respect of an act or omission affecting the person or property of the wife or husband of such person or the children of either of them

152 (1) If it is proved that an accused person has absconded and that there is no immediate prospect of arresting him, the court competent to try or commit for trial such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution and
Power to take
evidence of
witnesses in
absence of
accused

record their depositions Any such depositions may, on the arrest of such person, be given in evidence against him on the inquiry into or trial for the offence with which he is charged if the deponent is dead or incapable of giving evidence, or his attendance cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable

(2) If it appears that an offence punishable with death or imprisonment for a term not less than seven years has been committed by some person or persons unknown, the Supreme Court may direct that any magistrate empowered to hold a subordinate court of the first class shall hold an inquiry and examine any witnesses who can give evidence concerning the offence Any depositions so taken may be given in evidence against any person who is subsequently accused of the offence if the deponent is dead or incapable of giving evidence or beyond the limits of the Colony

**Issue of
commission for
examination of
witness**

COMMISSIONS FOR THE EXAMINATION OF WITNESSES

153 (1) Whenever in the course of any inquiry, trial or other proceeding under this Code, the Supreme Court is satisfied that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, the court may issue a commission to any magistrate, within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness

(2) The magistrate to whom the commission is issued shall proceed to the place where the witness is or shall summon the witness before him, and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in the case of a trial

**Parties may
examine
witnesses**

154 (1) The parties to any proceeding under this Code in which a commission is issued may respectively forward any interrogatories in writing which the court directing the commission may think relevant to the issue, and the magistrate to whom the commission is directed shall examine the witness upon such interrogatories

(2) Any such party may appear before such magistrate by advocate, or, if not in custody, in person, and may examine, cross-examine, and re-examine (as the case may be) the said witness

**Power of
magistrate to
apply for
issue of
commission**

155 Whenever in the course of any inquiry, trial or other proceeding under this Code before any magistrate, it appears that a commission ought to be issued for the examination of a witness whose evidence is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, such magistrate shall apply to the Supreme Court stating the reasons for the application, and the Supreme Court may either issue a commission in the manner hereinbefore provided or reject the application

**Return of
commission**

156 (1) After any commission issued under section 153 or section 155 has been duly executed it shall be returned, together with the deposition of the witness examined thereunder, to the Supreme Court, and the commission, the return thereto, and

the deposition shall be open at all reasonable times to inspection of the parties, and may, subject to all just exceptions, be read in evidence in the case by either party, and shall form part of the record

(2) Any deposition so taken, if it satisfies the conditions prescribed by section 33 of the Indian Evidence Act, 1872, may also be received in evidence at any subsequent stage of the case before another court

157 In every case in which a commission is issued under section 153 or section 155 the inquiry, trial or other proceeding may be adjourned for a specified time reasonably sufficient for the execution and return of the commission

Adjournment
of inquiry
or trial

EVIDENCE FOR DEFENCE

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

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

Provided as follows —

- (1) A person so charged shall not be called as a witness in pursuance of this section except upon his own application Own application
- (2) The failure of any person charged with an offence, or of the wife or husband, as the case may be, of the person so charged, to give evidence shall not be made the subject of any comment by the prosecution No comment if not called as witness
- (3) The wife or husband of the person charged shall not, save as hereinafter mentioned, be called as a witness except upon the application of the person so charged Spouses
- (4) Nothing in this section shall make a husband compellable to disclose any communication made to him by his wife during the marriage, or a wife compellable to disclose any communication made to her by her husband during the marriage Communications during marriage
- (5) A person charged and being a witness in pursuance of this section may be asked any question in cross-examination notwithstanding that it would tend to criminate him as to the offence charged Cross-examination
- (6) A person charged and called as a witness in pursuance of this section shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of or been charged with any offence other than that wherewith he is then charged, or is of bad character, unless—
 - (a) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged, or Exceptions
 - (b) he has personally or by his advocate asked questions of the witnesses for the prosecution with a view to establishing his own good character, or has given evidence of his own good

character, or the nature or conduct of the defence is such as to involve imputations on the character of the complainant or the witnesses for the prosecution, or

- (c) he has given evidence against any other person charged with the same offence

Evidence from box

(7) Every person called as a witness in pursuance of this section shall, unless otherwise ordered by the court, give his evidence from the witness box or other place from which the other witnesses have given their evidence

Statement by person charged

(8) Nothing in this section shall affect the provisions of section 222 or any right of the person charged to make a statement without being sworn

Procedure where person charged is the only witness called

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

Right of reply

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

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

Inquiry by court as to lunacy or accused

161 (1) When in the course of a trial or preliminary investigation the court has reason to believe that the accused is of unsound mind and consequently incapable of making his defence, it shall inquire into the fact of such unsoundness

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

(3) If the case is one in which bail may be taken, the court may release the accused person on sufficient security being given that he will be properly taken care of and prevented from doing injury to himself or to any other person, and for his appearance before the court or such officer as the court may appoint in that behalf

(4) If the case is one in which bail may not be taken, or if sufficient security is not given, the court shall report the case to the Colonial Secretary, and the Governor may order the accused to be confined in a lunatic asylum or other suitable place of custody, and the court shall issue a warrant in accordance with such order

Defence of lunacy at preliminary investigation

162 When the accused person appears to be of sound mind at the time of a preliminary investigation, the court notwithstanding that it is alleged that at the time when the act was committed, in respect of which the accused person is charged, he was by reason of unsoundness of mind incapable of knowing the nature of the act or that it was wrong or contrary to law, shall proceed with the case and, if the accused person ought, in the opinion of the court to be committed for trial on information, the court shall so commit him

163 Where any act or omission is charged against any person as an offence, and it is given in evidence on the trial of such person for that offence that he was insane so as not to be responsible for his action at the time when the act was done or omission made, then if it appears to the court before which such person is tried that he did the act or made the omission charged but was insane as aforesaid at the time when he did or made the same, the court shall make a special finding to the effect that the accused was guilty of the act or omission charged but was insane as aforesaid when he did the act or made the omission

Defence of lunacy on trial

When such special finding is made the court shall report the case for the order of the Governor and shall meanwhile order the accused to be kept in custody as a criminal lunatic in such place and in such manner as the court shall direct

The Governor may order such person to be confined in a lunatic asylum, prison or other suitable place of safe custody

164 Whenever any preliminary investigation or trial is postponed the court may at any time resume the preliminary investigation or trial and require the accused to appear or be brought before such court, when, if the court considers him capable of making his defence, the preliminary investigation or trial shall proceed

Resumption of trial or investigation

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

165 If a person is confined in a lunatic asylum under the provisions of this Code and the superintendent of such asylum certifies that the accused lunatic is capable of making his defence, such accused shall be taken before the court at such time as the court appoints to be dealt with according to law, and the certificate of such superintendent shall be receivable in evidence

Certificate of superintendent of asylum as to sanity to be evidence

166 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

JUDGMENT

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

Mode of delivering judgment

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

(2) The accused person shall, if in custody, be brought up, or, if not in custody, be required by the court to attend, to hear judgment delivered, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only or he is acquitted

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

(4) Nothing in this section shall be construed to limit in any way the provisions of section 373

Contents of judgment

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

(2) In the case of a conviction the judgment shall specify the offence of which, and the section of the Penal Code or other law under which, the accused person is convicted, and the punishment to which he is sentenced

(3) In the case of an acquittal the judgment shall state the offence of which the accused person is acquitted and shall direct that he be set at liberty

(4) Notwithstanding anything hereinbefore contained, in trials by jury the court need not write a judgment but shall record the heads of the charge to the jury

Copy of judgment, etc., to be given to accused on application

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

(2) In a trial by jury a copy of the heads of the charge to the jury shall, on the application of the accused person, be given to him without delay and free of cost

COSTS AND COMPENSATION

Costs against accused

170 (1) It shall be lawful for a judge of the Supreme Court or a magistrate of a subordinate court of the first, second or third class to order any person convicted before him of an offence to pay to the public or private prosecutor, as the case may be, such reasonable costs as to such judge or magistrate may seem fit, in addition to any other penalty imposed

Provided that such costs shall not exceed fifty pounds in the case of the Supreme Court or twenty-five pounds in the case of a subordinate court

Costs against private prosecutor

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

Provided that such costs shall not exceed fifty pounds in the case of an acquittal or discharge by the Supreme Court or twenty-five pounds in the case of an acquittal or discharge by a subordinate court

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

(3) The costs awarded under this section may be awarded in addition to any compensation awarded under section 172

(4) In this section—

“ Public prosecutor ” means any person prosecuting for or on behalf of the Crown or for or on behalf of a public authority

“ Private prosecutor ” means any prosecutor other than a public prosecutor

171 An appeal shall lie from any order awarding costs under the last preceding section, if made by a magistrate to the Supreme Court and if by a judge to His Majesty's Court of Appeal for Eastern Africa. The appellate court shall have power to give such costs of the appeal as it shall deem reasonable

Order to pay costs appealable

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

Compensation in case of frivolous or vexatious charge

173 The sums allowed for costs or compensation shall in all cases be specified in the conviction or order, and the same shall be recoverable in like manner as any penalty may be recovered under this Code, and in default of payment of such costs or compensation or of distress as hereinafter provided the person in default shall be liable to imprisonment with or without hard labour for a term not exceeding three months unless such costs or compensation shall be sooner paid

Costs and compensation to be specified in order, how recoverable

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

Power of courts to award expenses or compensation out of fine

(a) in defraying expenses properly incurred in the prosecution,

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

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

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

RESTITUTION OF PROPERTY

175 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

Property stolen

176 (1) Where any person is convicted of having stolen any property or having obtained it fraudulently or by false pretences, the court convicting him may order that the property or a part thereof be restored to the person who appears to be the owner thereof, either on payment or without payment by the owner to the person in whose possession such property or a part thereof may be of any sum named in such order

(2) This section shall not apply to—

- (a) any valuable security which has been *bonâ fide* paid or discharged by any person liable to pay or discharge the same, or
- (b) any negotiable instrument which shall have been *bonâ fide* received by transfer or delivery by any person for a just and valuable consideration without notice, or without reasonable cause to suspect that it has been stolen or dishonestly obtained

MISCELLANEOUS PROVISIONS**The person accused of any offence may be convicted of attempt**

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

When offence proved is included in offence charged

178 When a person is charged with an offence, and part of the charge is not proved, but the part which is proved amounts to a different offence, he may be convicted of the offence which he is proved to have committed, although he was not charged with it

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

179 If on any trial for any of the offences mentioned in Chapter XXIX of the Penal Code, the facts proved in evidence authorise a conviction for some other of the said offences and not the offence wherewith the accused is charged, he may be found guilty of the said other offence, and thereupon he shall be punished as if he had been convicted on a charge or an information charging him with such offence

Conviction of receiving on charge of stealing

180 When a person is charged with stealing anything and it is proved that he received the thing knowing the same to have been stolen, he may be convicted of receiving, although he was not charged with that offence

Conviction of false pretences on charge of stealing

181 When a person is charged with stealing anything and it is proved that he obtained the thing in any such manner as would amount, under the provisions of the Penal Code, to obtaining it by false pretences with intent to defraud, he may be convicted of obtaining it by false pretences although he was not charged with that offence

Conviction of stealing on charge or false pretences

182 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

183 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 114 of the Penal Code or for an indecent assault and not the offence wherewith the accused is charged, he may be convicted of an offence under section 114 of the Penal Code or of indecent assault, as the case may be, and thereupon he shall be punished as if he had been convicted on a charge or an information charging him with such last-mentioned offence or with indecent assault

Person charged with rape may be convicted of kindred offence

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

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

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

Right of accused to be defended

PART V—MODE OF TAKING AND RECORDING EVIDENCE IN INQUIRIES AND TRIALS

GENERAL

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

Evidence to be taken in presence of accused

SUBORDINATE COURTS

187 In inquiries and trials (other than trials under section 191) by or before a magistrate, the evidence of the witnesses shall be recorded in the following manner —

Manner of recording evidence before magistrate

- (a) The evidence of each witness shall be taken down in writing in the language of the court by the magistrate, or in his presence and hearing and under his personal direction and superintendence, and shall be signed by the magistrate, and shall form part of the record,
- (b) Such evidence shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative,

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

188 (1) As the evidence of each witness taken down under the last preceding section is completed, it shall be read over to him in the presence of the accused, if in attendance, or his advocate, if he appears by advocate, and shall, if necessary, be corrected

Procedure in regard to such evidence when completed

(2) If the witness denies the correctness of any part of the evidence when the same is read over to him, the magistrate may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness, and shall add such remarks as he thinks necessary

(3) If the evidence is taken down in a language different from that in which it has been given and the witness does not understand the language in which it is taken down, the evidence shall be interpreted to him in the language in which it was given or in a language which he understands

**Interpretation
of evidence to
accused or his
advocate**

189 (1) Whenever any evidence is given in a language not understood by the accused, and he is present in person, it shall be interpreted to him in open court in a language understood by him

(2) If he appears by advocate and the evidence is given in a language other than the language of the court, and not understood by the advocate, it shall be interpreted to such advocate in the language of the court

(3) When documents are put in for the purpose of formal proof it shall be in the discretion of the court to interpret as much thereof as appears necessary

**Remarks
respecting
demeanour
of witness**

190 When a magistrate has recorded the evidence of a witness he shall also record such remarks (if any) as he thinks material respecting the demeanour of such witness whilst under examination

**Procedure in
case of minor
offences**

191 (1) Notwithstanding anything contained in this Code, any magistrate having jurisdiction to try any of the offences mentioned in the next succeeding sub-section may try any such offence without recording the evidence as hereinbefore provided, but in any such case he shall enter in such form as the Supreme Court may direct, the following particulars —

- (a) The serial number,
- (b) The date of the commission of the offence,
- (c) The date of the complaint,
- (d) The name of the complainant,
- (e) The name, parentage and residence of the accused,
- (f) The offence complained of and the offence (if any) proved, and in cases coming under paragraphs (d), (e) or (f) of the next succeeding sub-section the value of the property in respect of which the offence has been committed,
- (g) The plea of the accused,
- (h) The finding and where evidence has been taken, a judgment embodying the substance of such evidence,
- (i) The sentence or other final order
- (j) The date on which the proceedings terminated

(2) The offences referred to in the preceding sub-section are as follows —

- (a) Offences punishable with imprisonment for a term not exceeding six months or a fine not exceeding fifty pounds,
- (b) Offences against the Weights and Measures Ordinance,
- (c) Common assault under section 208 of the Penal Code,
- (d) Theft under Chapter XXVI of the Penal Code where the value of the property stolen does not exceed five pounds
- (e) Receiving or retaining stolen property under Chapter XXXI of the Penal Code where the value of such property does not exceed five pounds,

- (f) Malicious injury to property where the value of such property does not exceed five pounds,
- (g) Any other offence which the Governor may, by order in the Gazette, direct to be tried in accordance with the provisions of this section,
- (h) Aiding, abetting, counselling or procuring the commission of any of the foregoing offences,
- (i) Attempting to commit any of the foregoing offences

(3) When in the course of a trial under the provisions of this section it appears to the magistrate that the case is of a character which renders it undesirable that it should be so tried, the magistrate shall recall any witnesses and proceed to rehear the case in the manner provided by the preceding sections of this Part

(4) No sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under this section

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

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

Provided that—

- (a) in any trial the accused may, when the second magistrate commences his proceedings demand that the witnesses or any of them be resummoned and reheard,
- (b) the Supreme Court may whether there be an appeal or not, set aside any conviction passed on evidence not wholly recorded by the magistrate before whom the conviction was held, if it is of opinion that the accused has been materially prejudiced thereby, and may order a new inquiry or trial

SUPREME COURT

193 The Supreme Court may from time to time, by rules, prescribe the manner in which evidence shall be taken down in cases coming before the court, and the judges of such court shall take down the evidence or the substance thereof in accordance with such rules

Record of evidence in Supreme Court

PART VI — PROCEDURE IN TRIALS BEFORE SUBORDINATE COURTS

PROVISIONS RELATING TO THE HEARING AND DETERMINATION OF CASES

194 If, in any case which a subordinate court has jurisdiction to hear and determine, the accused person appears in obedience to the summons served upon him at the time and place appointed in the summons for the hearing of the case, or is brought before the court by virtue of a warrant then, if the complainant, having had notice of the time and place appointed for the hearing of the charge, does not appear, the

Non-appearance of complainant at hearing

court shall dismiss the charge, unless for some reason it shall think it proper to adjourn the hearing of the case until some other date, upon such terms as it shall think fit, in which event it may, pending such adjourned hearing, either admit the accused to bail or remand him to prison, or take such security for his appearance as the court shall think fit, but shall not commit him to prison unless the charge has been made on oath.

Appearance of both parties

195 If at the time appointed for the hearing of the case both the complainant and the accused person appear before the court which is to hear and determine the charge, or if the complainant appears and the personal attendance of the accused person has been dispensed with under section 96, the court shall proceed to hear the case.

Withdrawal of complaint

196 If a complainant, at any time before a final order is passed in any case under this Part, satisfies the court that there are sufficient grounds for permitting him to withdraw his complaint, the court may permit him to withdraw the same and shall thereupon acquit the accused.

Adjournment

197 Before or during the hearing of any case, it shall be lawful for the court in its discretion to adjourn the hearing to a certain time and place to be then appointed and stated in the presence and hearing of the party or parties or their respective advocates then present, and in the meantime the court may suffer the accused person to go at large, or, if the charge has been made on oath, but not otherwise, may commit him to prison, or may discharge him upon his entering into a recognizance with or without sureties, at the discretion of the court, conditioned for his appearance at the time and place to which such hearing or further hearing shall be adjourned.

Provided that no such adjournment shall be for more than eight clear days, the day following that on which the adjournment is made being counted as the first day.

Non-appearance of parties after adjournment

198 (1) If at the time or place to which the hearing or further hearing shall be adjourned, the accused person shall not appear before the Court which shall have made the order of adjournment, it shall be lawful for such court, unless the accused person is charged with felony, to proceed with the hearing or further hearing as if the accused were present, and if the complainant shall not appear the court may dismiss the charge with or without costs as the court shall think fit.

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

(3) Any sentence passed under sub-section (1) shall be deemed to commence from the date of apprehension, and the person effecting such apprehension shall indorse the date thereof on the back of the warrant of commitment.

(4) If the accused person who has not appeared as aforesaid is charged with felony, or if the court, in its discretion, refrains from convicting the accused in his absence the court shall issue a warrant for the apprehension of the accused person and cause him to be brought before the court.

