

CHAPTER 116A**MAGISTRATE'S COURTS****ARRANGEMENT OF SECTIONS**

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CHAPTER 116A**MAGISTRATE'S COURTS**

An Act to provide for certain procedural reforms in the jurisdiction of magistrates in civil and criminal proceedings and in the practice and procedure before magistrate's courts, to consolidate enactments relating to the magistrate's courts and to provide for associated matters.

1996-27.
2001/82.
2002-3.

[15th January, 2001] Commence-
ment.
2001/12.

Citation

1. This Act may be cited as the *Magistrate's Courts Act*.

Short title.

Preliminary

2. (1) In this Act

Definitions.

"child" means any person who, in the opinion of the court before which he appears or is brought, is above 7 and under 14 years of age;

"civil jurisdiction" means the jurisdiction conferred on a magistrate under paragraph (b) of section 4(2) or any other jurisdiction of a civil nature conferred on a magistrate by any other enactment;

"clerk" means clerk of the court;

"commit to custody" means commit to prison or, where any enactment authorises or requires committal to some other place of detention instead of committal to prison, to that other place;

"committal proceedings" means proceedings before a magistrate acting as an examining magistrate;

"complainant" includes any informant or prosecutor in any case relating to a summary offence;

"court" or "summary court" or "court of summary jurisdiction", unless the same is expressly or by implication qualified, means a magistrate or a magistrate sitting as an examining magistrate to hear and determine any matters within his power and jurisdiction, either under this Act or under any other enactment;

"defendant" means any person against whom a complaint is made;

Cap. 216.
Cap. 214.
Cap. 217.

"domestic proceedings" means proceedings under the *Maintenance Act* the *Family Law Act* or the *Maintenance Orders (Reciprocal Enforcement) Act* or any other enactment relating to domestic proceedings;

"fine", except for the purposes of any enactment imposing a limit on the amount of any fine, includes any pecuniary penalty or pecuniary forfeiture or pecuniary compensation payable under a conviction;

"guardian", in relation to a child, means the parent or other lawful guardian of such child and includes any person who, in the opinion of the court having cognizance of any case in which such child is concerned, has for the time being the custody, control or charge of such child;

"impose imprisonment" means pass a sentence of imprisonment or fix a term of imprisonment for failure to pay any amount of money, or for want of sufficient distress to satisfy any amount of money, or for failure to do or abstain from doing anything required to be done or left undone;

"magistrate" means a person appointed as such by the Governor-General acting on the advice of the Judicial and Legal Service Commission, and includes Chief Magistrate;

"maintenance order" means

Cap. 216.

(a) a maintenance order within the meaning of section 2 of the *Maintenance Act*;

Cap. 214.

(b) an order for the maintenance of a child within the meaning of section 54 of the *Family Law Act*;

(c) a maintenance order within the meaning of section 2 of the *Maintenance Orders (Reciprocal Enforcement) Act*; or Cap. 217.

(d) any other enactment relating to maintenance orders;

"maintenance proceedings" means any proceedings before a magistrate in respect of his jurisdiction under the *Maintenance Act*, or any other enactment relating to maintenance orders; Cap. 216.

"open court" means any room or place in which any court is sitting to hear and determine any matters within its jurisdiction and to which room or place the public may have access so far as the same can conveniently contain them;

"order" includes any conviction in respect of a summary offence;

"prescribed" means prescribed by the rules of court;

"register" means the register of proceedings before a magistrate's court required by the rules to be kept by the clerk;

"sentence" does not include a committal in default of payment of any sum of money, or for want of sufficient distress to satisfy any sum of money, or for failure to do or abstain from doing anything required to be done or left undone.

(2) In this Act

(a) "indictable offence" means an offence that, if committed by an adult, is triable on indictment, whether it is exclusively so triable or triable either way;

(b) "summary offence" means an offence that, if committed by an adult, is triable only summarily;

(c) "offence triable either way" means an offence that, if committed by an adult, is triable either on indictment or summarily;

and the terms "indictable", "summary" and "triable either way", in their application to offences, are to be construed accordingly.