199 (1) The substance of the charge or complaint shall be stated to the accused person by the court, and he shall be asked whether he admits or denies the truth of the charge

Accused to
be called upon
to plead

(2) If the accused person admits the truth of the charge his admission shall be recorded as nearly as possible in the words used by him, and the court shall convict him and pass sentence upon or make an order against him, unless there shall appear to it sufficient cause to the contrary

(3) If the accused person does not admit the truth of the charge, the court shall proceed to hear the case as hereinafter provided

(4) If the accused person refuses to plead, the court shall order a plea of "not guilty" to be entered for him

200 If the accused person does not admit the truth of the charge, the court shall proceed to hear the complainant and his witnesses and other evidence (if any)

Procedure on
plea of
not guilty

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

201 (1) At the close of the evidence in support of the charge if it appears to the court that a case is made out against the accused person sufficiently to require him to make a defence, the court shall ask him if he wishes to say anything in answer to the charge, or has any witnesses to examine or other evidence to adduce in his defence, and the court shall then hear the accused and his witnesses and other evidence (if any)

(2) If the accused person states that he has witnesses to call but that they are not present in court, and the court is satisfied that the absence of such witnesses is not due to any fault or neglect of the accused person, and that there is a likelihood that they could, if present, give material evidence on behalf of the accused person, the court may adjourn the trial and issue process, or take other steps, to compel the attendance of such witnesses

202 If the accused person adduces in his defence any evidence, other than evidence as to character, the prosecutor may adduce evidence in reply thereto But, except with the leave of the court, the prosecutor shall not in any case be allowed to make any observations by way of reply to the evidence adduced by the accused nor, without such leave as aforesaid, shall the accused in any case be allowed to make any observation on evidence adduced by the prosecutor in reply

Evidence in
reply

203 Variance between the charge and the evidence adduced in support of it with respect to the time at which the alleged offence was committed is not material, if it is proved that the charge was in fact made within the time (if any) limited by law for the making thereof

Variance
between
charge and
evidence

But if any variance between the charge and the evidence appears to the court to be such that the accused has been thereby deceived or misled, the court may adjourn the hearing

and allow any witness to be recalled, and such questions to be put to him as by reason of the terms of the charge may have been omitted

The court may make an amendment of the charge on such terms as may be just

The decision

204 The court having heard both the complainant and the accused person and their witnesses and evidence shall either convict the accused and pass sentence upon or make an order against him according to law, or shall dismiss the case

A minute of the conviction or order of dismissal shall be made, of which a copy shall be given to the accused person if he shall request the same

**Drawing up
of conviction
or order**

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

**Order of
dismissal ba
to further
proceeding**

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

**LIMITATIONS AND EXCEPTIONS RELATING TO TRIALS
BEFORE SUBORDINATE COURTS**

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

207 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 six months from the time when the matter of such charge or complaint arose

**Procedure
in case of
offence proving
unsuitable for
summary trial**

208 (1) If in the course of a trial before a subordinate court it appears to the magistrate at any stage of the proceedings that the case is one which ought to be tried by the Supreme Court, and if he is empowered to commit for trial, he shall stop further proceedings and commit the accused person for trial upon information before the Supreme Court, and in such case he shall follow the procedure hereinafter directed in relation to preliminary inquiries as to offences triable by the Supreme Court

(2) If such magistrate is not empowered to commit for trial he shall submit the case with a brief report thereon to a magistrate holding a subordinate court of the first class, empowered to direct the transfer of the case under section 76

**PART VII —SPECIAL PROVISIONS RELATING
TO THE TRIAL OF EUROPEANS**

**Method of
inquiry into
certain offences
committed by
Europeans**

209 Save as is hereinafter provided, every case in which a European shall appear before a subordinate court accused of an offence punishable with imprisonment which may exceed six months shall be inquired into under Part VIII as if the offence were one triable exclusively by the Supreme Court, and if there are sufficient grounds for committing the accused for trial the subordinate court shall commit him for trial by the Supreme Court

210 Notwithstanding anything contained in the preceding section, a subordinate court of the first or second class may try and pass sentence according to law upon a European in any of the following cases —

- (a) If the maximum term of imprisonment prescribed by law as a punishment for the offence alleged does not exceed three years and the court, after hearing the evidence for the prosecution, is of the opinion that the accused would be adequately punished for the offence by a fine or by imprisonment for a term not exceeding six months with or without fine, and the person accused shall consent to be tried by such subordinate court,
- (b) If, after inquiry into any case in which a person is accused of an offence punishable by imprisonment which may exceed six months, the court considers for reasons to be recorded that there is no evidence against the accused of the alleged offence but that there is evidence against the accused of a lesser offence the punishment for which does not exceed imprisonment for six months with or without fine,
- (c) If, after inquiry into any case in which a person is accused of an offence punishable by imprisonment which may exceed three years, the court considers for reasons to be recorded that there is not sufficient evidence of the commission of the alleged offence but that there is evidence against the accused of a lesser offence the punishment for which does not exceed imprisonment for three years with or without fine, and the court is of opinion that the accused would be adequately punished for the offence by a fine or by imprisonment for a term not exceeding six months with or without fine, and the person accused shall consent to be tried by such subordinate court,
- (d) Cases in which notwithstanding the provisions herein contained, a subordinate court is given jurisdiction over Europeans by any other Ordinance or law,
- (e) If the offence alleged is triable under the provisions of section 191

211 Subordinate courts of the third class shall not have jurisdiction to try Europeans under this Part, but may take cognizance of an offence committed by a European in any case in which it could take cognizance of a like offence if committed by another person, but so that if any subordinate court of the third class issue process for the purpose of compelling the appearance of any European accused of an offence, such process shall be made returnable before a subordinate court of the first or second class

212 If an accused person does not claim to be a European when before the subordinate court by which he is tried or by which he is committed for trial, or if when such claim has been made and disallowed by the committing magistrate it is not made again before the Supreme Court, he shall be held to have relinquished his right to be dealt with as a European and shall not assert it at any subsequent stage of the same case

Offences committed by Europeans triable by a subordinate court

Jurisdiction of subordinate courts of the third class in regard to Europeans

Right to be tried as European may be relinquished

Europeans committed for trial to be tried by jury of Europeans

European accused jointly with non-European

Grounds of claim to be dealt with as a European to be stated and inquired into

Siting of proceedings when non-European is tried under this Part

Power to commit for trial

Court to hold preliminary inquiry

Depositions

213 Every person committed for trial to the Supreme Court under the provisions of this Part shall be tried by a jury composed of Europeans

214 In any case in which a European is accused jointly with a person not being a European, and such persons are committed for trial, they shall be tried together, and the procedure at the trial shall be the same as it would have been had the European been tried separately

215 (1) When any person claims to be dealt with under this Part, he shall state the grounds of such claim to the subordinate court before which he is brought for the purpose of inquiry or trial, and such court shall if necessary, inquire into the truth of such statement and allow the person making it reasonable time within which to prove that it is true and shall then decide whether he is or is not a European

(2) If any such person is convicted by such subordinate court and appeals from such conviction, the burden of proving that the decision of the subordinate court on such claim was wrong shall lie upon such person

(3) The question of any person claiming to be dealt with under this Part as a European is a question of fact for the court

216 When a person who is not a European is dealt with under this Part and does not object the inquiry, commitment, trial, finding or sentence, as the case may be, shall not by reason thereof be invalid

PART VIII—PROVISIONS RELATING TO THE COMMITTAL OF ACCUSED PERSONS FOR TRIAL BEFORE THE SUPREME COURT

PRELIMINARY INQUIRY BY SUBORDINATE COURTS

217 Any magistrate empowered to hold a subordinate court of the first, second or third class may commit any person for trial to the Supreme Court

Provided that it shall not be competent for a magistrate empowered to hold a subordinate court of the third class to commit a European for trial to the Supreme Court

218 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

219 (1) When the accused person charged with such an offence comes before a subordinate court, on summons or warrant or otherwise, the court shall, in his presence, take down in writing, or cause to be so taken down, the statements on oath of those who know the facts and circumstances of the case

Statements of witnesses so taken down in writing are termed depositions

(2) The accused person may put questions to each witness produced against him, and the answer of the witness thereto shall form part of such witness's depositions

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

(4) The deposition of each witness shall be read over to such witness and shall be signed by him and by the magistrate holding the inquiry

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

Variance
between
evidence and
charge

221 If, from the absence of witnesses or any other reasonable cause to be recorded in the proceedings, the court considers it necessary or advisable to adjourn the inquiry, the court may from time to time by warrant remand the accused for a reasonable time, not exceeding eight days at any one time, to some prison or other place of security. Or, if the remand is for not more than three days, the court may by word of mouth order the officer or person in whose custody the accused person is, or any other fit officer or person, to continue to keep the accused in his custody, and to bring him up at the time appointed for the commencement or continuance of the inquiry

Remand

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

222 (1) After the examination of the witnesses called on behalf of the prosecution, and provided that the court does not consider that the case should be dealt with in accordance with the provisions of section 224 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

After doing so the magistrate shall then address to him the following words or words to the like effect —

"Do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so, but whatever you say will be taken down in writing and may be given in evidence upon your trial"

(2) Before the accused person makes any statement in answer to the charge, the magistrate shall state to him and give him clearly to understand that he has nothing to hope from any promise of favour and nothing to fear from any threat which may have been held out to him to induce him to make any admission or confession of his guilt but that whatsoever he then says may be given in evidence on his trial notwithstanding the promise or threat

(3) Whatever the accused person states in answer to the charge shall be recorded in full and shall be shown or read over to him, and he shall be at liberty to explain or add to his statement

(4) When the whole is made conformable to what he declares is the truth, the statement shall be attested by the magistrate, who shall certify that such statement was taken in his presence and hearing and contains accurately the whole statement made by the accused person. The accused person shall sign or attest by his mark such record. If he refuses, the court shall add a note of his refusal, and the statement may be used as if he had signed or attested it

Evidence in defence

223 (1) Immediately after the accused person shall so have had opportunity of making his answer to the charge, the court shall ask him whether he desires to call any witnesses, and the depositions of such witnesses as the accused person shall call and who shall appear on his behalf shall then be taken in like manner as in the case of the witnesses for the prosecution, and every witness as aforesaid, not being merely a witness to the character of the accused person, shall, if the court be of opinion that his evidence is in any way material to the case, be bound by recognizance to appear and give evidence at the trial of such accused person

(2) If the accused person states that he has witnesses to call, but that they are not present in court, and the court is satisfied that the absence of such witnesses is not due to any fault or neglect of the accused person, and that there is a likelihood that they could, if present, give material evidence on behalf of the accused person, the court may adjourn the inquiry and issue process, or take other steps, to compel the attendance of such witnesses, and on their attendance shall take their depositions and bind them by recognizance in the same manner as witnesses under sub-section (1)

Discharge of accused person

224 If the court considers that the evidence against the accused person is not sufficient to put him on his trial, the court shall forthwith order him to be discharged as to the particular charge under inquiry, but such discharge shall not be a bar to any subsequent charge in respect of the same facts

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

Commitment for trial

225 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

Conflict of evidence

226 Where there is a conflict of evidence, the court shall consider the evidence to be sufficient to put the accused on his trial if the evidence against him is such as, if uncontradicted, would raise a probable presumption of his guilt,

notwithstanding that it is contradicted in material points by evidence in favour of the accused, unless the court, for reasons to be recorded in the proceedings, shall see fit to deviate from this rule

227 All persons committed for trial by a subordinate court shall be committed for trial at the next convenient sessions of the Supreme Court

Commital to
next sessions

228 If, at the close of or during the inquiry, it shall appear to the subordinate court that the offence is of such a nature that it may suitably be dealt with under the powers possessed by the court, the court may, subject to the provisions of Part VI, hear and finally determine the matter and either convict the accused person or dismiss the charge

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

229 When the accused person is committed for trial before the Supreme Court, the subordinate court committing him shall bind by recognizance, with or without surety or sureties, as it may deem requisite, the complainant and every witness to appear at the trial to give evidence, and also to appear and give evidence if required, at any further examination concerning the charge which may be held by direction of the Attorney General

Complainant
and witnesses
to be bound
over

230 If a person refuses to enter into such recognizance, the court may commit him to prison or into the custody of any officer of the court, there to remain until after the trial, unless in the meantime he enters into a recognizance. But if afterwards, from want of sufficient evidence or other cause, the accused is discharged, the court shall order that the person imprisoned for so refusing be also discharged

Refusal to be
bound over

231 A person who has been committed for trial before the Supreme Court shall be entitled at any time before the trial to have a copy of the depositions on payment of a reasonable sum, not exceeding fifty cents for every hundred words, or, if the court thinks fit, without payment

Accused person
entitled to
copy of
depositions

The court shall at the time of committing him for trial inform the accused person of the effect of this provision

232 (1) Where any person charged before a subordinate court with an offence triable upon information before the Supreme Court is committed for trial, and it appears to such subordinate court, after taking into account anything which may be said with reference thereto by the accused or the prosecutor, that the attendance at the trial of any witness who has been examined before it is unnecessary by reason of anything contained in any statement by the accused person, or of the accused person having pleaded guilty to the charge, or of the evidence of the witness being merely of a formal nature, the subordinate court shall if the witness has not already been bound over, bind him over to attend the trial conditionally upon notice given to him and not otherwise or shall, if the witness has already been bound over, direct that he shall be treated as having been bound over to attend only conditionally as aforesaid, and shall transmit to the Supreme Court a statement in writing of the names, addresses and occupations of the witnesses who are, or who are to be treated as having been, bound over to attend the trial conditionally

Binding over
of witnesses
conditionally

(2) Where a witness has been or is to be treated as having been, bound over conditionally to attend the trial, the Attorney General or the person committed for trial may give notice at any time before the opening of the sessions of the Supreme Court to the committing subordinate court and at any time thereafter to the registrars of the Supreme Court that he desires the witness to attend at the trial, and any such court or registrar to whom any such notice is given shall forthwith notify the witness that he is required so to attend in pursuance of his recognizance.

The subordinate court shall on committing the accused person for trial inform him of his right to require the attendance at the trial of any such witness as aforesaid, and of the steps which he must take for the purpose of enforcing such attendance.

(3) Any documents or articles produced in evidence before the subordinate court by any witness whose attendance at the trial is stated to be unnecessary in accordance with the provisions of this section and marked as exhibits shall, unless in any particular case the subordinate court otherwise orders, be retained by the subordinate court and forwarded with the depositions to the registrar of the Supreme Court.

PRESERVATION OF TESTIMONY IN CERTAIN CASES

Taking the depositions of persons dangerously ill

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

Notices to be given

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

Transmission of statements

235 If the statement relates to an offence for which any person is then or subsequently committed for trial, it shall be transmitted to the registrar of the Supreme Court, and a copy thereof shall be transmitted to the Attorney General.

Use of statement in evidence

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

PROCEEDINGS AFTER COMMITTAL FOR TRIAL

237 In the event of a committal for trial the written charge (if any), the depositions, the statement of the accused person, the recognizances of the complainant and of the witnesses, the recognizances of bail (if any), and any documents or things which have been put in evidence, shall be transmitted without delay by the committing court to the registrar of the Supreme Court, and an authenticated copy of the depositions and statement aforesaid shall be also transmitted to the Attorney General

Transmission
of records to
Supreme
Court and
Attorney
General

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

Power of
Attorney
General to
direct further
investigation

239 If, after receipt of the authenticated copy of the depositions and statement as aforesaid and before the trial before the Supreme Court, the Attorney General shall be of opinion that there is in any case committed for trial any material or necessary witness for the prosecution or the defence who has not been bound over to give evidence on the trial of the case, the Attorney General may require the subordinate court which committed the accused person for trial to take the depositions of such witness and compel his attendance either by summons or by warrant as hereinbefore provided

Powers of
Attorney
General as to
additional
witnesses

240 If the Attorney General shall be of opinion that there is not sufficient evidence to warrant a committal for trial before the Supreme Court, he may cause the depositions to be returned to the court which committed the accused, and such court may thereupon re-open the case and deal with it in all respects as if such person had not been committed for trial as aforesaid, and if the case be one which may suitably be dealt with by such court it may be so tried and determined accordingly

Return of
depositions in
certain cases

241 If, after the receipt of the authenticated copy of the depositions as aforesaid, the Attorney General shall be of the opinion that the case is one which should be tried upon information before the Supreme Court, an information shall be drawn up in accordance with the provisions of this Code, and when signed by the Attorney General shall be filed in the registry of the Supreme Court

Filing of an
information

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

Notice of trial

' 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 [redacted] on the [redacted] day of [redacted] 19[redacted] "

Copy of
information
and notice of
trial to be
served

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

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

**Return of
service**

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

Postponement of trial

245 It shall be lawful for the Supreme Court upon the application of the prosecutor or the accused person, if the court considers that there is sufficient cause for the delay to postpone the trial of any accused person to the next sessions of the court held in the district, or to a subsequent sessions, and to respite the recognizances of the complainant and witnesses, in which case the respite recognizances shall have the same force and effect as flesh recognizances to prosecute and give evidence at such subsequent sessions would have had.

RULES AS TO INFORMATIONS BY THE ATTORNEY
GENERAL.

**Informations
by Attorney
General**

246 All informations drawn up in pursuance of section 241 of this Code shall be in the name of and (subject to the provisions of section 80) signed by the Attorney General, and when so signed shall be as valid and effectual in all respects as an indictment presented by a Grand Jury in England.

Form of information

247 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 KENYA AT

The day of , 19

At the sessions held at
 on the day of , 19 , the Court
 is informed by the Attorney General on behalf of our
 Lord the King that A B is charged with the following
 offence (or offences)

248 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

- | | |
|--|--|
| <ul style="list-style-type: none"> (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 (2) Figures and abbreviations may be used for expressing anything which is commonly expressed thereby (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 (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 | <p>General provisions as to informations</p> <p>Offence to be specified with necessary particulars</p> <p>Use of figures and abbreviations</p> <p>Mode in which offences are to be charged</p> |
|--|--|

Provided that where any rule of law or any Ordinance or statute limits the particulars of an offence which are required to be given in an information, nothing in this rule shall require any more particulars to be given than those so required

- (v) The forms set out in the Second Schedule to this Code or forms conforming thereto as nearly as may be shall be used in cases to which they are applicable, and in other cases forms to the like effect or conforming thereto as nearly as may be shall be used, the statement of offence and the particulars of offence being varied according to the circumstances in each case
- (vi) Where an information contains more than one count, the counts shall be numbered consecutively

Provision as
to statutory
offences

- (4) (i) Where an enactment constituting an offence states the offence to be the omission to do any one of any different acts in the alternative, or the doing or the omission to do any act in any one of any different capacities, or with any one of any different intentions, or states any part of the offence in the alternative, the acts, omissions, capacities or intentions, or other matters stated in the alternative in the enactment, may be stated in the alternative in the count charging the offence
- (ii) It shall not be necessary, in any count charging an offence constituted by an enactment, to negative any exception or exemption from or qualification to the operation of the enactment creating the offence
- (5) (i) The description of property in a count in an information shall be in ordinary language and such as to indicate with reasonable clearness property referred to, and, if the property is so described, it shall not be necessary (except when required for the purpose of describing an offence depending on any special ownership of property or special value of property) to name the person to whom the property belongs or the value of the property
- (ii) Where property is vested in more than one person, and the owners of the property are referred to in an information, it shall be sufficient to describe the property as owned by one of those persons by name with others, and if the persons owning the property are a body of persons with a collective name, such as a joint stock company or "Inhabitants," "Trustees," "Commissioners" or "Club," or other such name, it shall be sufficient to use the collective name without naming any individual
- (iii) Property belonging to or provided for the use of any public establishment, service or department, may be laid as the property of His Majesty the King
- (iv) Coin and bank notes may be described as money, and any averment as to money, so far as regards the description of property, shall be sustained by proof of any amount of coin or of any bank or currency note (although the particular species of coin of which such amount was composed, or the particular nature of the bank or currency note, shall not be proved), and in the cases of stealing and defrauding by false pretences, by proof that the accused dishonestly appropriated or obtained any coin or any bank or currency note, or any portion of the value thereof, although such coin or bank or currency note may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same or to any other person and such part shall have been restored accordingly

- (6) The description or designation in an information of the accused, or of any other person to whom reference is made therein, shall be such as is reasonably sufficient to identify him, without necessarily stating his correct name, or his abode, style, degree or occupation, and if, owing to the name of the person not being known, or for any other reason, it is impracticable to give such a description or designation, such description or designation shall be given as is reasonably practicable in the circumstances, or such person may be described as 'a person unknown' Description of persons
- (7) Where it is necessary to refer to any document or instrument in an information, it shall be sufficient to describe it by any name or designation by which it is usually known, or by the purport thereof, without setting out any copy thereof Description of document
- (8) Subject to any other provisions of these rules, it shall be sufficient to describe any place, time, thing, matter, act or omission whatsoever to which it is necessary to refer in any information in ordinary language in such a manner as to indicate with reasonable clearness the place, time, thing, matter, act or omission referred to General rule is to description
- (9) It shall not be necessary in stating any intent to defraud, deceive, or injure, to state an intent to defraud, deceive or injure any particular person, where the enactment creating the offence does not make an intent to defraud, deceive or injure a particular person an essential ingredient of the offence Statement of intent
- (10) Where a previous conviction of an offence is charged in an information it shall be charged at the end of the information by means of a statement that the accused has been previously convicted of that offence at a certain time and place without stating the particulars of the offence Charge of previous conviction

249 The Chief Justice may with the approval of the Governor 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 Powers of Chief Justice

PART IX —PROCEDURE IN TRIALS BEFORE THE SUPREME COURT

GENERAL

250 The practice of the Supreme Court in its criminal jurisdiction shall be assimilated as nearly as circumstances will admit to the practice of His Majesty's High Court of Justice in its criminal jurisdiction and of Courts of Oyer and Terminer and General Gaol Delivery in England Practice of Supreme Court in its criminal jurisdiction

MODE OF TRIAL

251 All trials before the Supreme Court shall, save where otherwise provided be by jury or with the aid of assessors Trials before Supreme Court to be by jury or with assessors

Power of Governor to order trial by jury

252 (1) The Governor in Council may, by order in the Gazette direct that the trial of all offences or of any particular class of offences before the Supreme Court shall be by jury, and may revoke or alter such order

(2) In the absence of any such order, and subject to the other provisions of this Code and of any law in force in the Colony, trials before the Supreme Court shall be with the aid of assessors

(3) When the accused is charged at the same trial with several offences of which some are and some are not triable by jury, he shall be tried by jury for such offences as are triable by jury, and with the aid of the jurors as assessors for such of them as are not triable by jury

Number of jury

253 The Governor may by order fix the number of the jury by whom any class of offence shall be tried

Provided that in no case shall the number of the jury be less than five, and, in the absence of any such order, the jury shall consist of five persons

Number of assessors

254 When the trial is to be held with the aid of assessors, the number of assessors shall be three

LIST OF JURORS AND ASSESSORS

Preparation of list of jurors and assessors

255 The registrar of the Supreme Court shall, before the first day of March in each year, and subject to such rules as the Supreme Court may from time to time prescribe, prepare a list of all persons in the Colony other than natives of African extraction liable to serve as jurors or assessors

Liability to serve

256 Subject to the exemptions in the next succeeding section contained, all male persons between the ages of twenty-one and sixty shall be liable to serve as assessors, and all male persons of European extraction between the ages of twenty-one and sixty shall be liable also to serve as jurors, at any trial held by the Supreme Court within the Colony

Provided that the Supreme Court may from time to time make rules regulating the area within which a person may be summoned to serve as a juror or assessor

Exemptions

257 The following persons are exempt from liability to serve as jurors or assessors, namely —

- (a) Members of the Executive Council,
- (b) Persons holding any office or situation of emolument under the Crown,
- (c) Persons actively discharging the duties of priests or ministers of their respective religions,
- (d) Physicians, surgeons and apothecaries in active practice,
- (e) Legal practitioners in active practice,
- (f) Officers and others in His Majesty's Army, Navy, or Air Force on full pay,
- (g) Persons exempted from personal appearance in court under the provisions of the Civil Procedure Ordinance, 1924, or any rules made thereunder,
- (h) Persons disabled by mental or bodily infirmity,
- (i) Other persons exempted by the Governor from liability to serve as jurors or assessors

258 (1) A copy of the list made by the registrar of persons liable to serve as jurors or assessors shall be published in the Gazette on the first day of March, and extracts therefrom containing the names of the persons liable to serve as jurors or assessors residing in each province or district shall be exposed to public inspection at the offices of the provincial or district commissioner of each province or district respectively

Publication of list

(2) To every such copy or extract shall be subjoined a notice stating that objections to the list will be heard and determined by a judge of the Supreme Court and such magistrate as the Supreme Court may appoint at a time and place to be mentioned in such notice

259 (1) For the hearing of objections to the list a judge of the Supreme Court shall sit with the magistrate, and shall, at the time and place mentioned in the notice, revise the list and hear the objections (if any) of persons interested in the amendment thereof, and shall strike out the name of any person not suitable in their judgment to serve as a juror or as an assessor, or who may establish his right to any exemption from service given by section 257, and insert the name of any person omitted from the list whom they deem qualified for such service

Revision of list

(2) In the event of a difference of opinion between the judge and the magistrate, the name of the proposed juror or assessor shall be omitted from the list

(3) A copy of the revised list shall be signed by the judge and magistrate and sent to the registrar of the Supreme Court

(4) Any order of the judge and magistrate as aforesaid in preparing and revising the list shall be final

(5) Any exemption not claimed under this section shall be deemed to be waived, until the list is next revised

(6) The list so prepared and revised shall be again revised once in every year

ATTENDANCE OF JURORS AND ASSESSORS

260 (1) The registrar of the Supreme Court shall ordinarily, seven days at least before the day which from time to time may be fixed for holding sessions of the Supreme Court, send a letter to a magistrate holding a subordinate court of the first class, having jurisdiction in the province or district in which such sessions are to be held, requesting him to summon as many persons as seem to the judge who is to preside at the sessions to be needed for trials by jury and trials with the aid of assessors at the said sessions

Summoning of jurors or assessors

(2) In the case of persons named in the said list, the names of the persons to be summoned shall be drawn by lot by such magistrate in open court, excluding those who have served within six months unless the number cannot be made up without them

261 Every summons to a juror or an assessor shall be in writing and shall require his attendance as a juror or an assessor, as the case may be, at a time and place to be therein specified

Form of summons

Excuses

262 The Supreme Court may for reasonable cause excuse any juror or assessor from attendance at any particular sessions, and may, if it shall think fit, at the conclusion of any trial, direct that the jurors or assessors who have served at such trial shall not be summoned to serve again as jurors or assessors for a period of twelve months

List of jurors
and assessors
attending

263 (1) At each sessions the Supreme Court shall cause to be made a list of the names of those who have attended as jurors and assessors at such sessions, and such list shall be kept with the list of the jurors and assessors as revised under section 259

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

Penalty for
non-attendance
of juror or
assessor

264 (1) Any person summoned to attend as a juror or as an assessor who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Supreme Court, or fails to attend after adjournment of the court after being ordered to attend, shall be liable by order of the Supreme Court to a fine not exceeding twenty pounds

(2) Such fine shall be levied by a magistrate empowered to hold a subordinate court of the first class by attachment and sale of any movable property belonging to such juror or assessor within the local limits of the jurisdiction of such magistrate

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

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

ARRAIGNMENT

Pleading to
information

265 The accused person to be tried before the Supreme Court upon an information shall be placed at the bar un fettered, unless the court shall see cause otherwise to order, and the information shall be read over to him by the registrar or other officer of the court, and explained if need be by that officer or interpreted by the interpreter of the court, and such accused person shall be required to plead instantly thereto unless, where the accused person is entitled to service of a copy of the information, he shall object to the want of such service and the court shall find that he has not been duly served therewith

Orders for
amendment
of information,
separate trial,
and postpone-
ment of trial

266 (1) Every objection to any information for any formal defect on the face thereof shall be taken immediately after the information has been read over to the accused person and not later

(2) Where, before a trial upon information or at any stage of such trial, it appears to the court that the information is defective, the court shall make such order for the amendment of the information as the court thinks necessary to meet the circumstances of the case, unless, having regard to the merits of the case the required amendments cannot be made without injustice. All such amendments shall be made upon such terms as to the court shall seem just

(3) Where an information is so amended, a note of the order for amendment shall be indorsed on the information, and the information shall be treated for the purposes of all proceeding in connection therewith as having been filed in the amended form

(4) Where, before a trial upon information or at any stage of such trial, the court is of opinion that the accused may be prejudiced or embarrassed in his defence by reason of being charged with more than one offence in the same information, or that for any other reason it is desirable to direct that the accused should be tried separately for any one or more offences charged in an information, the court may order a separate trial of any count or counts of such information

(5) Where, before a trial upon information or at any stage of such trial, the court is of opinion that the postponement of the trial of the accused is expedient as a consequence of the exercise of any power of the court under this Code, the court shall make such order as to the postponement of the trial as appears necessary

(6) Where an order of the court is made under this section for a separate trial or for postponement of a trial—

(a) if such order is made during a trial with a jury or during a trial with assessors the court may order that the jury or the assessors are to be discharged from giving a verdict or opinions, as the case may be, on the count or counts the trial of which is postponed, or on the information, as the case may be, and

(b) the procedure on the separate trial of a count shall be the same in all respects as if the count had been found in a separate information, and the procedure on the postponed trial shall be the same in all respects (provided that the jury or assessors, if any, have been discharged) as if the trial had not commenced, and

(c) the court may make such order as to admitting the accused to bail, and as to the enlargement of recognizances and otherwise as the court thinks fit

(7) Any power of the court under this section shall be in addition to and not in derogation of any other power of the court for the same or similar purposes

267 If any information does not state, and cannot by any amendment authorised by the last preceding section be made to state, any offence of which the accused has had notice, it shall be quashed either on a motion made before the accused pleads or on a motion made in arrest of judgment

A written statement of every such motion shall be delivered to the registrar or other officer of the court by or on behalf of the accused and shall be entered upon the record

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

Procedure in
case of
previous
convictions

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

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

- (b) If he pleads guilty to or is convicted of the subsequent offence, he shall then be asked whether he has been previously convicted as alleged in the information,
- (c) If he answers that he has been so previously convicted, the judge may proceed to pass sentence on him accordingly, but if he denies that he has been so previously convicted, or refuses to or does not answer such question, the jury, or the court and the assessors, as the case may be, shall then hear evidence concerning such previous conviction, and in such case (where the trial is by jury) it shall not be necessary to swear the jurors again

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

Plea of "not guilty"

269 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

270 Any accused person against whom an information is filed may plead—

- (a) that he has been previously convicted or acquitted, as the case may be, of the same offence, or
- (b) that he has obtained the King's pardon for his offence

If either of such pleas are pleaded in any case and denied to be true in fact, the court shall try whether such plea is true in fact or not

If the court holds that the facts alleged by the accused do not prove the plea, or if it finds that it is false in fact, the accused shall be required to plead to the information

Refusal to plead

271 If any accused person being arraigned upon any information stands mute of malice, or neither will, nor by reason of infirmity can, answer directly to the information, the court, if it thinks fit, shall order the registrar to enter a plea of "not guilty" on behalf of such accused person, and the plea so entered shall have the same force and effect as if such accused person had actually pleaded the same, or else the court shall thereupon proceed to try whether the accused person be of sound or unsound mind, and, if he shall be found of sound mind, shall proceed with the trial, and if he shall be found of unsound mind, and consequently incapable of making his defence, shall order the trial to be postponed, and the accused person to be kept meanwhile in safe custody in such place and manner as the court thinks fit, and shall report the case for the order of the Governor

The Governor may order such accused person to be confined in a lunatic asylum, prison, or other suitable place for safe custody

272 If the accused pleads " guilty " the plea shall be recorded and he may be convicted thereon Plea of
" guilty "

273 If the accused pleads " not guilty," or if a plea of " not guilty " is entered in accordance with the provisions of section 271, the court shall proceed to choose jurors or assessors, as hereinafter directed, and to try the case Proceedings
after plea of
" not guilty "

Provided that, subject to the right of objection herein-after mentioned, the same jury may try, or the same assessors may aid in the trial of, as many accused persons successively as the court thinks fit

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

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

The court may on a remand admit the accused to bail

TRIAL BY JURY

275 At the sitting of the Supreme Court to try criminal cases triable by jury the names of all the jurors summoned shall be written on separate pieces of card or paper of equal size and put into a box, and, whenever a jury is required, the registrar or other officer of the court shall, in open court, draw from the box by lot until the required number of jurors appear, who, after all just causes of challenge allowed, shall remain as fair and indifferent. The same procedure shall be followed whenever it shall be necessary to form a new jury Choosing the
jury

Provided that if a case be brought on for trial during the time that a jury in any other case may be deliberating, a new jury may be drawn from the residue of the cards in the box

276 Whenever there shall be a deficiency of jurors, or when the number of trials before the court renders the attendance of one set of jurors for the whole of any sessions oppressive it shall be lawful for the court to issue fresh orders, if necessary and, subject to all rights of challenge to put upon the jury so many men of the bystanders as shall be sufficient to make up the full number thereof, and it shall not be an objection to any such talesman that his name is not upon any jurors' list Deficiency
of jurors

277 When the jurors are ready to be sworn, the registrar or other officer of the court shall address the accused person as follows — " The jurors who are to try you are now about to be sworn, if you object to any of them, you must do so as they come to the Book to be sworn, and before they are sworn, and you shall be heard " Warning
accused to
challenge

278 There shall be no challenge to the array, but every accused person shall be allowed to challenge three 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 Peremptory
challenges

assigned, challenge three jurymen if one person is arraigned, and six if two are arraigned together, and so forth, being three without cause assigned for every person arraigned, and every further peremptory challenge shall be void

Challenges
for cause

279 Challenges for cause shall be allowed on any of the following grounds —

1st, presumed or actual partiality or prejudice in the juror, as standing in the relation of husband, master or servant to the person accused, or to the person supposed to have been injured or affected by the acts complained of, or to the person on whose complaint the prosecution was instituted being in the employment of either of such persons, being plaintiff or defendant against either of such persons in civil suit, or having complained against or having been accused by either of such persons in any criminal prosecution, or entertaining prejudiced views on the case to be tried,

2nd, some personal cause, as infancy, old age, deafness, blindness, infirmity or ill-health,

3rd, that the juror has been convicted of any offence which, in the opinion of the court, renders him unfit to serve as a juror,

4th, that the juror does not understand the English language

Trial of
challenges
for cause

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

Foreman of
jury

281 (1) When the jurors have been chosen they shall appoint one of them number to be foreman

(2) The foreman shall preside at the meetings of the jury for consideration and shall announce the verdict of the jury, and ask any information from the court that is required by the jury or any of the jurors

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

Swearing
of jury

282 When the foreman has been appointed, the jurors shall be sworn

Giving the
accused in
charge

283 The jury having been sworn to give a true verdict according to the evidence upon the issues to be tried by them, and having elected a foreman, the proper officer of the court shall inform them of the charge set forth in the information, and of their duty as jurors upon the trial

Absence of
juror

284 If in the course of a trial by jury at any time before the delivery of the verdict, any juror from any sufficient cause is prevented from attending throughout the trial or from further attendance at the time, or if any juror absent himself and it is not practicable to enforce his attendance the court may postpone the trial until the juror can attend, if within a reasonable time, or, if the attendance of such juror cannot

be procured within a reasonable time, the court may direct that a new jury shall be added and the jury re-sworn, or that the jury shall be discharged and a new jury empanelled and in either of the latter cases the trial shall commence anew

285 If during a trial the accused person becomes incapable, through sickness or other sufficient cause, of remaining at the bar the court may discharge the jury and adjourn the trial

286 (1) It shall not be necessary in any case to keep the jury together during any adjournment prior to the close of the judge's summing up, but it shall be lawful for the court, if it shall appear to it to be advisable in the interests of justice in any trial to require the jury to be kept together during any adjournment

(2) When the jury have retied to consider their verdict the court may give such directions as it may think fit with respect to their accommodation, custody and refreshment

287 If the trial is adjourned, the jurors shall be required to attend at the adjourned sitting, and at every subsequent sitting until the conclusion of the trial

TRIAL WITH ASSESSORS

288 When a trial is to be held with the aid of assessors, the court shall select three from the list of those summoned to serve as assessors at the sessions

289 (1) If, in the course of a trial with the aid of assessors, at any time before the finding, any assessor is from any sufficient cause prevented from attending throughout the trial, or absents himself, and it is not practicable immediately to enforce his attendance, the trial shall proceed with the aid of the other assessors

(2) If two or more of the assessors are prevented from attending, or absent themselves, the proceedings shall be stayed and a new trial shall be held with the aid of fresh assessors

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

CASE FOR THE PROSECUTION

291 When the jurors or assessors have been chosen, the advocate for the prosecution shall open the case against the accused person and shall call witnesses and adduce evidence in support of the charge

292 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

evidence and determined to call him as a witness. No such notice need be given if the prosecution first became aware of the evidence which the witness could give on the day on which he is called.

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

293 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**

294 The deposition of any person taken before the committing subordinate court may, if the conditions herein-after set out are satisfied, without further proof be read as evidence on the trial of that person, whether for that offence or for any other offence arising out of the same transaction, or set of circumstances as that offence.

The conditions hereinbefore referred to are the following —

- (a) The deposition must be the deposition either of a witness whose attendance at the trial is stated to be unnecessary in accordance with the provisions of section 232, or of a witness who is proved at the trial by oath of a credible witness to be dead or insane, or so ill as not to be able to travel, or to be kept out of the way by means of the procurement of the accused or on his behalf,
- (b) It must be proved at the trial, either by a certificate purporting to be signed by the magistrate of the subordinate court before whom the deposition purports to have been taken or by the clerk to such court, or by the oath of a credible witness, that the deposition was taken in the presence of the accused, and that the accused or his advocate had full opportunity of cross-examining the witness,
- (c) The deposition must purport to be signed by the magistrate of the subordinate court before whom it purports to have been taken.

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

- (i) that the deposition, or, where the proof required by paragraph (b) of this section is given by means of a certificate, that the certificate was not in fact signed by the magistrate by whom it purports to have been signed, or
- (ii) where the deposition is that of a witness whose attendance at the trial is stated to be unnecessary as aforesaid, that the witness has been duly notified that he is required to attend the trial.

**Deposition
of medical
witness**

295 (1) The deposition of a medical officer or other medical witness, taken and attested by a magistrate in the presence of the accused person, may be read as evidence, although the deponent is not called as a witness.

(2) The court may, if it thinks fit, summon and examine such deponent as to the subject-matter of his deposition.

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

Statement of accused

297 (1) When the evidence of the witnesses for the prosecution has been concluded, and the statement (if any) of the accused person has been given in evidence, the accused person shall be asked whether he means to give or adduce evidence

Close of case for prosecution

(2) If he says that he does not, the advocate for the prosecution may sum up the case against the accused person, and if the court considers that there is no evidence that the accused person committed the offence, it may then, in a case tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict, of not guilty

(3) If the accused person, or any one of several accused persons, says that he means to give or adduce evidence, and the court considers that there is no evidence that the accused committed the offence, the court may then, in a case tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict, of not guilty

(4) If the accused person, or any one of several accused persons, says that he means to give or adduce evidence, and the court considers that there is evidence that he committed the offence, or if, on his saying that he does not mean to give or adduce evidence, the advocate for the prosecution sums up the case against the accused person and the court considers that there is evidence that the accused person committed the offence, the court shall call on the accused person to enter on his defence

CASE FOR THE DEFENCE

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

The defence

299 The accused person shall be allowed to examine any witness not previously bound over to give evidence at the trial, if such witness is in attendance, but he shall not be entitled as of right to have any witness summoned other than the witnesses whom he named to the subordinate court committing him for trial as witnesses whom he desired to be summoned

Additional witnesses for the defence

300 If the accused person, or any one of several accused persons, adduces any evidence, the advocate for the prosecution shall be entitled to reply

Prosecutor's reply

CLOSE OF HEARING

In Trials by Jury

301 When, in a trial before a jury, the case on both sides is closed, the judge shall, if necessary, sum up the law and evidence in the case

Summing up by judge

Duty of judge

- 302** (1) In such cases it is the duty of the judge—
 (a) to decide all questions of law arising in the course of a trial, and especially all questions as to the relevancy of facts which it is proposed to prove and the admissibility of evidence or the propriety of questions asked by or on behalf of the parties, and, in his discretion, to prevent the production of inadmissible evidence whether it is or is not objected to by the parties,
 (b) to decide upon the meaning and construction of all documents given in evidence at the trial,
 (c) to decide on all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given,
 (d) to decide whether any question which arises is for himself or for the jury, and upon this point his decision shall bind the jurors

(2) The judge may, if he thinks proper, in the course of his summing up, express to the jury his opinion upon any question of fact or upon any question of mixed law and fact relevant to the proceedings

Duty of jury

- 303** It is the duty of the jury—

- (a) to decide which view of the facts is true and then to return the verdict which, under such view, ought, according to the direction of the judge, to be returned,
 (b) to determine the meaning of all technical terms (other than terms of law) and words used in an unusual sense, which it may be necessary to determine, whether such words occur in documents or not,
 (c) to decide all questions which, according to law, are to be deemed questions of fact,
 (d) to decide whether general indefinite expressions do or do not apply to particular cases, unless such expressions refer to legal procedure, or unless their meaning is ascertained by law, in either of which cases it is the duty of the judge to decide their meaning

Jury to consider their verdict.

- 304** 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

- 305** 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

- 306** 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

307 (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

308 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

309 (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

310 Whenever the jury is discharged, the accused person shall be detained in custody or on bail, as the case may be, and shall be tried by another jury, unless the judge considers that he should not be retried, in which case the judge shall make an entry to that effect on the information, and such entry shall operate as an acquittal

In Cases tried with Assessors

311 (1) When, in a case tried with assessors, the case on both sides is closed, the judge may sum up the evidence for the prosecution and the defence, and shall then require each of the assessors to state his opinion orally, and shall record such opinion

(2) The judge shall then give judgment, but in doing so shall not be bound to conform to the opinions of the assessors

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

PASSING SENTENCE

312 If the jury find the accused person guilty, or if the judge convicts him, or if the accused person pleads guilty, it shall be the duty of the registrar to ask him whether he has anything to say why sentence should not be passed upon him according to law, but the omission so to ask him shall have no effect on the validity of the proceedings

313 (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 is willing and has power to make, state any offence which the court has power to try

(2) The court may, in its discretion, either hear and determine the matter during the same sitting, or adjourn the hearing thereof to a future time to be fixed for that purpose

(3) If the court decides in favour of the accused he shall be discharged from that information

Sentence

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

Power to reserve decision on question raised at trial

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

Power to reserve questions arising in the course of the trial

316 (1) When any person has, in a trial before the Supreme Court, been convicted of an offence, the judge may reserve and refer for the decision of a court consisting of two or more judges of the Supreme Court any question which has arisen in the course of the trial, and the determination of which would affect the event of the trial

(2) If the judge reserves any such question, the person convicted shall, pending the decision thereon, be remanded to prison or, if the judge thinks fit, be admitted to bail, and the Supreme Court shall have power to review the case, or such part thereof as may be necessary, and finally determine such question, and thereupon to alter the sentence passed by the trial judge and to pass such judgment or order as the Supreme Court may think fit

Objections cured by verdict

317 No judgment shall be stayed or reversed on the ground of any objection, which if stated after the information was read over to the accused person, or during the progress of the trial, might have been amended by the court, nor because of any error committed in summoning or swearing the jury or any of them, nor because any person who has served upon the jury was not qualified to sit as a juror, nor because of any objection which might have been stated as a ground of challenge of any of the jurors, nor for any informality in swearing the witnesses or any of them

Evidence for arriving at a proper sentence

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

PART X —SENTENCES AND THEIR EXECUTION

SENTENCE OF DEATH

Sentence of death

319 When any person is sentenced to death, the sentence shall direct that he shall be hanged by the neck till he is dead

Accused to be informed of right to appeal

320 When an accused person is sentenced to death, the court shall inform him of the period within which, if he wishes to appeal, his appeal should be preferred

Authority for detention

321 A certificate under the hand of the registrar or other officer of the court that sentence of death has been passed, and naming the person condemned, shall be sufficient authority for the detention of such person

Record and report to be sent to Governor

322 (1) As soon as conveniently may be after sentence of death has been pronounced, if no appeal from the sentence is preferred, or if such appeal is preferred and the sentence is confirmed, then as soon as conveniently may be after such confirmation, the presiding judge shall forward to the Governor

a copy of the notes of evidence taken on the trial, with a report in writing signed by him containing any recommendation or observations on the case he may think fit to make