(3) Any reference in this Act to an amount adjudged to be paid by a conviction or order of a magistrate shall be construed as including a reference to any costs, damages or compensation adjudged to be paid by the conviction or order; but this subsection does not prejudice the definition of "amount adjudged to be paid by a conviction" contained in section 115(8) for the purposes of that section.

(4) Where the age of any person at any time is material for the purposes of any provision of this Act regulating the powers of a magistrate, his age at the material time shall be deemed to be or to have been that which appears to the court after considering any available evidence to be or to have been his age at that time.

(5) Except where the context otherwise requires, any reference in this Act to an offence shall be construed as including a reference to an alleged offence; and any reference in this Act to an offence committed, completed or begun anywhere shall be construed as including a reference to an offence alleged to have been committed, completed or begun there.

(6) References in this Act to an offence punishable with imprisonment or punishable on summary conviction with imprisonment shall be construed without regard to any prohibition or restriction imposed by or under any other enactment on imprisonment of persons under the age of 16 years.

(7) The provisions of this Act authorising a magistrate on conviction of an offender to pass a sentence or make an order instead of dealing with him in any other way shall not be construed as taking away any power to order him to pay costs, damages or compensation.

PART I

MAGISTRATES

Chief Magistrate and other Magistrates

3. (1) There shall be a Chief Magistrate and such number of other magistrates as there shall be offices established under the *Civil Establishment Act*.¹

Magistrates:
appointment:
ex officio
Justices of
the Peace.
Cap. 21.

(2) The magistrates shall be appointed by the Governor-General by warrant under the public seal in accordance with the advice of the Judicial and Legal Service Commission.

(3) Every magistrate shall, *ex officio*, be a Justice of the Peace for Barbados.

Jurisdiction and Districts

4. (1) Every magistrate shall have and exercise all such powers, privileges, rights and jurisdiction as are conferred upon each of them respectively under this Act and any other enactment and also, subject to this Act and any other enactment, all such powers, rights and jurisdiction as are conferred on Justices of the Peace by common law.

Jurisdiction
of magis-
trates.

(2) Every magistrate shall have and exercise full power and jurisdiction in respect of

- (a) all summary offences and all matters relating thereto or in respect of which a summary court can make an order in the exercise of its jurisdiction;
- (b) all actions in respect of which a magistrate can give judgment or make an order in the exercise of his civil jurisdiction;
- (c) all enquiries into offences as an examining magistrate.

¹ Reference should also be made to section 93 of the *Constitution* which requires the Governor-General to act in accordance with the advice of the Judicial and Legal Service Commission in appointing to public offices for which legal qualifications are required.

Limitation
of power of
Justices of
the Peace.

5. (1) A Justice of the Peace shall have and exercise the powers and functions of a magistrate in relation to the issue of a warrant of arrest or a search warrant, but subject as aforesaid no Justice shall exercise any of the powers or functions by this Act granted and assigned to a magistrate and not by this Act expressly extended to a Justice of the Peace.

(2) A warrant issued by a Justice of the Peace under subsection (1) shall be returnable only before a magistrate and, where a warrant is issued by a Justice of the Peace, he shall at once forward to the magistrate of the district the sworn information on which it was issued.

(3) Nothing herein contained shall impose on a Justice of the Peace any obligation to exercise the powers reserved to him by this section.

Magisterial
districts.
First
Schedule.

6. (1) Barbados is hereby divided into the magisterial districts set out and defined in the *First Schedule*.

(2) The Minister may by order increase or decrease the number of magisterial districts or may vary the extent or boundaries thereof and require that one or more courts be held in each such district.

Assignment
of magis-
trates to
districts.

7. (1) The Chief Justice may assign one or more magistrates to a district and may assign a magistrate to more than one district.

(2) Where more than one magistrate is assigned to a district each such magistrate shall exercise concurrent jurisdiction in that district with the other or others so assigned.

(3) Notwithstanding subsections (1) and (2), the Chief Magistrate shall have jurisdiction in every magisterial district without further assignment.

Delegation
of functions
by Chief
Justice.