(2) The Governor after considering the said report in Executive Council shall communicate to the said judge, or his successor in office, the terms of any decision to which he may come thereon, and such judge shall cause the tenor and substance thereof to be entered in the records of the court

(3) The Governor shall issue a death warrant, or an order for the sentence of death to be commuted, or a pardon, under his hand and the public seal of the Colony to give effect to the said decision. If the sentence of death is to be carried out, the warrant shall state the place where and the time when execution is to be had, and shall give directions as to the place of burial 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

(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

323 If a woman sentenced to death be alleged to be pregnant, the court shall inquire into the fact and, if there is a reasonable cause for believing it, shall order the sentence to be postponed until the result of the pregnancy be known and shall report such order to the Governor

Sentence of
death on
pregnant
woman

OTHER SENTENCES

324 A warrant under the hand of the judge or magistrate by whom any person shall be sentenced to imprisonment, ordering that the sentence shall be carried out in any prison within the Colony, shall be issued by the sentencing judge or magistrate, and shall be full authority to the officer in charge of such prison and to all other persons for carrying into effect the sentence described in such warrant, not being a sentence of death. Every sentence shall be deemed to commence from, and to include, the whole of the day of the date on which it was pronounced

Warrant in
case of
sentence of
imprisonment

325 (1) When a court orders money to be paid by an accused person or by a prosecutor or complainant for fine, penalty, compensation, costs, expenses or otherwise, the money may be levied on the movable and immovable property of the person ordered to pay the same by distress and sale under warrant. If he shows sufficient movable property to satisfy the order his immovable property shall not be sold

Warrant for
levy of
fine, etc

(2) Such person may pay or tender to the officer having the execution of the warrant the sum therein mentioned, together with the amount of the expenses of the distress up to the time of payment or tender, and thereupon the officer shall cease to execute the same

(3) A warrant under this section may be executed within the local limits of the jurisdiction of the court issuing the same, and it shall authorise the distress and sale of any

property belonging to such person without such limits when indorsed by a magistrate holding a subordinate court of the first or second class within the local limits of whose jurisdiction such property was found

**Suspension
of execution
of sentence of
imprisonment
in default
of fine**

326 (1) When an offender has been sentenced to fine only and to imprisonment in default of payment of the fine, and the court issues a warrant under the last preceding section, it may suspend the execution of the sentence of imprisonment and may release the offender on his executing a bond, with or without sureties, as the court thinks fit, conditioned for his appearance before such court on a date not being more than fifteen days from the time of executing the bond, and in the event of the fine not having been realised the court may direct the sentence of imprisonment to be carried into execution at once

(2) In any case in which an order for the payment of money has been made, on non-recovery of which imprisonment may be awarded, and the money is not paid forthwith, the court may require the person ordered to make such payment to enter into a bond as prescribed in sub-section (1), and in default of his so doing may at once pass sentence of imprisonment as if the money had not been recovered

**Payment by
instalments**

(3) The court may in its discretion direct that any money to which this section applies may be paid by instalments at such times and in such amounts as the court may deem fit, but so nevertheless that in default of payment of any such instalment as aforesaid the whole of the amount outstanding shall become and be immediately due and payable, and all the provisions of this Code and of the Penal Code applicable to a sentence of fine and to imprisonment in default of payment thereof shall apply to the same accordingly

**Commitment
for want of
distress**

327 If the officer having the execution of a warrant of distress reports that he could find no property or not sufficient property whereon to levy the money mentioned in the warrant with expenses, the court may by the same or a subsequent warrant commit the person ordered to pay to prison for a time specified in the warrant unless the money and all expenses of the distress, commitment and conveyance to prison, to be specified in the warrant, are sooner paid

**Commitment in
lieu of distress**

328 When it appears to the court that distress and sale of property would be ruinous to the person ordered to pay the money or his family, or (by his confession or otherwise) that he has no property whereon the distress may be levied, or other sufficient reason appears to the court, the court may if it thinks fit instead of or after issuing a warrant of distress, commit him to prison for a time specified in the warrant, unless the money and all expenses of the commitment and conveyance to prison, to be specified in the warrant, are sooner paid

**Payment in
full after
commitment**

329 Any person committed for non-payment may pay the sum mentioned in the warrant, with the amount of expenses therein authorised (if any), to the person in whose custody he is, and that person shall thereupon discharge him if he is in custody for no other matter

**Part payment
after
commitment**

330 (1) If any person committed to prison for non-payment shall pay any sum in part satisfaction of the sum adjudged to be paid, the term of his imprisonment shall be

reduced by a number of days bearing as nearly as possible the same proportion to the total number of days for which such person is committed, as the sum so paid bears to the sum for which he is liable

(2) The officer in charge of a prison in which a person is confined who is desirous of taking advantage of the provisions of the preceding sub-section shall, on application being made to him by such prisoner, at once take him before a court, and such court shall certify the amount by which the term of imprisonment originally awarded is reduced by such payment in part satisfaction, and shall make such order as is required in the circumstances

331 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

Who may issue warrant

332 No commitment for non-payment shall be for a longer period than six months, unless the law under which the conviction has taken place enjoins or allows a longer period

Limitation of imprisonment

FIRST OFFENDERS

333 (1) In any case in which a person is convicted before any court of any offence punishable with not more than three years' imprisonment, and no previous conviction is proved against him, if it appears to the court before which he is convicted that, having regard to the youth, character, antecedents, health or mental condition of the offender, or to the trivial nature of the offence, or to any extenuating circumstances under which the offence was committed, it is expedient to release the offender on probation, the court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, and during such period (not exceeding one year) as the court may direct, to appear and receive sentence when called upon, and in the meantime to keep the peace and be of good behaviour

Power to release upon probation instead of sentencing to punishment

(2) An order under this section may be made by the Supreme Court when exercising its powers of revision

334 (1) If at any time the court which convicted the offender is satisfied that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension

Provisions in case of offender failing to observe conditions of his recognizance

(2) An offender when apprehended on any such warrant shall be brought forthwith before the court by which the warrant was issued, and such court may either remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned for his appearing for sentence. Such court may, after hearing the case, pass sentence

335 The court, before directing the release of an offender under section 333, shall be satisfied that the offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the court acts, or in which the offender is likely to live during the period named for the observance of the condition

Condition as to abode of offender

Person twice convicted may be subjected to police supervision

PREVIOUSLY CONVICTED OFFENDERS

- 336** (1) When any person, having been convicted of any offence punishable with imprisonment for a term of three years or upwards, is again convicted of any offence punishable with imprisonment for a term of three years or upwards, the court may, if it thinks fit, at the time of passing sentence of imprisonment on such person, also order that he shall be subject to police supervision as hereinafter provided for a term not exceeding five years from the date of the expiration of such sentence
- (2) If such conviction is set aside on appeal or otherwise, such order shall become void
- (3) An order under this section may be made by the Supreme Court when exercising its powers of revision

Requirements from persons subject to police supervision

- 337** (1) Every person subject to police supervision, and who is at large in the Colony, shall—
- (a) report himself personally once in each month to the officer in charge of the police station nearest to his place of residence at such time as may be directed by such police officer, or as may be prescribed by rules under this section, and
 - (b) notify the place of his residence and any change of such residence at such time and place and in such manner and to such person as may be prescribed by rules under this section
- (2) The Governor may make rules for carrying out the provisions of this section

Failure to comply with requirements under section 337

- 338** If any person subject to police supervision who is at large in the Colony refuses or neglects to comply with any requirement prescribed by the last preceding section or by any rule made thereunder, such person shall, unless he proves to the satisfaction of the court before which he is tried that he did his best to act in conformity with the law, be guilty of an offence and liable to imprisonment for a term not exceeding six months

Errors and omissions in orders and warrants

- 339** The court may at any time amend any defect in substance or in form in any order or warrant, and no omission or error as to the time and place, and no defect in form in any order or warrant given under this Code, shall be held to render void or unlawful any act done or intended to be done by virtue of such order or warrant, provided that it is therein mentioned, or may be inferred therefrom, that it is founded on a conviction or judgment, and there is a valid conviction or judgment to sustain the same

PART XI —APPEALS

APPEALS FROM SUBORDINATE COURTS

Appeals

Appeal to Supreme Court

- 340** (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

341 (1) No appeal shall be allowed in the case of any accused person who has pleaded guilty and has been convicted on such plea by a subordinate court, except as to the extent or legality of the sentence

No appeal on
plea of guilty
nor in petty
cases

(2) No appeal shall be allowed in cases in which a subordinate court has passed a sentence of imprisonment not exceeding one month only, or of a fine not exceeding five pounds only, or of corporal punishment only

Provided that there shall be no appeal from a sentence of imprisonment passed by such court in default of the payment of a fine, when no substantive sentence of imprisonment has also been passed

Provided, however, that an appeal may be brought against any sentence referred to in this sub-section by which any two or more of the punishments therein mentioned are combined, but no sentence, which would not otherwise be liable to appeal, shall be appealable merely on the ground that the person convicted is ordered to find security to keep the peace

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

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

344 If the appellant is in prison he may present his Appellant in prison petition of appeal and the copies accompanying the same to the officer in charge of the prison, who shall thereupon forward such petition and copies to the registrar of the Supreme Court

345 (1) On receiving the petition and copy under section 343 the Supreme Court shall peruse the same, and if it considers that there is no sufficient ground for interfering, it may dismiss the appeal summarily

Provided that no appeal shall be dismissed unless the appellant (if not in custody) or his advocate has had a reasonable opportunity of being heard in support of the same, and provided further that no appeal, where the appellant is in custody, shall be dismissed unless the appellant's advocate (if the court has been notified that he has an advocate) has had such opportunity

(2) Before dismissing an appeal under this section, the court may call for the record of the case, but shall not be bound to do so

346 If the Supreme Court does not dismiss the appeal summarily, it shall cause notice to be given to the appellant or his advocate, and to the Attorney General, of the time and place at which such appeal will be heard, and shall furnish the Attorney General with a copy of the proceedings and of the grounds of appeal

Notice of
time and
place of
hearing

347 (1) The Supreme Court shall then send to the record of the case if such record is not already in court After Powers of Supreme Court perusing such record and hearing the appellant or his advocate,

if he appears, and the Attorney General, if he appears, the court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may—

(a) in an appeal from a conviction—

- (i) reverse the finding and sentence, and acquit or discharge the accused, or order him to be tried by a court of competent jurisdiction, or commit him for trial, or
- (ii) alter the finding, maintaining the sentence, or, with or without altering the finding, reduce or increase the sentence, or
- (iii) with or without such reduction or increase and with or without altering the finding, alter the nature of the sentence,

(b) in an appeal from any other order, alter or reverse such order,

and in either case may make any amendment or any consequential or incidental order that may appear just and proper

(2) An appellant who is in custody shall not be entitled to be present at the hearing of an appeal

Provided that the court may, in any case in which it considers it to be in the interest of the appellant that he be present, direct his attendance

Order of the Supreme Court to be certified to lower court

348 (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

349 (1) Pending any appeal by a convicted person, the Supreme Court may, for reasons to be recorded by it in writing, order that the execution of a sentence or order appealed against be suspended and also, if he is in confinement, that he be released on bail or on his own bond

(2) When the appellant is ultimately sentenced to imprisonment, the time during which he is so released shall be excluded in computing the term for which he is sentenced

Further evidence

350 (1) In dealing with an appeal from a subordinate court the Supreme Court, if it thinks additional evidence is necessary, shall record its reasons, and may either take such evidence itself or direct it to be taken by a subordinate court

(2) When the additional evidence is taken by a subordinate court, such court shall certify such evidence to the Supreme Court, which shall thereupon proceed to dispose of the appeal

(3) Unless the Supreme Court otherwise directs, the accused or his advocate shall be present when the additional evidence is taken

(4) Evidence taken in pursuance of this section shall be taken as if it were evidence taken at a trial before a subordinate court

351 All appeals to the Supreme Court shall be heard by Number of judges on not less than two judges. Provided that any interlocutory matter may be heard and disposed of by one judge in appeal

If on the hearing of an appeal the court is equally divided in opinion, the appeal shall be dismissed

352 Every appeal from a subordinate court (except an appeal from a sentence of fine) shall finally abate on the death of the appellant Abatement of appeals

Revision

353 The Supreme Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court Power of Supreme Court to call for records

354 (1) Any magistrate may call for and examine the record of any criminal proceedings before a subordinate court of a class inferior to the court which he is empowered to hold, and situate within the local limits of his jurisdiction, for the purpose of satisfying himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior subordinate court Power of magistrates to call for records of inferior courts and to report to the Supreme Court

(2) If any magistrate acting under sub section (1) considers that any finding, sentence or order of such inferior subordinate court is illegal or improper, or that any such proceedings are irregular, he shall forward the record, with such remarks thereon as he thinks fit, to the Supreme Court

355 (1) In the case of any proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the Supreme Court may— Powers of Supreme Court on revision

(a) in the case of an order of acquittal, reverse such order and direct that further inquiry be made or direct that the accused be retried,

(b) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by section 347, 349 and 350 and may enhance the sentence,

(c) in the case of any other order, alter or reverse such order

(2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence

(3) Where the sentence dealt with under this section has been passed by a subordinate court, the Supreme Court shall not inflict a greater punishment for the offence, which in the opinion of the Supreme Court the accused has committed, than might have been inflicted by a magistrate empowered to hold a subordinate court of the first class

(4) Nothing in this section shall be deemed to authorise the Supreme Court to convert a finding of acquittal into one of conviction

(5) Where an appeal lies from any finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed

Discretion
of court as
to hearing
parties

356 No party has any right to be heard either personally or by advocate before the Supreme Court when exercising its powers of revision

Provided that such court may, if it thinks fit, when exercising such powers, hear any party either personally or by advocate, and that nothing in this section shall be deemed to affect sub-section (2) of the last preceding section

Number of
judges in
revision

357 All proceedings before the Supreme Court in the exercise of its revisional jurisdiction may be heard and any judgment or order thereon may be made or passed by one judge

Provided that when such court is composed of more than one judge and the court is equally divided in opinion, the sentence or order of the subordinate court shall be upheld

Supreme Court
order to be
certified to
lower court

358 When a case is revised by the Supreme Court it shall certify its decision or order to the court by which the sentence or order so revised was recorded or passed, and the court to which the decision or order is so certified shall thereupon make such orders as are conformable to the decision so certified, and, if necessary, the record shall be amended in accordance therewith

Case Stated

Case stated
by subordinate
court

359 After the hearing and determination by any subordinate court of any summons, charge, information or complaint, either party to the proceedings before the said subordinate court may, if dissatisfied with the said determination as being erroneous in point of law or as being in excess of jurisdiction, apply in writing within thirty days after the said determination to the said subordinate court to state and sign a case setting forth the facts and the grounds of such determination for the opinion thereon of the Supreme Court, and such party, hereinafter called the appellant, shall within fourteen days after receiving such case transmit the same to the Supreme Court, first giving notice in writing of such appeal, with a copy of the case so stated and signed, to the other party to the proceedings in which the determination was given, hereinafter called the respondent

Recognition
to be taken
and fees paid

360 The appellant, at the time of making such application and before the case shall be stated and delivered to him by the subordinate court, shall in every instance enter into a recognizance before such subordinate court, with or without surety or sureties, and in such sum not exceeding fifty pounds as to the subordinate court shall seem meet, conditioned to prosecute without delay such appeal, and to submit to the judgment of the Supreme Court, and to pay such costs as may be awarded by the same, and before he shall be entitled to have the case delivered to him, he shall pay to the clerk of such subordinate court his fees for and in respect of the case and recognizances, and any other prescribed fees to

which such clerk shall be entitled, which fees shall be in accordance with the Third Schedule, and which shall be paid in stamps to be affixed to the original case stated, recognizance or certificate of refusal, as the case may be, and shall be cancelled by the subordinate court

The appellant, if then in custody, shall be liberated upon the recognizance being further conditioned for his appearance before the same subordinate court, or, if that is impracticable, before some other subordinate court exercising the same jurisdiction, within fourteen days after the judgment of the Supreme Court shall have been given, to abide such judgment unless the determination appealed against be reversed

Provided that nothing in this section shall apply to an application for a case stated by or under the direction of the Attorney General

361 If the subordinate court be of opinion that the application is merely frivolous, but not otherwise, it may refuse to state a case, and shall, on the request of the appellant, sign and deliver to him a certificate of such refusal. Provided that the subordinate court shall not refuse to state a case when the application for that purpose is made to him by or under the direction of the Attorney General, who may require a case to be stated with reference to proceedings to which he was not a party

Subordinate court may refuse case when it thinks application frivolous

362 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

Procedure on refusal of subordinate court to state case

363 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

Supreme Court to determine the questions on the case, its decision to be final

364 The Supreme Court shall have power, if it thinks fit—

Case may be sent back for amendment or rehearing

- (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

365 After the decision of the Supreme Court has been given on a case stated, the subordinate court in relation to whose determination the case has been stated, or any other subordinate court exercising the same jurisdiction, shall have the same authority to enforce any conviction or order, which may have been affirmed, amended or made by the Supreme Court, as the subordinate court which originally decided the case would have had to enforce its determination if the same had not been appealed against, and no action or proceeding whatsoever shall be commenced or had against the magistrate holding such subordinate court for enforcing such conviction or order, by reason of any defect in the same respectively

Appellant may
not proceed
both by case
stated and
by appeal

366 No person who has appealed under section 340 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 340

Contents or
case stated

367 A case stated by a subordinate court shall set out—
 (a) the charge, summons, information or complaint,
 (b) the facts found by the subordinate court to be admitted or proved
 (c) any submission of law made by or on behalf of the complainant during the trial or inquiry,
 (d) any submission of law made by or on behalf of the accused during the trial or inquiry,
 (e) the finding and, in the case of conviction, the sentence of the subordinate court,
 (f) any question or questions of law which the subordinate court or any of the parties may desire to be submitted for the opinion of the Supreme Court,
 (g) any question of law which the Attorney General may require to be submitted for the opinion of the Supreme Court

Constitution
or court
hearing case
stated

368 A case stated for the opinion of the Supreme Court shall be heard by not less than two judges. If on the hearing of a case stated the court is equally divided in opinion the decision of the subordinate court shall be affirmed

Supreme
Court may
enlarge time

369 The Supreme Court may, if it deems fit, enlarge any period of time prescribed by sections 359, 360 or 362

APPEALS FROM SUPREME COURT

Appeals from
Supreme
Court to His
Majesty's
Court of
Appeal for
Eastern
Africa

370 Any person convicted on a trial held by the Supreme Court may appeal to His Majesty's Court of Appeal for Eastern Africa—

- (a) Against his conviction on any ground of appeal which involves a question of law alone, and
- (b) with the leave of such Court of Appeal or upon the certificate of the judge who tried him that it is a fit case for appeal on any ground of appeal which involves a question of fact alone or a question of mixed law and fact or any other ground which appears to the court to be a sufficient ground of appeal, and

- (c) with the leave of such Court of Appeal against the sentence passed on conviction unless such sentence is one fixed by law

PART XII —SUPPLEMENTARY PROVISIONS

IRREGULAR PROCEEDINGS

371 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

372 (1) If an offence triable with the aid of assessors is tried by a jury, the trial shall not on that ground only be invalid

(2) If an offence triable by a jury is tried with the aid of assessors, the trial shall not on that ground only be invalid, unless the objection is taken before the court records its finding

373 Subject to the provisions hereinbefore contained, no finding sentence or order passed by a court of competent jurisdiction shall be reversed or altered on appeal or revision on account—

(a) of any error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during the trial or in any inquiry or other proceedings under this Code, or

(b) of the omission to revise any list of jurors or assessors in accordance with section 259, 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

374 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

Proceedings
in wrong place

Trial by jury
of offence
triable with
assessors

Trial with
assessors of
offence triable
by jury

Finding or
sentence when
excusable by
reason of
error or
omission in
charge or
other
proceedings

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

INQUIRIES AS TO SUDDEN DEATHS

375 Any magistrate empowered to hold a subordinate court of the first, second or third class and any magistrate specially empowered in that behalf by the Governor, shall be empowered to hold inquests

Magistrates
empowered
to hold
inquests

376 (1) The officer in charge of a police station, or any other officer specially empowered by the Governor in that behalf, on receiving information that a person—

Police to
inquire and
report on
suicide, etc

(a) has committed suicide, or

(b) has been killed by another or by an accident, or

(c) has died under circumstances raising a reasonable suspicion that some other person has committed an offence,

shall immediately give information thereof to the nearest magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the Governor, shall proceed to the place where the body of such deceased person is, and shall there make an investigation and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted. The report shall be forwarded forthwith to the nearest magistrate empowered to hold inquests.

(2) When there is any doubt regarding the cause of death, or when for any other reason the police officer considers it expedient to do so, he shall, subject to any rule prescribed by the Governor, forward the body, with a view to its being examined, to the nearest medical officer or other person appointed by the Governor in this behalf, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

Inquiry by magistrate into cause of death

377 (1) When any person dies while in the custody of the police, or of a prison officer, or in a prison, the nearest magistrate empowered to hold inquests shall, and in any other case mentioned in sub-section (1) of the last preceding section any magistrate so empowered may, hold an inquiry into the cause of death, either instead of or in addition to the investigation held by the police or prison officer, and if he does so he shall have all the powers in conducting it which he would have in holding an inquiry into an offence.

(2) Whenever such magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the magistrate may cause the body to be disinterred and examined.

(3) If before or at the termination of the inquiry the magistrate is of opinion that the commission by some known person or persons of an offence has been disclosed, he shall issue a summons or warrant for his or their arrest, as the case may be, or take such other steps as may be necessary to secure his or their attendance to answer the charge. On the attendance of the said person or persons the magistrate shall commence the inquiry *de novo* and shall proceed as if he had taken cognizance of an offence.

(4) If at the termination of the inquiry the magistrate is of opinion that an offence has been committed by some person or persons unknown, he shall record his opinion and shall forthwith send a copy thereof to the Commissioner of Police.

(5) If at the termination of the inquiry the magistrate is of opinion that no offence has been committed, he shall record his opinion accordingly.

DIRECTIONS IN THE NATURE OF HABEAS CORPUS AND
WRITS

378 (1) The Supreme Court may whenever it thinks fit direct—

- (a) that any person within the limits of the Colony be brought up before the court to be dealt with according to law,
- (b) that any person illegally or improperly detained in public or private custody within such limits be set at liberty,
- (c) that any prisoner detained in any prison situate within such limits be brought before the court to be there examined as a witness in any matter pending or to be inquired into in such court,
- (d) that any prisoner detained as aforesaid be brought before a court-martial or any commissioners acting under the authority of any commission from the Governor for trial to be examined touching any matter pending before such court-martial or commissioners respectively,
- (e) that any prisoner within such limits be removed from one custody to another for the purpose of trial, and
- (f) that the body of a defendant within such limits be brought in on a return of *cepit 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

379 (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

380 Affidavits and affirmations to be used before the Supreme Court may be sworn and affirmed before a judge of the Supreme Court or any magistrate or the registrar or deputy registrar of the Supreme Court or any commissioner for oaths

381 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

382 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

383 Subject to any rules which may be made by the Governor, any court may order payment on the part of Government of the reasonable expenses of any juror, assessor, complainant or witness attending before such court for the purposes of any inquiry, trial or other proceeding under this Code

Repeal and
saving clause
No 7 of 1926
No 14 of 1926
No 31 of 1926

REPEAL

384 (1) The Criminal Procedure Ordinance (Chapter 7 of the Revised Edition) as amended by the Revised Edition of the Laws (Operation) Ordinance, 1926, ~~and~~ the Costs in Criminal Cases Ordinance, 1926, and the Criminal Procedure (Amendment) Ordinance, 1926, are hereby repealed

Provided that such repeal shall not affect—

- (a) the past operation of the said repealed Ordinances or any of them,
- (b) any right, privilege, obligation or liability acquired, accrued or incurred under the said repealed Ordinances or any of them,
- (c) any penalty, forfeiture or punishment incurred in respect of any offence committed under the said repealed Ordinances or any of them,
- (d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, but any such investigation, legal proceeding or remedy may be carried on or sought as if the said Ordinances had not been repealed

Provided further that all rules, orders, declarations and appointments made, sanctions and directions given, forms approved, powers conferred and notifications and proclamations published under any of the said repealed Ordinances shall, so far as they are consistent with the provisions of this Code, be deemed to have been respectively made, given, approved, conferred and published under this Code

(2) Whenever reference is made in any enactment now in force or in any document to any provision in any of the said repealed Ordinances for which other provision is made by this Code, such reference shall be construed as a reference to the other provision made by this Code if such reference is consistent with the context in which it occurs

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FIRST SCHEDULE.**OFFENCES UNDER THE PENAL CODE**

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

CHAPTER V — PARTIES TO OFFENCES

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code (<i>N.B.</i> —Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. <i>Vide</i> also section 33 of the Penal Code)	5 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non native *
21	Aiding, abetting, counselling or procuring the commission of an offence	May arrest without warrant if arrest for the offence aided, abetted, counselled or procured may be made without warrant but not otherwise	Same punishment as for the offence aided, abetted, counselled or procured	Any court by which the offence aided, abetted, counselled or procured would be triable

DIVISION I

OFFENCES AGAINST PUBLIC ORDER

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

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	
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	Any magistrate
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	Subordinate court of the first or second class
46	Seditious conspiracy and libel	ditto	ditto	ditto
48	Administering or taking oath to commit capital offence	May arrest without warrant	Imprisonment for life	
49	Administering or taking other unlawful oaths	ditto	Imprisonment for seven years	Subordinate court of the first class
51 (1)	Unlawful drilling	ditto	ditto	ditto
(2)	Being unlawfully drilled	ditto	Imprisonment for two years	Subordinate court of the first or second class

* For the court by which an offence is triable when the accused is a native, *vide* section 10

FIRST SCHEDULE—*continued*

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

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code (<i>N.B.</i> —Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine instead of imprisonment. <i>Vide</i> also section 33 of the Penal Code)	5 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non native *
52	Defamation of foreign princes	Shall not arrest without warrant	Imprisonment for two years	Subordinate court of the first or second class
53	Foreign enlistment	ditto	ditto	ditto
54	Piracy	May arrest without warrant	Punishment prescribed by law of England	

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

56	Unlawful assembly	May arrest without warrant	Imprisonment for one year without hard labour	Subordinate court of the first or second class
57	Riot	ditto	Imprisonment for two years	ditto
60	Rioting after proclamation	ditto	Imprisonment for five years	Subordinate court of the first class
61	Obstructing proclamation	ditto	Imprisonment for ten or five years	ditto
62	Rioters destroying buildings	ditto	Imprisonment for life	
63	Rioters injuring buildings	ditto	Imprisonment for seven years	Subordinate court of the first class
64	Riotously preventing sailing of ship	ditto	Imprisonment for two years	Subordinate court of the first or second class
65	Going armed in public	ditto	ditto	ditto
66	Forcible entry	ditto	ditto	ditto
67	Forcible detainer	ditto	ditto	ditto
68	Committing affray	ditto	Imprisonment for one year	Any magistrate
69	Challenging to fight a duel	Shall not arrest without warrant	Imprisonment for two years	ditto
70	Threatening violence If the offence committed in the night	May arrest without warrant ditto	Imprisonment for one year Imprisonment for two years	ditto ditto
71	Assembling for purpose of smuggling	ditto	Fine of one hundred pounds or imprisonment for six months	ditto

DIVISION II

OFFENCES AGAINST THE ADMINISTRATION OF LAWFUL AUTHORITY

CHAPTER X—CORRUPTION AND ABUSE OF OFFICE

72	Official corruption	Shall not arrest without warrant	Imprisonment for three years	Subordinate court of the first or second class
73	Extortion by public officers	ditto	ditto	ditto

* For the court by which an offence is triable when the accused is a native *vide* section 10

FIRST SCHEDULE—*continued*CHAPTER X—CORRUPTION AND ABUSE OF OFFICE—(*contd.*)

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code (<i>N.B.</i> —Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. <i>Vide</i> also section 33 of the Penal Code)	5 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non native *
74	Receiving property to show favour	Shall not arrest without warrant	Imprisonment for six months	Subordinate court of the first or second class
75	Officer discharging duties in respect of property in which he has a special interest	ditto	Imprisonment for one year	ditto
76	False claims by officials	ditto	Imprisonment for two years	ditto
77	Abuse of office	ditto	ditto	ditto
77	Abuse of office (<i>if for purposes of gain</i>)	ditto	Imprisonment for three years	ditto
78	False certificates by public officers	ditto	Imprisonment for two years	ditto
79	False assumption of authority	ditto	ditto	ditto
80	Personating public officers	ditto	Imprisonment for three years	ditto

CHAPTER XI—OFFENCES RELATING TO THE ADMINISTRATION OF JUSTICE

82	Perjury or subordination of perjury	Shall not arrest without warrant	Imprisonment for seven years	Subordinate court of the first class
84	Fabricating evidence	ditto	ditto	ditto
85	False swearing	ditto	Imprisonment for two years	Subordinate court of the first or second class
86	Deceiving witnesses	ditto	ditto	ditto
87	Destroying evidence	ditto	ditto	ditto
88	Conspiracy to defeat justice and interference with witnesses	ditto	ditto	ditto
89	Compounding felonies	ditto	ditto	ditto
90	Compounding penal actions	ditto	ditto	ditto
91	Advertising for stolen property	ditto	ditto	ditto

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

92	Rescue			
(a)	if person rescued is under sentence of death or imprisonment for life or charged with offence punishable with death or imprisonment for life,	May arrest without warrant	Imprisonment for life	

* For the court by which an offence is triable when the accused is a native, *vide* section 10

FIRST SCHEDULE—*continued*

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

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code (<i>N.B.</i> —Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. <i>Vide</i> also section 33 of the Penal Code)	5 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non native *
(b)	if person rescued is imprisoned on a charge or under sentence for any other offence,	May arrest without warrant	Imprisonment for seven years	Subordinate court of the first class
(c)	in any other case	ditto	Imprisonment for two years	Subordinate court of the first or second class
93	Escape	ditto	Imprisonment for seven years, with or without corporal punishment	Subordinate court of the first class
(a)	if person escaping is charged with or has been convicted of felony,	ditto	Imprisonment for two years	Subordinate court of the first or second class
94	Aiding prisoners to escape	ditto	Imprisonment for seven years	Subordinate court of the first class
95	Removal, etc. of property under lawful seizure	ditto	Imprisonment for three years	Subordinate court of the first or second class
96	Obstructing Court officers	ditto	Imprisonment for one year	ditto

CHAPTER XIII—MISCELLANEOUS OFFENCES AGAINST PUBLIC AUTHORITY

97	Frauds and breaches of trust by public officers	Shall not arrest without warrant	Imprisonment for two years	Subordinate court of the first class
98	Neglect of official duty	ditto	ditto	ditto
99	Disobedience of statutory duty	ditto	ditto	ditto
100	Disobedience of lawful orders	ditto	ditto	ditto

DIVISION III

OFFENCES INJURIOUS TO THE PUBLIC IN GENERAL

CHAPTER XIV—OFFENCES RELATING TO RELIGION

101	Insult to religion of any class	May arrest without warrant	Imprisonment for two years	Subordinate court of the first or second class
102	Disturbing religious assemblies	ditto	ditto	ditto
103	Trespassing on burial places	ditto	ditto	ditto
104	Uttering words with intent to wound religious feelings	Shall not arrest without warrant	Imprisonment for one year	ditto

* For the court by which an offence is triable when the accused is a native, *vide* section 10

FIRST SCHEDULE—*continued*

CHAPTER XV—OFFENCES AGAINST MORALITY

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code. <i>(N.B.—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. <i>Vide</i> also section 33 of the Penal Code.)</i>	5 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non native *
106	Rape	May arrest without warrant	Death or imprisonment for life or for any term not less than three years, with or without corporal punishment	
107	Attempted rape	ditto	Imprisonment for life, with or without corporal punishment	
108	Abduction	ditto	Imprisonment for seven years	Subordinate court of the first class
109	Abduction of girl under sixteen	ditto	Imprisonment for two years	ditto
110(1)	Indecent assault on females	ditto	Imprisonment for fourteen years, with or without corporal punishment	ditto
(3)	Indecently insulting or annoying females	ditto	Imprisonment for one year	ditto
111(1)	Defilement of girl under sixteen	ditto	Imprisonment for life, with or without corporal punishment	
(2)	Attempted defilement of girl under sixteen	ditto	Imprisonment for fourteen years, with or without corporal punishment	Subordinate court of the first class
112	Defilement of an idiot or imbecile	ditto	ditto	ditto
113	Procuration	ditto	Imprisonment for two years, with or without corporal punishment	ditto
114	Procuring defilement by threats or fraud or administering drugs	ditto	Imprisonment for two years	ditto
115	Householder permitting defilement of girl under thirteen on his premises	ditto	Imprisonment for five years	ditto
116	Householder permitting defilement of girl under sixteen on his premises	ditto	Imprisonment for two years	ditto
117	Detention with intent or in brothel	ditto	ditto	ditto
119	Male person living on earnings of prostitution or persistently soliciting	ditto	ditto	ditto

* For the court by which an offence is triable when the accused is a native, *vide* section 10

FIRST SCHEDULE—*continued*
 CHAPTER XV—OFFENCES AGAINST MORALITY—(*contd.*)

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code (<i>N.B.</i> —Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. <i>Vide</i> also section 33 of the Penal Code)	5 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non native *
120	Woman aiding, etc., for gain, prostitution of another woman	May arrest without warrant	Imprisonment for two years	Subordinate court of the first class
121	Keeping a brothel	ditto	ditto	ditto
122	Conspiracy to defile	ditto	Imprisonment for three years with or without corporal punishment	ditto
123	Attempt to procure abortion	ditto	Imprisonment for fourteen years	ditto
124	Woman attempting to procure her own abortion	ditto	Imprisonment for seven years	ditto
125	Supplying drugs or instruments to procure abortion	ditto	Imprisonment for three years	ditto
127	Unnatural offences	ditto	Imprisonment for fourteen years, with or without corporal punishment	
128	Attempt to commit unnatural offence	ditto	Imprisonment for seven years, with or without corporal punishment	
129(1)	White woman having connection with native	ditto	Imprisonment for five years	
(2)	White woman soliciting native to have connection with her	ditto	Imprisonment for two years	
(3)	Native having or attempting to have connection with white woman	ditto	Imprisonment for five years	
(4)	Procuring or attempting to procure white woman for purpose of having connection with native	ditto	Imprisonment for ten years, with or without corporal punishment	
(5)	Householder permitting connection between native and white woman	ditto	Imprisonment for five years	
130(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	
131	Incest by females	ditto	Imprisonment for five years	

* For the court by which an offence is triable when the accused is a native *vide* section 10

FIRST SCHEDULE—*continued*

CHAPTER XVI—OFFENCES RELATING TO MARRIAGE AND DOMESTIC OBLIGATIONS

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code (<i>N.B.</i> —Under section 26(3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. <i>Vide also</i> section 33 of the Penal Code)	5 Court (in addition to the Supreme Court by which offence triable when the accused is a non native *)
136	Fraudulent pretence of marriage	May arrest without warrant	Imprisonment for ten years	
137	Bigamy	ditto	Imprisonment for five years	
138	Dishonestly or fraudulently going through ceremony of marriage	ditto	ditto	
139	Desertion of children	Shall not arrest without warrant	Imprisonment for two years	Subordinate court of the first or second class
140	Neglecting to provide food, etc., for children	ditto	ditto	ditto
141	Master not providing for servants or apprentices	ditto	ditto	ditto
142	Child stealing	May arrest without warrant	Imprisonment for seven years	Subordinate court of the first class

CHAPTER XVII—NUISANCES AND OFFENCES AGAINST HEALTH AND CONVENIENCE

143	Committing common nuisance	Shall not arrest without warrant	Imprisonment for one year	Any magistrate
144(3)	Keeping common gaming house	ditto	Imprisonment for two years	Subordinate court of the first or second class
(4)	Being found in common gaming house	ditto	Fine of five pounds for first offence, and for each subsequent offence a fine of twenty pounds or imprisonment for three months or both	ditto
145	Keeping or permitting the keeping of a common betting house	ditto	Imprisonment for one year	ditto
146(1)	Carrying on a lottery	ditto	Imprisonment for two years	ditto
(2)	Printing or publishing advertisement relating to a lottery	ditto	Fine of fifty pounds	ditto
148	Trafficking in obscene publications	May arrest without warrant	Imprisonment for two years	ditto
149	Being an idle or disorderly person	ditto	Imprisonment for one month or a fine of two pounds, or both	Any magistrate

* For the court by which an offence is triable when the accused is a native, *vide* section 10.

FIRST SCHEDULE—*continued*CHAPTER XVII—NUISANCES—(*contd.*)

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code (<i>N.B.</i> —Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. <i>Vide</i> also section 33 of the Penal Code)	5 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non native *
150	Being a rogue or vagabond	May arrest without warrant	Imprisonment for three months for first offence, and for each subsequent offence imprisonment for one year with or without corporal punishment	Subordinate court of the first or second class
151(1)	Wearing uniform without authority	ditto	Imprisonment for one month or a fine of ten pounds	ditto
(2)	Bringing contempt on uniform	ditto	Imprisonment for three months or a fine of twenty pounds	ditto
(3)	Importing or selling uniform without authority	ditto	Imprisonment for six months or a fine of one hundred pounds	ditto
152	Doing any act likely to spread infection of dangerous disease	ditto	Imprisonment for two years	ditto
153	Adulteration of food or drink intended for sale	Shall not arrest without warrant	ditto	ditto
154	Selling, or offering or exposing for sale, noxious food or drink	ditto	ditto	ditto
155	Adulteration of drugs intended for sale	ditto	ditto	ditto
156	Selling adulterated drugs	ditto	ditto	ditto
157	Fouling water of public spring or reservoir	May arrest without warrant	ditto	Any magistrate
158	Making the atmosphere noxious to health	Shall not arrest without warrant	ditto	ditto
159	Carrying on offensive trade	ditto	Imprisonment for one year	ditto

CHAPTER XVIII—DEFAMATION

160	Libel	Shall not arrest without warrant	Imprisonment for two years	Subordinate court of the first class
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* For the court by which an offence is triable when the accused is a native, *vide* section 10

FIRST SCHEDULE—*continued*

DIVISION IV

OFFENCES AGAINST THE PERSON

CHAPTER XIX—MURDER AND MANSLAUGHTER

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code (<i>N.B.</i> —Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. <i>Vide</i> also section 33 of the Penal Code)	5 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non-native *
170	Murder	May arrest without warrant	Death	
171	Manslaughter	ditto	Imprisonment for life	

CHAPTER XXI—OFFENCES CONNECTED WITH MURDER AND SUICIDE

184	Attempted murder	May arrest without warrant	Imprisonment for life	
185	Attempted murder by convict	ditto	Imprisonment for life, with or without corporal punishment	
186	Being accessory after the fact to murder	ditto	Imprisonment for seven years	
187	Sending written threat to murder	ditto	ditto	
188	Conspiracy to murder	ditto	Imprisonment for fourteen years	
189	Aiding suicide	ditto	Imprisonment for life	
190	Attempted suicide	ditto	Imprisonment for two years	Subordinate court of the first or second class
191	Concealing the birth of a child	ditto	ditto	ditto

CHAPTER XXII—OFFENCES ENDANGERING LIFE OR HEALTH

192	Disabling in order to commit felony or misdemeanour	May arrest without warrant	Imprisonment for life, with or without corporal punishment	
193	Stupefying in order to commit felony or misdemeanour	ditto	Imprisonment for life	
194	Acts intended to cause grievous harm or prevent arrest	ditto	ditto	
195	Preventing escape from wreck	ditto	ditto	
196	Intentionally endangering safety of persons travelling by railway	ditto	Imprisonment for life, with or without corporal punishment	
197	Doing grievous harm	ditto	Imprisonment for seven years	Subordinate court of the first or second class

* For the court by which an offence is triable when the accused is a native, *vide* section 10

FIRST SCHEDULE—*continued*

CHAPTER XXII—OFFENCES ENDANCERING LIFE OR HEALTH—(contd.)