8. (1) The Chief Justice may, by instrument in writing, delegate any administrative function conferred upon him by this Act or any other law, whether written or otherwise, respecting magistrates or the administration of the magistrate's courts to the Chief Magistrate.

(2) The delegation of a function pursuant to subsection (1) does not preclude the Chief Justice from exercising that function.

9. The Chief Justice may by order appoint places and times for the attendance of magistrates for the hearing of all cases which they are competent to hear and determine, but a magistrate may in his discretion adjourn a court to any hour or day that he considers convenient and, subject to any special or general directions the Chief Justice may issue from time to time, may hold sittings at times and places other than those appointed by order of the Chief Justice under this section where satisfied that it is in the interest of justice to do so.

Places and times of hearing.

10. Where a magistrate is a party to a case or is unable, from personal interest or for any other sufficient reason, to adjudicate in any case, the Chief Justice may designate another magistrate to hear and determine such case or may direct that it be heard by a magistrate of the adjoining district.

Hearing of case where magistrate interested.

11. (1) Every magistrate shall keep or cause to be kept a record of all complaints brought in his district distinguishing the nature thereof, and the mode in which and the name or names of the magistrate by whom the complaint shall have been disposed of.

Record of cases.

(2) Such record, when signed by the magistrate, shall be conclusive evidence of the several matters and things therein set forth and contained.

(3) An extract from such record certified under the hand of the clerk shall be *prima facie* evidence of the contents thereof.

PART II

CRIMINAL JURISDICTION AND PROCEDURE

Jurisdiction to Issue Process and Deal with Charges

12. (1) Upon an information being laid before a magistrate of any district that any person has, or is suspected of having committed an offence, the magistrate may, in any of the events mentioned in subsection (2) but subject to subsections (3) to (5),

Issue of summons to accused or warrant for his arrest.

- (a) issue a summons directed to that person requiring him to appear before the magistrate for that district to answer to the information; or
 - (b) issue a warrant to arrest that person and bring him before the magistrate for that district or such other magistrate as is provided in subsection (5).
- (2) A magistrate for any district may issue a summons or warrant under this section
 - (a) if the offence was committed or is suspected to have been committed within the district; or
 - (b) if it appears to the magistrate necessary or expedient, with a view to the better administration of justice, that the person charged should be tried jointly with, or in the same place as, some other person who is charged with an offence, and who is in custody, or is being or is to be proceeded against, within the district; or
 - (c) if the person charged resides or is, or is believed to reside or to be, within the district; or
 - (d) if under any enactment the magistrate of the district has jurisdiction to try the offence; or
 - (e) if the offence was committed outside Barbados and, where it is an offence exclusively punishable on summary conviction, if the magistrate of the district would have jurisdiction to try the offence if the offender were before him.
- (3) No warrant shall be issued under this section unless the information is in writing and substantiated on oath.
- (4) No warrant shall be issued under this section for the arrest of any person who has attained the age of 16 unless
 - (a) the offence to which the warrant relates is an indictable offence or is punishable with imprisonment; or

- (b) the person's address is not sufficiently established for a summons to be served on him.
- (5) Where the offence charged is not an indictable offence
 - (a) no summons shall be issued by virtue only of subsection (2)(c); and
 - (b) any warrant issued by virtue only of subsection (2)(c) shall require the person charged to be brought before the magistrate of the district having jurisdiction to try the offence.
- (6) Where the offence charged is an indictable offence, a warrant under this section may be issued at any time notwithstanding that a summons has previously been issued.
- (7) The provisions of this section are in addition to, and not in derogation of, the provisions of any other enactment relating to the issue of a summons or a warrant by a magistrate.

13. (1) A magistrate shall have jurisdiction to try all summary offences committed within the district or districts to which he has been assigned in accordance with section 7.

Jurisdiction
to deal with
charges.

(2) Where a person charged with a summary offence appears or is brought before a magistrate in answer to a summons issued under paragraph (b) of section 12(2) or under a warrant issued under that paragraph, the magistrate shall have jurisdiction to try the offence.

(3) A magistrate for a district shall have jurisdiction as an examining magistrate over any offence committed by a person who appears or is brought before him, whether or not the offence was committed within the district or districts to which he is assigned.