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code (<i>N.B.</i> —Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment <i>Vide</i> also section 33 of the Penal Code)	5 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non native *
198	Attempting to injure by explosive substances	May arrest without warrant	Imprisonment for fourteen years	
199	Administering poison with intent to harm	ditto	ditto	
200	Wounding and similar acts	ditto	Imprisonment for three years	Subordinate court of the first or second class
201	Failing to provide necessities of life	ditto	ditto	ditto

CHAPTER XXIII—CRIMINAL RECKLESSNESS AND NEGLIGENCE

202	Rash and negligent acts	ditto	Imprisonment for two years	Subordinate court of the first or second class
203	Other negligent acts causing harm	ditto	Imprisonment for six months	ditto
204	Endangering safety of persons travelling by railway	ditto	Imprisonment for two years	ditto
205	Exhibiting false light, mark or buoy	ditto	Imprisonment for seven years	
206	Conveying person by water for hire in unsafe or overloaded vessel	ditto	Imprisonment for two years	Subordinate court of the first or second class
207	Causing danger or obstruction in public way or line of navigation	ditto	Fine	ditto

CHAPTER XXIV—ASSAULTS

208	Common assault	Shall not arrest without warrant	Imprisonment for one year	Any magistrate
209	Assault occasioning actual bodily harm	May arrest without warrant	Imprisonment for five years	Subordinate court of the first or second class
210	Assaulting person protecting wreck	ditto	Imprisonment for seven years	Subordinate court of the first class
211	Various assaults	ditto	Imprisonment for two years	Subordinate court of the first or second class

CHAPTER XXV—OFFENCES AGAINST LIBERTY

215	Kidnapping	May arrest without warrant	Imprisonment for seven years	Subordinate court of the first class
216	Kidnapping or abducting in order to murder	ditto	Imprisonment for ten years	
217	Kidnapping or abducting with intent to confine a person	ditto	Imprisonment for seven years	Subordinate court of the first class

* For the court by which an offence is triable when the accused is a native, *vide* section 10

FIRST SCHEDULE—*continued*CHAPTER XXV—OFFENCES AGAINST LIBERTY—(*contd.*)

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code (<i>N.B.</i> —Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. <i>Vide</i> also section 33 of the Penal Code)	5 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non native *
218	Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc	May arrest without warrant	Imprisonment for ten years	
219	Wrongfully concealing or keeping in confinement a kidnapped or abducted person	ditto	Same punishment as for kidnapping or abduction	
220	Kidnapping or abducting child under fourteen with intent to steal from its person	ditto	Imprisonment for seven years	Subordinate court of the first class
221	Buying or disposing of any person as a slave	ditto	ditto	
222	Habitually dealing in slaves	ditto	Imprisonment for ten years	
223	Unlawful compulsory labour	ditto	Imprisonment for two years	Any magistrate

DIVISION V

OFFENCES RELATING TO PROPERTY

CHAPTER XXVI—THEFT

232	Theft	ditto	Imprisonment for five years	Any magistrate
233	Stealing wills	ditto	Imprisonment for ten years	Subordinate court of the first or second class
234	Stealing postal matter, etc	ditto	ditto	ditto
235	Stealing cattle, etc	ditto	Imprisonment for seven years	ditto
236	Stealing from the person in a dwelling house, in transit, etc	ditto	ditto	ditto
237	Stealing by persons in the public service	ditto	ditto	ditto
238	Stealing by clerks and servants	ditto	ditto	ditto
239	Stealing by directors or officers of companies	ditto	ditto	ditto
240	Stealing by agents, etc	ditto	ditto	ditto
241	Stealing by tenants or lodgers	ditto	ditto	ditto
242	Stealing after previous conviction	ditto	ditto	ditto

* For the court by which an offence is triable when the accused is a native, *vid.* section 10

FIRST SCHEDULE—*continued*

CHAPTER XXVII—OFFENCES ALIED TO STEALING

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code (<i>N.B.</i> —Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. <i>Vide</i> also section 33 of the Penal Code)	5 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non native *
243	Concealing registers	May arrest without warrant	Imprisonment for ten years	
244	Concealing wills	ditto	ditto	
245	Concealing deeds	ditto	Imprisonment for three years	
246	Killing animals with intent to steal	ditto	Same punishment as if the animal had been stolen	Any court by which the theft of the animal would be triable
247	Severing with intent to steal	ditto	Same punishment as if the thing had been stolen	Any court by which the theft of the thing would be triable
248	Fraudulently dealing with ore or minerals in mines	ditto	Imprisonment for five years	Subordinate court of the first or second class
249	Fraudulent appropriation of mechanical or electrical power	ditto	ditto	ditto

CHAPTER XXVIII—ROBBERY AND EXTORTION

251	Robbery	May arrest without warrant	Imprisonment for fourteen years	Subordinate court of the first class
	Robbery with violence	ditto	Imprisonment for life, with or without corporal punishment	
252	Attempted robbery	May arrest without warrant	Imprisonment for seven years	Subordinate court of the first class
	Attempted robbery with violence	ditto	Imprisonment for life, with or without corporal punishment	
253	Assault with intent to steal	ditto	Imprisonment for three years	Subordinate court of the first or second class
254	Demanding property by written threats	ditto	Imprisonment for fourteen years	Subordinate court of the first class
255	Threatening with intent to extort— in certain specified cases, in any other case	ditto	ditto	ditto
		ditto	Imprisonment for three years	Subordinate court of the first or second class

* For the court by which an offence is triable when the accused is a native, *vide* section 10

FIRST SCHEDULE—*continued*CHAPTER XXVIII—ROBBERY AND EXTORTION—(*contd.*)

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code (<i>N.B.</i> —Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. <i>Vide</i> also section 33 of the Penal Code)	5 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non native *
256	Procuring execution of deeds, etc., by threats	May arrest without warrant	Imprisonment for fourteen years	Subordinate court of the first class
257	Demanding property with menaces with intent to steal	ditto	Imprisonment for five years	Subordinate court of the first or second class

CHAPTER XXIX—BURGLARY, HOUSEBREAKING AND SIMILAR OFFENCES

259	Housebreaking	May arrest without warrant	Imprisonment for seven years	Subordinate court of the first or second class
	Burglary	ditto	Imprisonment for ten years	ditto
260	Entering dwelling-house with intent to commit felony	ditto	Imprisonment for five years	ditto
	If offence is committed in the night	ditto	Imprisonment for seven years	ditto
261	Breaking into building and committing felony	ditto	ditto	ditto
262	Breaking into building with intent to commit felony	ditto	Imprisonment for five years	ditto
263	Being found armed, etc., with intent to commit felony	ditto	Imprisonment for three years	ditto
	If offender has been previously convicted of a felony relating to property	ditto	Imprisonment for seven years	ditto

CHAPTER XXX—FALSE PRETENCES

265	Obtaining property by false pretence	May arrest without warrant	Imprisonment for three years	Subordinate court of the first or second class
266	Obtaining execution of a security by false pretence	ditto	ditto	ditto
267	Cheating	ditto	ditto	ditto
268	Obtaining credit, etc., by false pretence	ditto	Imprisonment for one year	ditto
269	Conspiracy to defraud	ditto	Imprisonment for three years	ditto
270	Frauds on sale or mortgage of property	ditto	Imprisonment for two years	ditto

* For the court by wh'ch an offence is triable when the accused is a native, *vide* section 10

FIRST SCHEDULE—*continued*CHAPTER XXX—FALSE PRETENCES—(*contd*)

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code (<i>N.B.</i> —Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. <i>Vide</i> also section 33 of the Penal Code)	5 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non native *
271	Pretending to exercise witchcraft or tell fortunes	May arrest without warrant	Imprisonment for one year	Subordinate court of the first or second class
272	Obtaining registration, etc., by false pretence	ditto	ditto	ditto

CHAPTER XXXI—RECEIVING PROPERTY STOLEN OR UNLAWFULLY OBTAINED AND LIKE OFFENCES

273(1)	Receiving or retaining stolen property	May arrest without warrant	Imprisonment for fourteen years	Subordinate court of the first or second class
(2)	Receiving property unlawfully obtained, converted or disposed of	ditto	Same punishment as offender by whom the property was unlawfully obtained, converted or disposed of	Any court by which the unlawful obtaining, conversion or disposal of the property would be triable
274	Failing to account for possession of property suspected to be stolen or unlawfully obtained	ditto	Imprisonment for three months	Subordinate court of the first or second class

CHAPTER XXXII—FRAUDS BY TRUSTEES AND PERSONS IN A POSITION OF TRUST, AND FALSE ACCOUNTING

276	Fraudulently disposing of trust property	May arrest without warrant	Imprisonment for seven years	Subordinate court of the first or second class
277	Directors and officers of corporations fraudulently appropriating property or keeping fraudulent accounts, or falsifying books or accounts	ditto	ditto	ditto
278	False statements by officials of corporations	ditto	ditto	ditto
279	Fraudulent false accounting by clerk or servant	ditto	ditto	ditto
280	False accounting by public officer	ditto	Imprisonment for two years	ditto

* For the court by which an offence is triable when the accused is a native, *vide* section 10

FIRST SCHEDULE—*continued*

DIVISION VI

MALICIOUS INJURIES TO PROPERTY

CHAPTER XXXIII—OFFENCES CAUSING INJURY TO PROPERTY

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code (<i>N.B.</i> —Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. <i>Vide</i> also section 33 of the Penal Code)	5 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non native *
281	Arson	May arrest without warrant	Imprisonment for life	
282	Attempt to commit arson	ditto	Imprisonment for fourteen years	Subordinate court of the first class
283	Setting fire to crops or growing plants	ditto	ditto	ditto
284	Attempting to set fire to crops or growing plants	ditto	Imprisonment for seven years	ditto
285	Casting away a ship	ditto	Imprisonment for life, with or without corporal punishment	
286	Attempt to cast away a ship	ditto	Imprisonment for fourteen years, with or without corporal punishment	Subordinate court of the first class
287	Killing or wounding animals—			
	in the case of certain animals	ditto	Imprisonment for seven years	Subordinate court of the first or second class
	in any other case	ditto	Imprisonment for two years	Any magistrate
288(1)	Destroying or damaging property in general	ditto	Imprisonment for two years	ditto
(2)	Destroying or damaging an inhabited house or a vessel with explosives	ditto	Imprisonment for life, with or without corporal punishment	
(3)	Destroying or damaging river bank or wall, or navigation works, or bridges	ditto	Imprisonment for life	
(4)	Destroying or damaging wills or registers	ditto	Imprisonment for fourteen years	Subordinate court of the first class
(5)	Destroying or damaging wrecks	ditto	Imprisonment for seven years	ditto
(6)	Destroying or damaging railways	ditto	Imprisonment for fourteen years	ditto
(7)	Destroying or damaging property of special value	ditto	Imprisonment for seven years	ditto
(8)	Destroying or damaging deeds or records	ditto	ditto	ditto

* For the court by which an offence is triable when the accused is a native, *vide* section 10

FIRST SCHEDULE—*continued*

CHAPTER XXXIII—OFFENCES CAUSING INJURY TO PROPERTY—(contd.)

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code (N.B.—Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. <i>Vide</i> also section 33 of the Penal Code)	5 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non native *
289	Attempt to destroy or damage property by use of explosives	May arrest without warrant	Imprisonment for fourteen years	Subordinate court of the first class
290	Communicating infectious disease to animals	ditto	Imprisonment for seven years	ditto
291	Removing boundary marks with intent to defraud	ditto	Imprisonment for three years	Subordinate court of the first or second class
292	Removing or injuring survey or boundary marks	ditto	Imprisonment for three months or a fine of twenty pounds	Any magistrate
293	Injuring or obstructing railway works, etc	ditto	ditto	ditto
294	Threatening to burn any building, etc., or to kill or wound any cattle	ditto	Imprisonment for ten years	Subordinate court of the first class

DIVISION VII

FORGERY, COINING, COUNTERFEITING AND SIMILAR OFFENCES

CHAPTER XXXV—FORGERY

299	Forgery (where no special punishment is provided)	May arrest without warrant	Imprisonment for three years	Subordinate court of the first class
300	Forgery of a will document of title, security, cheque, etc	ditto	Imprisonment for life	
301	Forgery of judicial or official document	ditto	Imprisonment for ten years	
302	Forgery, etc., of stamps	ditto	Imprisonment for seven years	
303	Uttering false document	ditto	Same punishment as for forgery of document	Any court by which forgery of document would be triable
304	Uttering cancelled or exhausted document	ditto	ditto	ditto
305	Procuring execution of document by false pretences	ditto	ditto	ditto
306	Obliterating or altering the crossing on a cheque	ditto	Imprisonment for seven years	Subordinate court of the first class

* For the court by which an offence is triable when the accused is a native, *vide* section 10

FIRST SCHEDULE—*continued*CHAPTER XXXV —FORGERY—(*contd.*)

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code (<i>N.B.</i> —Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. <i>Vide</i> also section 33 of the Penal Code)	5 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non native *
307	Making or executing document without authority	May arrest without warrant	Imprisonment for seven years	Subordinate court of the first class
308	Demanding property upon forged testamentary instrument	ditto	Same punishment as for forgery of instrument	Any court by which forgery of instrument would be triable
309	Purchasing or receiving forged bank note	ditto	Imprisonment for seven years	Subordinate court of the first class
310	Falsifying warrant for money payable under public authority	ditto	ditto	ditto
311	Permitting falsification of register or record	ditto	ditto	ditto
312	Sending false certificate of marriage to registrar	ditto	ditto	ditto
313	Making false statement for insertion in register of births, deaths or marriages	ditto	Imprisonment for three years	Subordinate court of the first or second class

CHAPTER XXXVI —OFFENCES RELATING TO COIN

315	Counterfeiting coin—	May arrest without warrant	Imprisonment for life	
	if the offence is committed with respect to current coin ,			
316	if the offence is committed with respect to coin of a foreign Sovereign or State	ditto	Imprisonment for seven years	
	Making preparations for coining—			
317	if the offence is committed with respect to current coin ,	ditto	Imprisonment for life	Subordinate court of the first class
	if the offence is committed with respect to coin of a foreign Sovereign or State		Imprisonment for seven years	
318	Clipping current coin	ditto	ditto	ditto
	Being in possession of clippings	ditto	ditto	

* For the court by which an offence is triable when the accused is a native, *vide* section 10

FIRST SCHEDULE—*continued*CHAPTER XXXVI—OFFENCES RELATING TO COIN—(*contd.*)

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code (<i>N.B.</i> —Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine instead of imprisonment. <i>Vide</i> also section 33 of the Penal Code)	5 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non native *
319	Uttering counterfeit coin— if the offence is committed with respect to current coin if the offence is committed with respect to coin of a foreign Sovereign or State	May arrest without warrant ditto	Imprisonment for two years Imprisonment for one year	Subordinate court of the first class ditto
320	Repeated uttering of counterfeit coin	ditto	Imprisonment for three years	ditto
321	Uttering foreign coin or metal as current coin	ditto	Imprisonment for one year	ditto
322	Exporting counterfeit coin	ditto	Imprisonment for two years	ditto

CHAPTER XXXVII—COUNTERFEIT STAMPS

323	Being in possession, etc, of die or paper used for purpose of making revenue stamps	May arrest without warrant	Imprisonment for seven years	Subordinate court of the first class
324	Being in possession, etc, of die or paper used for postage stamps	ditto	Imprisonment for one year or fine of fifty pounds	ditto

CHAPTER XXXVIII—COUNTERFEITING TRADE MARKS

326	Counterfeiting, etc, trade mark	Shall not arrest without warrant	Imprisonment for two years	Subordinate court of the first or second class
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CHAPTER XXXIX—PERSONATION

327	Personation in general	May arrest without warrant	Imprisonment for two years	Subordinate court of the first or second class
	If representation is that the offender is a person entitled by will or operation of law to any specific property and he commits the offence to obtain such property	ditto	Imprisonment for seven years	Subordinate court of the first class
328	Falsely acknowledging deeds, recognizances, etc	ditto	Imprisonment for two years	Subordinate court of the first or second class

* For the court by which an offence is triable when the accused is a native, *vide* section 10

FIRST SCHEDULE—*continued*CHAPTER XXXIX — PERSONATION—(*contd.*)

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code (<i>N.B.</i> —Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. <i>Vide</i> also section 33 of the Penal Code)	5 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non-native *
329	Personation of a person named in a certificate	May arrest without warrant	Same punishment as for forgery of certificate	Any court by which forgery of certificate would be triable
330	Lending, etc., certificate for purposes of personation	ditto	Imprisonment for two years	Subordinate court of the first or second class
331	Personation of person named in a testimonial of character	ditto	Imprisonment for one year	ditto
332	Lending, etc., testimonial of character for purposes of personation	ditto	Imprisonment for two years	ditto

DIVISION VIII

ATTEMPTS AND CONSPIRACIES TO COMMIT CRIMES AND ACCESSORIES AFTER THE FACT

CHAPTER XL — ATTEMPTS

334	Attempt to commit a felony or misdemeanour	According as to whether or not the offence is one for which the police may arrest without a warrant	Imprisonment for two years	Any court by which the felony or misdemeanour attempted would be triable
335	Attempt to commit a felony punishable with death or imprisonment for fourteen years or upwards	May arrest without warrant	Imprisonment for seven years	Any court by which the felony attempted would be triable
336	Neglecting to prevent commission or completion of a felony	Shall not arrest without warrant	Imprisonment for two years	Subordinate court of the first or second class

CHAPTER XLI — CONSPIRACIES

337	Conspiracy to commit a felony	May arrest without warrant	Imprisonment for seven years	Any court by which the felony would be triable
338	Conspiracy to commit a misdemeanour	According as to whether or not the misdemeanour is one for which the police may arrest without warrant	Imprisonment for two years	Any court by which the misdemeanour would be triable
339	Conspiracy to effect certain specified purposes	Shall not arrest without warrant	ditto	Subordinate court of the first or second class

* For the court by which an offence is triable when the accused is a native, *vide* section 10

FIRST SCHEDULE—*continued*

CHAPTER XLII—ACCESSORIES AFTER THE FACT

1 Section	2 Offence	3 Whether the police may arrest without warrant or not	4 Punishment under the Penal Code (<i>N.B.</i> —Under section 26 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment. <i>Vide</i> also section 33 of the Penal Code)	5 Court (in addition to the Supreme Court) by which offence is triable when the accused is a non native *
341	Being an accessory after the fact to a felony	May arrest without warrant	Imprisonment for three years	Subordinate court of the first or second class
342	Being an accessory after the fact to a misdemeanour	Shall not arrest without warrant	Imprisonment for two years	ditto

OFFENCES UNDER OTHER LAWS

If punishable with death or imprisonment for seven years or upwards	May arrest without warrant		
If punishable with imprisonment for three years or upwards, but less than seven	ditto		Subordinate court of the first class
If punishable with imprisonment for one year or upwards, but less than three	Shall not arrest without warrant		Subordinate court of the first or second class
If punishable with imprisonment for less than one year or with fine only	ditto		Any magistrate

* For the court by which an offence is triable when the accused is a native, *vide* section 10

SECOND SCHEDULE.

FORMS OF STATING OFFENCES IN INFORMATIONS

1 — MURDER

Murder, contrary to section 170 of the Penal Code

PARTICULARS OF OFFENCE

A B, on the _____ day of _____, 19_____, in the province of
_____, murdered *J S*

2—ACCESSORY AFTER THE FACT TO MURDER

Accessory after the fact to murder, contrary to section 186 of the Penal Code

PARTICULARS OF OFFENCE

3 — MANSLAUGHTER

Manslaughter, contrary to section 171 of the Penal Code

PARTICULARS OF OFFENCE

A B, on the _____ day of _____, 19_____, in the province of
_____, unlawfully killed *J S*

4 — RAPE

Rape, contrary to section 106 of the Penal Code

PARTICULARS OF OFFENCE

A B, on the _____ day of _____, 19_____, in the province of _____,
had carnal knowledge of *E F*, without her consent

5 — WOUNDING

First Count

Wounding with intent, contrary to section 194 of the Penal Code

PARTICULARS OF OFFENCE

A B, on the _____ day of _____, 19_____, in the province of _____, wounded *C D*, with intent to maim, disfigure or disable, or to do some grievous harm, or to resist the lawful arrest of him the said *A B*

Second Count

Wounding, contrary to section 200 of the Penal Code

PARTICULARS OF OFFENCE

A B, on the _____ day of _____, 19_____, in the province of
_____, unlawfully wounded *C D*

SECOND SCHEDULE (Contd)

6 — THEFT

First Count

Stealing, contrary to section 232 of the Penal Code

PARTICULARS OF OFFENCE

A B, on the _____ day of _____, 19_____, in the province of _____,
stole a bag, the property of *C D*

Second Count

Receiving stolen goods, contrary to section 273 of the Penal Code

PARTICULARS OF OFFENCE

A B, on the _____ day of _____, 19_____, in the province of _____, did receive a bag, the property of *C D*, knowing the same to have been stolen

7 —THEFT BY CLERK

Stealing by clerks and servants, contrary to section 238 of the Penal Code

PARTICULARS OF OFFENCE

A B, on the _____ day of _____, in the province of _____,
_____, being clerk or servant to *M N*, stole from the said *M N*,
10 yards of cloth

8 — ROBBERY

Robbery with violence, contrary to section 251 of the Penal Code

PARTICULARS OF OFFENCE

A B, on the _____ day of _____, in the province of _____, robbed *C D* of a watch, and at, or immediately before or immediately after, the time of such robbery did use personal violence to the said *C D*

9 — BURGLARY

Burglary, contrary to section 259, and stealing, contrary to section 236 of the Penal Code

PARTICULARS OF OFFENCE

10 — THREATS

Demanding property by written threats, contrary to section 254 of the Penal Code

PARTICULARS OF OFFENCE

A B, on the _____ day of _____, in the province of _____, with intent to extort money from *C D*, caused the said *C D*, to receive a letter containing threats of injury or detriment to be caused to *E F*

SECOND SCHEDULE (*Contd*)

11 —ATTEMPTS TO EXTORT

Attempt to extort by threats, contrary to section 255 of the Penal Code

PARTICULARS OF OFFENCE

A B, on the day of , in the province of , with intent to extort money from *C D*, accused or threatened to accuse the said *C D*, of an unnatural offence

12 —FALSE PRETENCES

Obtaining goods by false pretences, contrary to section 265 of the Penal Code

PARTICULARS OF OFFENCE

A B, on the day of , in the province of , with intent to defraud, obtained from *S P* 5 yards of cloth by falsely pretending that the said *A B* was a servant to *J S*, and that he, the said *A B*, had then been sent by the said *J S*, to *S P*, for the said cloth, and that he, the said *A B*, was then authorised by the said *J S* to receive the said cloth on behalf of the said *J S*

13 —CONSPIRACY TO DEFRAUD

Conspiracy to defraud, contrary to section 269 of the Penal Code

PARTICULARS OF OFFENCE

A B, and *C D*, on the day of , and on divers days between that day and the day of , in the province of , conspired together with intent to defraud by means of an advertisement inserted by them, the said *A B* and *C D*, in the *H S* newspaper, falsely representing that *A B* and *C D* were then carrying on a genuine business as jewellers at , in the province of , and that they were then able to supply certain articles of jewellery to whomsoever would remit to them the sum of £2

14 —ARSON

Arson, contrary to section 281 of the Penal Code

PARTICULARS OF OFFENCE

A B, on the day of , in the province of , wilfully and unlawfully set fire to a house

15 —ARSON AND ACCESSORY BEFORE THE FACT

A B, Arson, contrary to section 281 of the Penal Code

C D, accessory before the fact to same offence

PARTICULARS OF OFFENCE

A B, on the day of , in the province of , wilfully and unlawfully set fire to a house

C D, on the same day, in the province of , and counsel or procure the said *A B*, to commit the said offence

SECOND SCHEDULE (*Contd.*)

16—OBSTRUCTING RAILWAY

First Count

Offence under section 51 of the Kenya and Uganda Railway Ordinance, 1927

PARTICULARS OF OFFENCE

A B, on the day of , in the province of , with intent to obstruct the use of the Kenya and Uganda Railway, displaced a sleeper belonging to the said railway

Second Count

Obstructing railway, contrary to section 196 of the Penal Code

PARTICULARS OF OFFENCE

A B, on the day of , in the province of , by unlawfully displacing a sleeper belonging to the Kenya and Uganda Railway, caused an engine or vehicle in use upon the said railway to be obstructed in its passage

17—DAMAGE

Damaging trees, contrary to section 288 of the Penal Code

PARTICULARS OF OFFENCE

A B, on the day of , in the province of , wilfully and unlawfully damaged a cocoa tree there growing

18—FORGERY

First Count

Forgery, contrary to section 300 of the Penal Code

PARTICULARS OF OFFENCE

A B, on the day of , in the province of , forged a certain will purporting to be the will of *C D*

Second Count

Uttering a false document, contrary to section 303 of the Penal Code

PARTICULARS OF OFFENCE

A B, on the day of , in the province of , knowingly and fraudulently uttered a certain forged will purporting to be the will of *C D*

19—COUNTERFEIT COIN

Uttering counterfeit coin, contrary to section 319 of the Penal Code

A B, on the day of , at market in the province of , uttered a counterfeit shilling, knowing the same to be counterfeit

20—PERJURY

Perjury, contrary to section 82 of the Penal Code

PARTICULARS OF OFFENCE

A B, on the day of , in the province of , being a witness upon the trial of an action in the Supreme Court of Kenya at Nairobi, in which one was plaintiff, and one was defendant, knowingly gave false testimony that he saw one, *M W*, in the street called the on the day of

SECOND SCHEDULE (*Contd.*)

21 — DEFAMATORY LIBEL

Publishing defamatory matter, contrary to section 160 of the Penal Code

PARTICULARS OF OFFENCE

A B, on the day of , in the province of , published defamatory matter affecting *E F*, in the form of a letter (book, pamphlet, picture, or as the case may be)
 (Innuendo should be stated where necessary)

22 — FALSE ACCOUNTING

First Count

Fraudulent false accounting, contrary to section 279 of the Penal Code

PARTICULARS OF OFFENCE

A B, on the day of , in the province of , being clerk or servant to *C D*, with intent to defraud, made or was privy to making a false entry in a cash book belonging to the said *C D*, his employer, purporting to show that on the said day £100 had been paid to *L M*

Second Count

Same as first count

PARTICULARS OF OFFENCE

A B, on the day of , in the province of , being clerk or servant to *C D*, with intent to defraud, omitted or was privy to omitting from a cash book belonging to the said *C D*, his employer, a material particular, that is to say, the receipt on the said day of £50 from *H S*

23 — THEFT BY AGENT

First Count

Stealing by agents and others, contrary to section 240 of the Penal Code

PARTICULARS OF OFFENCE

A B, on the day of , in the province of , stole £100 which had been entrusted to him by *H S*, for him, the said *A B*, to retain in safe custody

Second Count

Stealing by agents and others, contrary to section 240 of the Penal Code

PARTICULARS OF OFFENCE

A B, on the day of , in the province of , stole £100 which had been received by him, for and on account of *L M*

24 — PREVIOUS CONVICTION

Prior to commission of the said offence, the said *A B* had been previously convicted of on the day of ,

19 , at the held at

THIRD SCHEDULE.**FEES TO BE TAKEN BY MAGISTRATES UNDER SECTION 360**

	Shs Cts
For drawing case and copy—	
When the case does not exceed five folios of one hundred words each	10 00
When the case exceeds five folios, then for every additional folio	1 00
For the recognizance to be taken in pursuance of section 360	5 00
For every enlargement or renewal thereof	2 50
For certificate of refusal of case	2 00

OBJECTS AND REASONS

The Code has been prepared in an attempt to establish uniform criminal procedure in the East African Dependencies. Originally drafted by the legal advisers to the Colonial Office as a model, it was discussed by the law officers of Kenya, Uganda and Tanganyika and in its amended form will be introduced in the first instance into the legislatures of those dependencies.

The Code is complementary to the Penal Code and follows the alterations in the substantive law effected by the latter.

Reference to the comparative table will show the source of the provisions of the Code and the manner in which the provisions of the Criminal Procedure Ordinance (Chapter 7 of the Revised Edition) have been disposed of.

The existing law is to a great extent re-enacted, but the Code tends towards the principles of English criminal practice, in particular Clause 158 provides that every person charged with an offence may, on his own application, give evidence in his own behalf.

Clauses 241 and 246 to 249 provide for the filing of information by the Attorney General in cases committed to the Supreme Court. This procedure which is analogous to proceedings by indictment is based on the law in force in Nigeria and upon the Indictments Act, 1915.

Clause 250 provides that the practice of the Supreme Court shall be assimilated to the practice of His Majesty's High Court of Justice in its criminal jurisdiction.

TABLE SHOWING THE SOURCE OF THE VARIOUS SECTIONS IN
THE DRAFT CODE

Section of draft Code	Corresponding section (if any) of Kenya Criminal Procedure Ordinance (Cap 7) as amended by Ordinance No 7 of 1926	Corresponding section (if any) of Uganda Criminal Procedure Ordinance (Cap 5)	Corresponding section (if any) of Indian Code of Criminal Procedure (Tanganyika)	Corresponding section (if any) of Mr Ehrhardt's draft Code	Other sources (if any)	Remarks
1	1	1	1	1	-	
2	4	4	4	3	-	
3	5	5	5	-	-	
4	12	6 (1)	28	-	-	
5	13	7	29	-	-	
6	14	9	31	-	-	
7	15 (1) (omitting proviso)	10	(<i>Vide</i> Tanganyika Ordinance No 6 of 1920, s 18)	-	-	The proviso to section 15 (1) of the Kenya Ordinance (Cap 7) is transferred to section 211 of draft
8	15 (2)	12	32 (2)	-	-	
9	16	-	-	-	-	
0	17	13	-	-	-	Section amended so as to accord with law in Kenya.
11	19	-	(<i>Vide</i> Tanganyika Ordinance No 6 of 1920, s 19)	-	-	
12	19	-	-	-	-	
13	21	15	35	-	-	
14	450	-	-	-	-	
15	451	-	(<i>Vide</i> Tanganyika Ordinance No 6 of 1920, s 21)	-	-	Section amended so as to accord with section 10 of draft
16	452	-	-	-	-	
17	453	-	-	-	-	
18	454	-	-	-	-	
19	455	-	-	-	-	
20	30	38	46	-	-	
21 (1)	31	39	47	-	-	
(2)	32	40	48	-	-	
22	33	41	49	-	-	
23	34	42	50	-	-	
24	35	43	51	-	-	
25	36	44	52	-	-	
26	37	45	53	-	-	
27	38	46	54	20	-	
28	39	47	55	-	-	
29	40	43	56	-	-	

Section of draft Code	Corresponding section (if any) of Kenya Criminal Procedure Ordinance (Cap 7) as amended by Ordinance No 7 of 1926	Corresponding section (if any) of Uganda Criminal Procedure Ordinance (Cap 5)	Corresponding section (if any) of Indian Code of Criminal Procedure (Tanganyika)	Corresponding section (if any) of Mr Ehrhardt's draft Code	Other sources (if any)	Remarks
30	41	49	57	—	—	
31	44	51	60	—	—	
32	43 (1)	50 (1)	59 (1)	19	—	
33	43	50	59	23 (1)	—	
34	45	52	61	23 (2)	—	Application of section limited to non-capital offences in which bail may be taken. Cf s 123 "Rape" added as it is a capital offence in Kenya
35	46	53	62	—	—	
36	48	55	64	—	—	
37	49	56	65	21	—	
38	50	57	66	22	—	
39	51	58	67	—	—	
40	90	97	107	—	—	
41	92	99	109	—	—	
42	93	100	110	—	—	Section amended by inserting references to appropriate provisions of new Penal Code
43	94	—	111	—	—	
44	95	101	112	—	—	
45	96	102	113	—	—	
46	97	103	114	—	—	
47	98	104	115	—	—	
48	99	105	116	—	—	
49	100	106	117	—	—	
50	101 & 322	107 & 317	118 & 406	—	—	
51	102	108	119	—	—	
52	103	109	120	—	—	
53	104	110	121	—	—	
54	105	111	122	—	—	
55	106	112	123	—	—	
56	107	113	124	—	—	
57	108	114	125	—	—	
58	109	115	126	—	—	
59	116	123	149	—	—	
60	117	124	150	—	—	
61	118	125	151	—	—	
62	119	126	152	—	—	

Section of draft Code	Corresponding section (if any) of Kenya Criminal Procedure Ordinance (Cap 7) as amended by Ordinance No 7 of 1926	Corresponding section (if any) of Uganda Criminal Procedure Ordinance (Cap 5)	Corresponding section (if any) of Indian Code of Criminal Procedure (Tanganyika)	Corresponding section (if any) of Mr Ehrhardt's draft Code	Other sources (if any)	Remarks
63	—	—	—	7	Nigeria, Cap 20, s 3 (1)	
64	—	—	—	8	Do s 4 (1)	
65	—	—	—	9	Do s 5	
66	—	—	—	10	Do s 6 (1)	
67	273	257	334 & 335	—	—	
68	144	150	177	11	Do s 7 (a)	
69	145	151	179	12	Do s 7 (b)	
70	146	152	180	13	Do s 7 (c)	
71	148	154	182	14	Do s 7 (d)	
72	149	155	183	15	—	
73	150	157	185	16	Do s 9	
74	286	270	352	—	—	
75	151	158	186	18	—	
76	154	161	192	—	—	
77	283 (1)	267 (1)	346	—	—	
78	155	162	526	—	—	
79	272	256	333	4	Do s 22	
80	—	—	—	6	Do s 23	Power is given to the Attorney General to delegate the powers conferred upon him in relation to signing informations, etc., in accordance with the recommendation of the Law Officers' Conference
81	156 (2)	164 (2)	194 (2)	—	—	
82	382	364	492	—	—	
83	383	365	493	—	—	
84	384	366	494	—	—	Application limited to subordinate courts in view of section 79. Section also amended in regard to effect of withdrawal
85	385	367	495	—	—	
86 (1)	—	—	—	24	—	
(2)	162	170	200	—	—	Sub-section (2) inserted in accordance with recommendation of Law Officers' Conference
87	—	—	—	25	—	
88 (1)	52 (1)	59 (1)	68 (1)	—	—	
(2)	—	—	—	26	—	
	52 (2), 53 (1) & (2)	59 (2), 60 (1) & (2)	68 (2), 69 (1) & (2)	26	—	
	54	61	70	—	—	
91	55	62	71	—	—	

Section of draft Code	Corresponding section (if any) of Kenya Criminal Procedure Ordinance (Cap 7) as amended by Ordinance No 7 of 1926	Corresponding section (if any) of Uganda Criminal Procedure Ordinance (Cap 5)	Corresponding section (if any) of Indian Code of Criminal Procedure (Tanjanyika)	Corresponding section (if any) of Mr Ehrhardt's draft Code	Other sources (if any)	Remarks
92	56	63	72	-	-	
93	53 ('3)	60 (3)	69 ('2)	-	-	
94	57	64	73	-	-	
95	58	65	74	-	-	
96	167 as amended by Ordinance No 31 of 1926	174	205	-	-	Application limited to cases other than felonies <i>Cf s 198</i>
97	-	-	-	27	-	
98	-	-	-	28	-	
99	59	66	75	29	-	
100	60	67	70	-	-	Application limited to non capital offences in which bail may be taken <i>Cf s 123</i>
101	61	68	77	-	-	
102	62	69	78	-	-	
103	63	70	79	-	-	
104	64	71	80	-	-	
105	65	72	81	-	-	
106	66	73	82	-	-	
107	67	74	83	-	-	
108	68	75	84	-	-	
109	69	76	85 & 86	-	-	
110	-	-	-	20	-	
111	70	77	87	-	-	
112	71	78	88	-	-	
113	72 & 321	79 & 316	89 & 405	-	-	
114	74	81	91	-	-	
115	75	82	92	-	-	
116	425	407	542	-	-	
117	76	83	93	-	-	
118	79	86	96	36	-	
119	-	-	-	27	-	
120	85	92	102	-	-	
121	-	-	-	36	-	
122	84	91	101	-	-	
123	386—388	368—370	496—498	39	-	Application limited to non capital offences
124	389	371	499	40	-	
125	390	372	500	--	-	

Section of draft Code	Corresponding section (if any) of Kenya Criminal Procedure Ordinance (Cap. 7) as amended by Ordinance No 7 of 1926	Corresponding section (if any) of Uganda Criminal Procedure Ordinance (Cap. 5)	Corresponding section (if any) of Indian Code of Criminal Procedure (Tanganyika)	Corresponding section (if any) of Mr Ehrhardt's draft Code	Other sources (if any)	Remarks
126	402	384	513	—	—	
127	391	373	501	—	—	
128	392	374	502	41	—	
129	403 (6)	385 (6)	514 (6)	—	—	
130	—	—	—	—	Nigeria, Cap 20, s 76 (2) Gold Coast, Cap 13, s 98	
131	75 & 403	82 & 385	92 & 514	42	—	
132	404	387	515	—	—	
133	405	388	516	—	—	
134	192*	200	233	—	Gold Coast, Cap 13, s 29	
(a)	193	201	234	—	Do	
(b)	194 (1)	202 (1)	235 (1)	—	Do	
(c)	195	203	236	—	Do	
(d)	198	205	239	—	Do	
135	318 (1)	313 (1)	403 (1)	—	Nigeria, Cap 20, s 24	
136	318 (2)	313 (2)	403 (2)	—	Do s 25	
137	318 (3)	313 (3)	403 (3)	—	Do s 26	
138	318 (4)	313 (4)	403 (4)	—	—	
139	400	382	511	—	—	
140	—	—	—	43	Nigeria, Cap 20, s 33	A definition of " offence " is inserted so as to bring the section into line with 41 and 42 Vic, Cap 73
141 (1)	—	—	—	—	31	
(2)	77 (3)	84 (3)	94 (3)	—	—	
142	—	—	—	32	—	
143	—	—	—	33	—	
144	—	—	—	—	Trinidad and Tobago, Cap 24, s 47	
145	425	407	542	—	—	
146	271	255	232	156	Trinidad and Tobago, Cap 24, ss 48 and 49	
147	423	405	540	—	—	
148	—	—	—	34	Nigeria, Cap 3, s 70	
149	—	—	—	35	—	
150	399	381	510	—	Criminal Evidence Act, 1898, s 4 Trinidad and Tobago, Cap 30 s 5 Nigeria, Cap 21, s 8	This section at present appears in the Kenya law as applying only in case of trials of Europeans. It is proposed to make it of general application
151	358	—	—	—		

Section of draft Code	Corresponding section (if any) of Kenya Criminal Procedure Ordinance (Cap 7) as amended by Ordinance No 7 of 1926	Corresponding section (if any) of Uganda Criminal Procedure Ordinance (Cap 5)	Corresponding section (if any) of Indian Code of Criminal Procedure (Tanganyika)	Corresponding section (if any) of Mr Ehrhardt's draft Code	Other sources (if any)	Remarks
152	401	383	512	—	—	
153	393	375	503	—	—	
154	394	376	505	—	—	
155	395	377	506	—	—	
156	396	378	507	—	—	
157	397	379	508	—	—	
158	355	—	—	—	Criminal Evidence Act, 1898, ss 13	It is proposed that every accused person should be entitled to give evidence, and these sections, which in Kenya apply only in the case of trials of Europeans, are accordingly made of general application
159	356	—	—	—	Trinidad and Tobago, Cap 30, ss 24	
160	357	—	—	—	Nigeria, Cap 21, s 7	
161	360—362	342—344	464—466	48	Nigeria, Cap 20, s 52	Application of section extended to all trials
162	365	347	469	49	Do s 53	
163	—	—	—	50	Do s 54	Application of section extended to all trials
164	363 & 364	345 & 346	467 & 468	51	Do s 55 (1)	
165	369	351	473	52	Do s 55 (2)	
166	278	262	341	—	—	
167	295	280	366	—	—	
168	296	281	367	—	—	
169	299 (1) & (2)	284 (1)	371 (1) & (2)	—	—	
170	Kenya Ordinance No 14 of 1926, ss 2 & 4	—	—	—	—	
171	Kenya Ordinance No 14 of 1926, s 5	—	—	—	—	
172	209	218	250	55	—	
173	Kenya Ordinance No 14 of 1926, ss 6-8	—	—	—	—	
174	428 & 429	410 & 411	545 & 546	—	—	
175	406—412	389—396	517—525	57	Nigeria, Cap 20, s 39	Paragraph (b) amended so as to apply to payment of a fine as well as to costs or compensation
176	ditto	ditto	ditto	58	Do s 40	
177	196 (2)	205 (4)	237 (2)	—	Do s 57	
178	196 (1)	204	237 (1)	—	Do s 58 (1)	
179	—	—	—	—	Do s 59 (1)	
180	—	—	—	—	Do s 58 (2)	
181	—	—	—	—	Do s 59 (2)	
182	—	—	—	—	Do s 59 (3)	

Section of draft Code	Corresponding section (if any) of Kenya Criminal Procedure Ordinance (Cap 7) as amended by Ordinance No 7 of 1926	Corresponding section (if any) of Uganda Criminal Procedure Ordinance (Cap 5)	Corresponding section (if any) of Indian Code of Criminal Procedure (Tanganyika)	Corresponding section (if any) of Mr Ehrhardt's draft Code	Other sources (if any)	Remarks
183	—	—	—	—	Criminal Law Amendment Act, 1885, s 9 Trinidad and Tobago, Cap 8, s 43	
184	—	—	—	—	Nigeria, Cap 20, s 60	
185	277	261	340	—	—	
186	287	271	353	—	—	
187	288 & 289	272 & 273	355 & 359	69	—	
188	290	274	360	—	—	
189	291	275 & 276	361	—	—	
190	292	277	363	—	—	
191	219—221	231—233	261—263	—	—	
192	284	268	350	—	—	
193	294	279	365	—	—	
194	—	—	—	59	Nigeria, Cap 20, s 78	
195	—	—	—	60	Do	
196	207	215	248	—	—	
197	—	—	—	61	Nigeria, Cap 20, ss 85 and 86	
198	—	—	—	62	Do s 87	
199	214	223	255	64	Nigeria, Cap 20, s 80	
200	—	—	—	65	Do s 81	
201	—	—	—	66	Do s 82	
202	—	—	—	67	Do s 83	
203	—	—	—	68	Do s 84	
204	—	—	—	70	Do s 88	
205	—	—	—	71	—	
206	—	—	—	72	—	
207	—	—	—	73	—	Section amended on line recommended by Law Officers' Conference
208	283 (2) & (3)	267 (2)	347	74	Nigeria, Cap 20, s 89	
209	347	—	—	75	—	
210	348	—	—	76	—	
211	Proviso to 15 (1)	—	—	—	—	
212	350 (2)	—	—	7	—	
213	351	—	—	—	—	
214	352	—	—	73	—	
215	353	—	—	—	—	

Section of draft Code	Corresponding section (if any) of Kenya Criminal Procedure Ordinance (Cap 7) as amended by Ordinance No 7 of 1926	Corresponding section (if any) of Uganda Criminal Procedure Ordinance (Cap 5)	Corresponding section (if any) of Indian Code of Criminal Procedure (Tanganyika)	Corresponding section (if any) of M ₁ draft Code	Other sources (if any)	Remarks
216	354	—	—	—	—	
217	168	175	206	—	—	
218	—	—	—	109	—	
219	—	—	—	111	Nigeria, Cap 20 s 62	
220	—	—	—	112	Do s 63	
221	—	—	—	113	Do s 64 (1)	
222	—	—	—	114—116	Do s 65 Criminal Justice Act, 1925, s 12	This section has been inserted in accordance with the recommendation of the Law Officers' Conference
223	—	—	—	118	Nigeria, Cap 20, ss 66 and 67 Criminal Justice Act, 1925, s 12	
224	—	—	—	119	Nigeria, Cap 20, s 68	
225	—	—	—	ditto	Do s 69 (1)	
226	—	—	—	121	Do s 70	
227	—	—	—	120	—	
228	—	—	—	122	Nigeria, Cap 20, s 71	Proviso added in accordance with recommendation of Law Officers' Conference
229	—	—	—	123	Do s 74	
230	—	—	—	124	Do s 75	
231	—	—	—	125	Do s 72	
232	—	—	—	127	Criminal Justice Act, 1925, s 13 (1), (2) and (5)	
233	—	—	—	44	Nigeria, Cap 20, s 44	
234	—	—	—	45	Do s 45	Section amended in accordance with recommendation of Law Officers' Conference
235	—	—	—	46	Do s 46	
236	—	—	—	47	Do s 47	
237	—	—	—	126	Do s 73	
238	—	—	—	5	Do s 22	
239	—	—	—	129	—	
240	—	—	—	130	—	
241	—	—	—	131	—	
242	—	—	—	132	Nigeria, Cap 20, s 95	
243	—	—	—	133	Do ss 96 and 97	
244	—	—	—	134	Do s 98	
245	—	—	—	135	Do s 99	
246	—	—	—	136	Do s 90 (1)	
247	—	—	—	138	Do Sched I	