(4) Subject to sections 45 to 49 and any other enactment, wherever contained, relating to the mode of trial of offences triable either way, a magistrate shall have jurisdiction to try summarily an offence triable either way in any case in which under subsection (3) he would have jurisdiction as an examining magistrate.

(5) A magistrate shall, in exercise of the powers under section 51, have jurisdiction to try summarily an indictable offence in any case in which under subsection (3) he would have had jurisdiction as an examining magistrate.

(6) A magistrate for any district who tries a person for an offence, shall have jurisdiction to try him for any summary offence for which he could be tried by a magistrate for any other district.

(7) Nothing in this section affects any jurisdiction over offences conferred on a magistrate by any enactment not contained in this Act.

Offences
committed
on
boundaries,
etc.

14. (1) Where an offence has been committed on the boundary between 2 or more districts, or within 500 yards of such boundary, or in any harbour or other water lying between 2 or more districts, the offence may be treated for the purposes of this Act as having been committed in any of those districts.

(2) An offence begun in one district and completed in another may be treated for the purposes of this Act as having been wholly committed in either.

(3) Where an offence has been committed on any person, or on or in respect of any property, in or on a vehicle or vessel engaged on any journey or voyage through 2 or more districts, the offence may be treated for the purposes of this Act as having been committed in any of those districts; and, where the side or any part of a road or any water along which the vehicle or vessel passed in the course of the journey or voyage forms the boundary between 2 or more districts, the offence may be treated for the purposes of this Act as having been committed in any of those districts.

Summary
offences
committed
within
territorial
waters.

15. Where any offence punishable on summary conviction is committed in or upon any vessel within the territorial waters of Barbados, the same may be dealt with and determined by any magistrate in Barbados.

16. Where a person residing or being, or suspected of residing or being, within the limits of the jurisdiction of any magistrate has committed on the high seas or within the Exclusive Economic Zone established by the *Marine Boundaries and Jurisdiction Act* an offence punishable on summary conviction, the magistrate of the district within which any vessel or boat on which that offence was committed first arrives after the commission of the offence may inquire into, try and adjudicate that offence in the same manner as if the offence had been committed on shore within the limits of his jurisdiction.

Summary offences committed on the high seas etc. Cap. 387.

PART III

Committal proceedings

17. (1) An examining magistrate shall sit in open court except where any enactment contains an express provision to the contrary and except where it appears to him as respects the whole or any part of committal proceedings that the ends of justice would not be served by his sitting in open court.

General nature of committal proceedings.

(2) Subject to subsection (3) and section 133, evidence given before an examining magistrate shall be given in the presence of the accused, and the defence shall be at liberty to put questions to any witness at the inquiry.

(3) An examining magistrate may allow evidence to be given before him in the absence of the accused if

- (a) he considers that by reason of his disorderly conduct before him it is not practicable for the evidence to be given in his presence; or
- (b) the accused cannot be present for reasons of health, but is represented by an attorney-at-law and has consented in writing to the evidence being given in his absence.

18. (1) A magistrate may, before beginning to enquire into an offence as examining magistrate or at any time during the enquiry, adjourn the hearing and, if he does so, shall remand the accused.

Adjournment of an enquiry.

(2) The magistrate shall, when adjourning, fix the time and place at which the hearing is to be resumed; and the time fixed shall be that at which the accused is required to appear or be brought before the court in pursuance of the remand.

Discharge or
committal
for trial.

19. Subject to the provisions of this and any other enactment relating to the summary trial of indictable offences, where a magistrate inquiring into an offence as an examining magistrate is of opinion, on consideration of the evidence and of any statement of the accused, that there is sufficient evidence to put the accused upon trial by jury for any indictable offence, the magistrate shall commit him for trial to the next sitting of the High Court; and if he is not of that opinion, he shall, if he is in custody for no other cause than the offence under inquiry, discharge him.

Committal
for trial
without
considera-
tion of the
evidence.