Section of draft Code	Corresponding section (if any) of Kenya Criminal Procedure Ordinance (Cap 7) as amended by Ordinance No 7 of 1926	Corresponding section (if any) of Uganda Criminal Procedure Ordinance (Cap 5)	Corresponding section (if any) of Indian Code of Criminal Procedure (Tanganyika)	Corresponding section (if any) of Mr Ehrhardt's draft Code	Other sources (if any)	Remarks
248	—	—	—	139	Indictments Act, 1915, Schedule I Nigeria, Cap 20, s 30 and Schedule I	
249	—	—	—	140	Nigeria, Cap 20, s 29	
250	—	—	—	143	—	
251	222	234	—	—	—	
252	223	—	—	144	—	
253	227 (1)	—	—	145	—	
254	235	—	—	146	—	
255	261	—	321	147	—	
256	262	253	319	148	—	
257	263	254	320	—	—	
258	264	—	322 & 323	150	—	
259	265	—	324	151	—	
260	266	—	326 (1)	152	—	
261	267	—	328	153	—	
262	269	—	330	154	—	
263	270	—	331	155	—	
264	271	—	332	156	—	
265	—	—	—	157 (1)	Nigeria, Cap 20, s 100	
266	—	—	—	141	Do s 92	
267	—	—	—	142	—	
268	259	251	310	157 (2)	Trinidad and Tobago, Cap 5, s 53	
269	—	—	—	158	Nigeria, Cap 20, s 101	
270	—	—	—	159	—	
271	—	—	—	160	—	
272	224 (2)	235 (2)	271 (2)	161	—	
273	225	236	272	162	—	
274	281	265	344	113	—	
275	227 (2)	—	—	163	Nigeria, Cap 20, s 108	
276	227 (2)	—	—	164	Do s 109	
277	228 (1)	—	—	165	Do s 110	
278	228 (2)	—	—	166	Do s 111 Trinidad and Tobago, Cap 7, s 19	
279	229	—	—	167	Nigeria, Cap 20, s 112	
280	230	—	—	168	Do s 113	

Section of draft Code	Corresponding section (if any) of Kenya Criminal Procedure Ordinance (Cap 7) as amended by Ordinance No 7 of 1926	Corresponding section (if any) of Uganda Criminal Procedure Ordinance (Cap 5)	Corresponding section (if any) of Indian Code of Criminal Procedure (Tanganyika)	Corresponding section (if any) of Mr Ehrhardt's draft Code	Other sources (if any)	Remarks
281	231			169		
282	232			170		
283	—			171		
284	233			172	Nigeria, Cap 20, s 116	
285	234			173	—	
286	247			174	Nigeria, Cap 20, s 114 Gold Coast, Cap 13, s 126	
287	246			175	Nigeria, Cap 20, s 115	
288	235			176		
289	236			177		
290	246	249	295	—		
291	237	240	286	178		
292	—			179		
293	—			180		
294	—			128	Criminal Justice Act, 1925, s 13 (3)	
295	398	380	509	—	—	
296	238	241	287	181 (1) & (2)	Criminal Justice Act, 1925, s 12 (4)	
297	240	243	289	182	—	Sections amended so as to make it clear that every accused person is entitled to give evidence on his own behalf
298	241	244	290	183	—	
299	242	245	291	184	—	
300	243	246	292	185	—	
301	248	—	—	186 (1)	—	
302 (1)	249	—	—	187	—	
(2)	—	—	—	186 (2)	—	
303	250	—	—	188	—	
304	251	—	—	189	—	
305	252	—	—	190	—	
306	253	—	—	191	—	
307	254	—	—	192	—	
308	255	—	—	193	—	
309	256	—	—	194	—	
310	257	—	—	195	—	
311	258	—	—	196	—	
312	—	—	—	197	—	
313	—	—	—	198	—	

Section of draft Code	Corresponding section (if any) of Kenya Criminal Procedure Ordinance (Cap. 7) as amended by Ordinance No 7 of 1926	Corresponding section (if any) of Uganda Criminal Procedure Ordinance (Cap. 5)	Corresponding section (if any) of Indian Code of Criminal Procedure (Tananyika)	Corresponding section (if any) of Mr. Ehnhardt's draft Code	Other sources (if any)	Remarks
314	—	—	—	199	—	
315	—	—	—	200	—	
316	449 (1)	—	—	—	—	
317	—	—	—	201	Nigeria, Cap 20, s 93	
318	—	—	—	202	—	
319	297 (1)	282	368 (1)	203	—	
320	299 (3)	284 (2)	371 (3)	204	—	
321	—	—	—	—	Nigeria, Cap 20, s 147	
322	—	—	—	205	Nigeria, Cap 20, s 150	
323	301	295	382	206	Do s 153	
324	302	298 (1)	383	208	Do s 154	
325	304 & 305	299 (2) & 300	386 & 387	209	Do s 155 & 156	It is suggested that provisions for enforcing payment of a fine, etc., are more appropriate to a Criminal Procedure Code than a Penal Code, and that, if section 325 <i>et seq.</i> are accepted, paragraphs (vi), (vii) and (viii) of section 28 of the draft Penal Code might be omitted therefrom
326	306	301	388	—	—	
327	—	—	—	211	Nigeria, Cap 20, s 157	
328	—	—	—	212	Do s 158	
329	—	—	—	214	Do s 159	
330	—	—	—	—	Do s 160	
331	307	—	389	—	—	
332	—	—	—	213	Nigeria, Cap 20, s 161	
333	443	427	562	—	—	
334	444	428	563	—	—	
335	445	429	564	—	—	
336	446	431	565	—	—	
337	ditto	ditto	ditto	—	—	Provisions extended as present section has been found in Kenya to be of little value
338	ditto	ditto	ditto	—	—	
339	—	—	—	215	Nigeria, Cap 20, s 163	
340	323	318	410	79	—	
341	324 & 326	319 & 320	412 - 10 & 415	80	—	Provisions extended so as to apply to a subordinate court of <i>any</i> class
342	327	—	—	81	—	
343	329	324	419	82	—	
344	330	325	420	83	—	

Section of draft Code	Corresponding section (if any) of Kenya Criminal Procedure Ordinance (Cap 7) as amended by Ordinance No 7 of 1926	Corresponding section (if any) of Uganda Criminal Procedure Ordinance (Cap 5)	Corresponding section (if any) of Indian Code of Criminal Procedure (Taranvika)	Corresponding section (if any) of M. Ehrhardt's draft Code	Other sources (if any)	Remarks
345	331	326	421	84	—	
346	332	327	422	85	—	
347	333	328	423	86	—	
348	335	329	425	87	—	
349	336 & 337	330 & 331	426	—	—	
350	338	333	428	89	—	
351	339	—	—	90	—	
352	340	335	431	91	—	
353	341	336	435	103	—	
354	342	337	435 & 433	104	—	
355	343	338	439	105	—	Section amended in accordance with recommendation of Law Officers' Conference
356	344	339	440	106	—	
357	345	340	—	107	—	
358	346	341	442	108	—	
359	447	—	—	92	—	
360	448	—	—	93	—	
361	449	—	—	94	—	
362	449A	—	—	95	—	
363	449B	—	—	96	—	
364	449C	—	—	97	—	
365	449D	—	—	98	—	
366	449E	—	—	99	—	
367	449F	—	—	100	—	
368	449G	—	—	101	—	
369	449H	—	—	102	—	
370	320	315	—	216	—	
371	415	399	531	—	—	
372	419	—	—	—	—	
373	420	402	537	—	—	
374	421	403	538	—	—	
375	141 (4)	—	174 (5)	—	—	It is proposed that, as is the case in Uganda, magistrates of the third class should be empowered to hold inquests
376	141 (1)-(3)	147	174 (1)-(3)	—	—	Section amended by omission of requirement as to presence of two or more respectable inhabitants of the neighbourhood

Section of draft Code	Corresponding section (if any) of Kenya's Criminal Procedure Ordinance (Cap 7) as amended by Ordinance No 7 of 1926	Corresponding section (if any) of Uganda's Criminal Procedure Ordinance (Cap 5)	Corresponding section (if any) of India's Code of Criminal Procedure (Tanganyika)	Corresponding section (if any) of Mr. Firthardt's draft Code	Other sources (if any)	Remarks
377	143	149	176	-	-	
378	380	362	491	-	-	
379	381	363	-	-	-	
380	422	404	539	-	-	
381	431	414	548	-	-	
382	437	420	555	-	-	
383	427	409	544	-	-	
384	-	-	-	2	-	
Schedule I	Schedule I	Schedule I	Schedule II	-	-	The column headed "Whether a warrant or a summons shall ordinarily issue in the first instance" is omitted, the intention being that subject to the provision of the draft Code, it should be in the discretion of the magistrate in every case to issue either a summons or a warrant (<i>Vide</i> s 87)
Schedule II	-	-	-	-	-	The column headed "Whether bailable or not" is omitted as under the provisions of the draft Code bail may be taken in all cases other than murder, treason or rape
Schedule III	Schedule IV	-	-	-	-	The column headed "Whether compoundable or not" is omitted as the draft Code contains no provision for compounding offences

TABLE SHOWING HOW THE VARIOUS SECTIONS OF THE KENYA CRIMINAL PROCEDURE ORDINANCE (CHAPTER 7), TOGETHER WITH THE CORRESPONDING SECTIONS OF THE UGANDA CRIMINAL PROCEDURE ORDINANCE (CHAPTER 5) AND THE INDIAN CRIMINAL PROCEDURE CODE, AS APPLIED TO TANGANYIKA TERRITORY, ARE DISPOSED OF IN THE DRAFT CODE

Section of Kenya CPO	Section of Uganda CPO	Section of Indian CP Code	How disposed of in draft Code	Remarks
1	1	1	1	
2	2	2	Omitted	
3	3	3	ditto	
4	4	4	2	
5	5	5	3	
6—11	—	—	Omitted	It is proposed that these sections should be included in a new Courts Ordinance
12	6 (1)	28	4	
13	7	29	5	
14	9	31	6	
15 (1)	10	32 (1)	7	The proviso to section 15 (1) of Kenya CPO is inserted as section 211 of draft Code
(2)	12	32 (2)	8	
16	—	—	9	
17	13	—	10	Form of section varied
18	302	—	Omitted	
19	—	(Cf Tanganyika Ordinance No 6 of 1920 S 19)	11 & 12	
20	14	33	Omitted	Provisions covered by section 28 of draft Penal Code
21	15	35	13	
22	16	36	Omitted	It is proposed that, subject to the limitations appearing in the draft Code or in any other Law, all courts should have the powers conferred by the Code
23—25	17—19	37, 39 & 41	ditto	The inclusion of these sections becomes unnecessary in view of the provisions of the draft Code
26—29	34—37	42—45	ditto	
30	38	46	20	
1 & 32	39 & 40	47 & 48	21	
33	41	49	22	
34	42	50	23	
35	43	51	24	
	44	52	25	
37	45	53	26	
38	46	54	Cf 27	
39	47	55	28	
40	48	56	29	

Section of Kenya C P O	Section of Uganda C P O	Section of Indian C P Code	How disposed of in draft Code	Remarks
41	49	57	30	
42	-	58	Omitted	
43	50	59	Cf 32 & 33	
4	51	60	31	
45	52	61	Cf 34	
46	53	62	35	
47	54	63	Omitted	
48	55	64	36	
49	56	65	37	
50	57	66	38	
51	58	67	39	
52	59	68	Cf 88 (1) & 89 (1) 89	
53 (1) & (2)	60 (1) & (2)	69 (1) & (2)		
(3)	(3)	(3)	93	
54	61	70	90	
55	62	71	91	
56	63	72	92	
57	64	73	94	
58	65	74	95	
59	66	75	99 (1) & (3)	
60	67	76	100	
61	68	77	101	
62	69	78	102	
63	70	79	103	
64	71	80	104	
65	72	81	105	
66	73	82	106	
67	74	83	107	
68	75	84	108	
69	76	85 & 86	109	Form of proviso to sub section (2) varied, the intention being that every offence, other than murder, treason and rape (<i>e.g.</i> , capital offences), shall be “bailable”
70	77	87	111	
71	78	88	112	
72	79	89	113 (1)	
73	80	90	Cf 87, 98, 142 & 143	
74	81	91	114	
75	82	92	115	
76	83	93	117	
77 & 78	84 & 85	94 & 95	Cf 141	

Section of Kenya C P O	Section of Uganda C P O	Section of Indian C P Code	How disposed of in draft Code	Remarks
79—82	86—89	96—99	Cf 118 & 119	
83	90	100	Omitted	
84	91	101	122	
85	92	102	120	
86	93	103	Omitted	Except for the final paragraph which is included in section 119 of the draft Code, this section appears to be unnecessary
7 & 88	94 & 95	104 & 105	ditto	
89	96	106	ditto	Covered by provisions of draft Penal Code
90	97	107	40	
91	98	103	Omitted	Provisions sufficiently covered by preceding section of draft Code
92	99	109	41	
93	100	110	42	
94	—	111	43	
95	101	112	44	
96	102	113	45	
97	103	114	46	
98	104	115	47	
99	105	116	48	
100	106	117	49	
101	107	118	50 (1)	
102	108	119	51	
103	109	120	52	
104	110	121	53	
105	111	122	54	
106	112	123	55	
107	113	124	56	
108	114	125	57	
109	115	126	58	
110—115	116—121	127—132	Omitted	Provisions relating to Unlawful Assemblies appear in draft Penal Code
116	123	149	59	
117	124	150	60	
118	125	151	61	
119	126	152	62	
120	122	144	Omitted	
121—140	127—146	154—173	ditto	Provisions no longer appropriate
141	147	174	375 & 376	The requirement regarding the presence of "two or more respectable inhabitants of the neighbourhood" is omitted <i>See</i> preceding note
142	148	175	Omitted	
143	149	716	378	

Section of Kenya CPO	Section of Uganda CPO	Section of Indian CP Code	How disposed of in draft Code	Remarks
144	150	177	68	
145	151	179	69	
146	152	180	70	
147	153	181	Omitted	
148	154	182	71	
149	155	183	72	
150	157	185	73	
151	158	186	Cf 75	
152	159	190	Cf 86	
153	160	191	Omitted	Provisions sufficiently covered by other provisions of draft Code relating to transfer of cases. (<i>Vide e.g.</i> , sections 77 & 78)
154	161	192	70	
155	162	526	78	
156 (1)	164 (1)	194 (1)	Omitted	
(2)	(2)	(2)	81	
157—161	165—169	195—199	Omitted	
162—166	170—173	200—204	Omitted	<i>Vide</i> sections 86 & 87 of draft Code
167	174	205	96	
168	175	206	217	
169—179	176—187	207—220	Omitted	Provisions replaced by Part VIII of draft Code (relating to the committal of accused persons for trial before the Supreme Court)
180—191	188—199	221—232	Omitted	Corresponding provisions, so far as they are necessary and appropriate, appear in the draft Code
192—199	200—207	233—240	Cf 134, 177 & 178	
200—218	207—228	241—259	Cf Part VI	As regards section 209 of Kenya CPO (Uganda's 218, I.C.P.C.'s 259), <i>vide</i> section 172 of draft Code
219—221	231—233	260—265	191	
222	234	—	251	
223	—	—	252	
224 (1)	235 (1)	271 (1)	Cf 265	
(2)	(2)	(2)	272	
225	236	272	273	
226	237	273	Cf 267	
227	—	—	275 & 276	
228	—	—	277 & 278	
229	—	—	279	
230	—	—	Cf 280	
231	—	—	281	
232	—	—	282	

Section of Kenya C P O	Section of Uganda C P O	Section of Indian C P Code	How disposed of in draft Code	Remarks
233	—	—	<i>Cf</i> 284	
234	—	—	<i>Cf</i> 285	
235	238	284	288	
236	239	285	239	
237	240	286	291	
238	241	287	<i>Cf</i> 296	
239	242	288	<i>Cf</i> 294	
240	243	289	297	Form of section varied so as to enable every accused person to give evidence on his own behalf
241	244	290	298	Ditto
242	245	291	299	
243	246	292	<i>Cf</i> 300	
244 & 245	247 & 248	293 & 294	Omitted	
246	249	295	287 & 290	
247	—	—	<i>Cf</i> 286	
248	—	—	301	
249	—	—	302	
250	—	—	303	
251	—	—	304	
252	—	—	305	
253	—	—	306	
254	—	—	307	
255	—	—	308	
256	—	—	309	
257	—	—	310	
258	250	309	311	
259 & 260	251	310 & 311	268	
261	252	321	255	
262	253	319	256	
263	254	320	257	
264	—	322 & 323	258	
265	—	324	259	
266	—	326 (1)	260	
267	—	328	261	
268	—	329	Omitted	
269	—	330	262	
270	—	331	263	
271	255	332	264	
272	256	333	<i>Cf</i> 79	
273	257	334 & 335	67	

Section of Kenya C P O	Section of Uganda C P O	Section of Indian C P Code	How disposed of in draft Code	Remarks
355	--	--	158	
356	--	--	159	
357	-	--	160	
358	--	--	151	
359	--	--	Omitted	
360—371	342—353	464—475	ditto	The provisions of these sections, so far as they appear to be appropriate to a Criminal Procedure Code are covered by sections 161—165 of the draft Code
372—379	354—361	476—487	ditto	
380	362	491	378	
381	363	--	379	
382	364	92	82	
383	365	493	83	
384	366	494	84	In view of the provisions of section 79 of the draft Code the application of this section is limited to subordinate courts
385 (1)—(3)	367	495 (1)—(3)	85	
(4)	--	(4)	Omitted	
386—388	368—370	496—498	Cf 123	
389	371	499	124	
390	372	500	125	
391	373	501	127	
392	374	502	123	
393	375	503	153	
394	376	505	154	
395	377	506	155	
396	378	507	156	
397	379	508	157	
398	380	509	295	
399	381	510	150	
400	382	511	139	
401	383	512	152	
402	384	513	126	
403	385	514	Cf 131 & 129	
404	387	515	132	
405	388	516	133	
406—412	389—396	517—525	Cf 175 & 176	
413 & 414	397 & 398	529 & 530	Omitted	
415	399	531	371	
416—418	400 & 401	532—535	Omitted	
419	--	--	372	

Section of Kenya CPO	Section of Uganda CPO	Section of Indian CP Code	How disposed of in draft Code	Remarks
420	402	537	373	
421	403	538	374	
422	404	539	330	
423	405	540	147	
424	406	541	Omitted	
425	407	542	Cf 116 & 145	
426	408	543	Omitted	
427	409	544	333	
428 & 429	410 & 411	545 & 546	174	
430	413	547	Cf 325	
431	414	548	331	
432	415	549	Omitted	
433	416	550	ditto	
434	417	551	ditto	
435	418	552	ditto	
436	419	553	Cf 170—172	
437	420	555	383	
438 & 439	421 & 422	—	Omitted	In Kenya these sections already appear in the Courts Ordinance (Cap 5)
440	423	556	ditto	
441	424	560	ditto	
442	425	558	ditto	It is proposed (in regard to Kenya) that this section should be included in a new Courts Ordinance so that it may be of general application
443	427	562	333	
444	428	563	334	
445	429	564	335	
446	431	565	336—338	Form of original section varied
447	—	—	359	
448	—	—	360	
449	—	—	361	
449A	—	—	362	
449B	—	—	363	
449C	—	—	364	
449D	—	—	365	
449E	—	—	366	
449F	—	—	367	
449G	—	—	368	
449H	—	—	369	
449I	—	—	316	
450	—	—	14	

Section of Kenya C P O	Section of Uganda C P O	Section of Indian C P Code	How disposed of in draft Code	Remarks
451	—	—	15	
452	—	—	16	
453	—	—	17	
454	—	—	18	
455	—	—	19	
Schedule I	Schedule I	Schedule II	Schedule I	
Schedule II	Schedule II	Schedule III	Omitted	Omitted in consequence of omission of Kenya, section 22 (Uganda, s 16, I C P C, s 36)
Schedule III	Schedule III	Schedule IV	ditto	Omitted in consequence of omission of Kenya, sections 23-25 (Uganda ss 17-19, I C P C, ss 37, 39 & 41)
Schedule IV	—	—	Schedule III	