20. (1) Where a magistrate inquiring into an offence as an examining magistrate is satisfied that all the evidence before him, whether for the prosecution or the defence, consists of written statements tendered under section 132 with or without exhibits, he may commit the accused for trial for the offence without considering the contents of those statements, unless

- (a) the accused or one of the accused is not represented by an attorney-at-law;
- (b) the attorney-at-law for the accused or one of the accused, as the case may be, has requested the magistrate to consider a submission that the statements disclose insufficient evidence to put that accused on trial by jury for the offence,

and section 19 shall not apply to require a committal for trial on consideration of the evidence.

(2) In this Part "High Court" means the High Court sitting for the trial of criminal cases.

Cap. 122A.

(3) Subject to section 5 of the *Bail Act*, a magistrate may commit a person for trial

- (a) in custody, that is to say, by committing him to custody, there to be safely kept until delivered by due course of law; or

- (b) on bail by directing him to appear before the High Court for trial,

and where his release on bail is conditional on his providing one or more sureties and, in accordance with section 14 of the *Bail Act*, the magistrate fixes the amount in which a surety is to be bound with a view to his entering into his recognisance subsequently in accordance with subsections (3), (4) and (5) of that section, the magistrate shall in the meantime commit the accused to custody in accordance with paragraph (a). Cap. 122A.

(4) Where the magistrate has committed a person to custody in accordance with paragraph (a) of subsection (3), then if that person is in custody for no other cause, the magistrate may, at any time before the first sitting of the High Court at which he is to be tried, grant him bail in accordance with the *Bail Act* subject to a duty to appear before the High Court for trial. Cap. 122A.

21. Except where the charge is one of high treason, treason or murder, where an accused person in any statement by him to the magistrate says or admits that he is guilty of the charge, then the magistrate shall commit him for sentence and subsections (3) and (4) of section 20 shall apply. Committal for sentence.

22. (1) Except as provided by subsections (2) and (6), it shall not be lawful to publish a written report, or to broadcast a report, of any committal proceedings containing any matter other than that permitted by subsection (2). Restrictions on reports of committal proceedings.

(2) It shall not be unlawful under this section to publish or broadcast a report of committal proceedings containing the following

- (a) the identity of the court and the name of the examining magistrate;
- (b) the offence or offences, or a summary of them, with which the accused is or are charged;
- (c) the names of the attorneys-at-law engaged in the proceedings;

- (d) any decision of the magistrate to commit the accused or any of the accused for trial, and any decision of the magistrate on the disposal of the case of any accused not committed;
 - (e) where the magistrate commits the accused or any of the accused for trial, the charge or charges, or a summary of them, on which he is committed;
 - (f) where the committal proceedings are adjourned, the date and place to which they are adjourned;
 - (g) any arrangements as to bail on committal or adjournment.
- (3) If a report is published or broadcast in contravention of this section, the following persons
- (a) in the case of a publication of a written report as part of a newspaper or periodical, any proprietor, editor or publisher of the newspaper or periodical;
 - (b) in the case of a publication of a written report otherwise than as part of a newspaper or periodical, the person who publishes it;
 - (c) in the case of a broadcast of a report, any body corporate which transmits or provides the programme in which that the report is broadcast and any person having functions in relation to the programme corresponding to those of the editor of a newspaper or periodical,

shall be liable on summary conviction to a fine of \$5 000.

(4) Proceedings for an offence under this section shall not be instituted otherwise than by or with the consent of the Director of Public Prosecutions.

(5) Subsection (1) shall be in addition to, and not in derogation from, the provisions of any other enactment with respect to the publication of reports and proceedings of magistrate's and other courts.

(6) For the purposes of this section committal proceedings shall, in relation to an information charging an indictable offence, be deemed to include any proceedings in the magistrate's court before the court proceeds to inquire into the information as an examining magistrate; but where the magistrate who has begun to try an information summarily discontinues the summary trial in pursuance of section 52 and proceeds to inquire into the information as an examining magistrate, that circumstance shall not make it unlawful under this section for a report of any proceedings on the information that was published or broadcast before the court determined to proceed as aforesaid to have been so published or broadcast.

(7) In this section

"broadcast" means broadcast by wireless telegraphy sounds or visual images intended for general reception;

"publish", in relation to a report, means publish the report, either by itself or as part of a newspaper or periodical, for distribution to the public.

23. A magistrate who commits a person for trial or sentence shall, within such time as may be prescribed, transmit to the Director of Public Prosecutions and the Registrar the prescribed documents.

Documents
to be sent to
Director of
Public
Prosecutions
and
Registrar.

24. (1) Where a person has been committed for sentence and an indictment against him has been preferred he shall appear or be brought before the High Court, at such time as the Registrar fixes, to plead to the indictment.

Speedy trial
of persons
committed
for sentence.

(2) Where the accused fails to appear at the High Court to plead to the indictment against him, the Court may, on proof that he was served with notice in the prescribed manner, issue a warrant for his arrest.

(3) Where an accused appears or is brought before the High Court pursuant to this section and enters a plea other than that of guilty or where he pleads guilty but the court is satisfied, from examination of the depositions, that some other plea should be entered, the Court shall

commit the accused for trial at the next sitting of the High Court either in custody or on bail.

Speedy trial of persons committed for trial.

25. Where a person who has been committed for trial wishes to plead guilty and be sentenced before the next sitting of the High Court, he may serve a notice of his intention to plead guilty upon the Registrar and thereupon section 24 shall apply as if the person had been committed for sentence.

Power of Director of Public Prosecutions to remit case for further enquiry.

26. (1) At any time after the receipt of the prescribed documents and before the sitting of the court to which the accused person has been committed for trial, the Director of Public Prosecutions may, if he thinks fit, remit the case to the magistrate with directions to re-open the enquiry for the purpose of taking evidence or further evidence on a certain point or points to be specified, and with any other directions he thinks proper.

(2) Subject to any express directions given by the Director of Public Prosecutions, the effect of remission to the magistrate shall be that the enquiry shall be re-opened and dealt with in all respects as if the accused person had not been committed for trial.

(3) Nothing in this section shall be construed as depriving the Crown of its right to call additional evidence at the trial of an accused person on indictment.

Proceedings may be referred back by Director of Public Prosecutions.

27. Where after the receipt of the prescribed documents the Director of Public Prosecutions is of opinion that the accused person should not have been committed for trial or for sentence but that the case should have been dismissed or, where the offence is by law triable summarily, that it should have been dealt with summarily, the Director of Public Prosecutions may if he thinks fit refer back the case to the magistrate with directions to deal with it accordingly.

Further provisions as to remission of case.

28. (1) Any directions given by the Director of Public Prosecutions under section 26 or 27 shall be in writing signed by him and shall be followed by the magistrate.

(2) The Director of Public Prosecutions may at any time add to, alter or revoke any of the directions.

(3) The Registrar, at the request in writing of the Director of Public Prosecutions, shall send back to the magistrate the original documents transmitted to him by the magistrate.

(4) When the Director of Public Prosecutions directs that an inquiry shall be re-opened under section 26 or that a matter shall be dealt with summarily under section 27, the following provisions shall have effect, namely:

- (a) where the accused person is in custody, the magistrate may, by an order in writing under his hand, direct the keeper of the prison where the accused person is confined to convey him or cause him to be conveyed to the place where the proceedings are to be held for the purpose of being dealt with as the magistrate directs;
- (b) where the accused person is on bail, the magistrate shall issue a summons for his attendance at the time and place when and where the proceedings are to be held; and
- (c) thereafter the proceedings shall be continued in accordance with this Act.

29. When any person, against whom an indictment has been duly preferred and who is then at large, does not appear to plead thereto, whether he is under recognizance to appear or not, the court may issue a warrant for his arrest.

Warrant where accused person does not appear.

30. (1) The examining magistrate shall bind each witness examined before him, other than the accused and any witness of his merely to his character, by a recognizance to attend and give evidence before the High Court and he shall bind the prosecutor by a recognizance to prosecute the accused before that Court.

Binding over prosecutor and witnesses to attend trial.

(2) Where it appears to the magistrate, after taking into account any representations made by the accused or prosecutor, that the attendance at the High Court of any witness examined before him is

unnecessary by reason of any statement by the accused or of the accused having admitted before the magistrate the truth of the charge or of the evidence of the witness being merely formal, the magistrate shall

- (a) if the witness has not already been bound over, bind him over to attend the High Court conditionally, that is to say, on notice being given to him and not otherwise;
- (b) if the witness has already been bound over, direct that he shall be treated as having been bound over to attend the trial conditionally as aforesaid.

(3) A magistrate on committing any person for trial shall inform him of his right to require the attendance at the trial of any witness bound over, or treated as bound over, conditionally as aforesaid and of the steps that he must take for enforcing the attendance.

(4) Where any witness, on being required to enter into a recognizance under this section, refuses to do so, the magistrate may commit him to custody until after the trial of the accused or until he sooner enters into the recognizance; but where the magistrate does not commit the accused for trial or sentence he shall release the witness.

PART IV

Summary Trial of Information

Procedure
of trial.

31. (1) On the summary trial of an information, the magistrate shall, if the accused appears, state to him the substance of the information and ask him whether he pleads guilty or not guilty.

(2) The magistrate, after hearing the evidence and the parties, shall convict the accused or dismiss the information.

(3) If the accused pleads guilty, the magistrate may convict him without hearing evidence.

Adjourn-
ment of
trial.

32. (1) A magistrate may at any time, whether before or after beginning to try an information, adjourn the trial.

(2) The magistrate may, when adjourning, either fix the time and place at which the trial is to be resumed or, unless he remands the accused, leave the time and place to be determined later by him, but the trial shall not be resumed at that time and place unless the magistrate is satisfied that the parties have had adequate notice thereof.

(3) A magistrate may, for the purpose of enabling inquiries to be made or of determining the most suitable method of dealing with the case, exercise his power to adjourn after convicting the accused and before sentencing him or otherwise dealing with him, but where he does so, the adjournment shall not be for more than 3 weeks at a time.

(4) On adjourning the trial of an information, the magistrate may remand the accused and, where the accused has attained the age of 16, shall do so if the offence is triable either way and

- (a) on the occasion on which the accused first appeared, or was brought, before the magistrate to answer to the information he was in custody or, having been released on bail, surrendered to the custody of the court; or
- (b) the accused has been remanded at any time in the course of proceedings on the information,

and, where the magistrate remands the accused, the time fixed for the resumption of the trial shall be that at which he is required to appear or be brought before the magistrate in pursuance of the remand.

33. (1) Subject to this Act, where, at the time and place appointed for the trial or adjourned trial of an information, the prosecutor appears but the accused does not, the magistrate may proceed in his absence.

Non-
appearance
of accused:
general
provisions.

(2) Where a summons has been issued, the magistrate shall not begin to try the information in the absence of the accused unless either he is satisfied on oath, or in such other manner as may be prescribed, that the summons was served on the accused within what appears to him to be a reasonable time before the trial or adjourned trial or the accused has appeared on a previous occasion to answer to the information.

(3) A magistrate shall not in a person's absence sentence him to imprisonment or make an order that a deferred sentence passed on him shall take effect.

(4) A magistrate shall not in a person's absence impose any disqualification on him except on resumption of the hearing after an adjournment under section 32(3) and where a trial is adjourned under this subsection the notice required by section 32(2) shall include notice of the reason for the adjournment.

Non-
appearance
of accused:
plea of
guilty.

34. (1) Subject to subsection (7), this section shall apply where a summons has been issued requiring a person to appear before a magistrate's court, other than a juvenile court, to answer to an information for a summary offence, and the clerk is notified by or on behalf of the prosecutor that the following documents have been served upon the accused with the summons:

- (a) a notice containing such statement of the effect of this section as may be prescribed; and
- (b) a concise statement in the prescribed form of such facts relating to the charge as will be placed before the magistrate by or on behalf of the prosecutor if the accused pleads guilty without appearing before him.

(2) Subject to subsections (3) to (5), where the clerk receives a notification in writing purporting to be given by the accused or by an attorney-at-law acting on his behalf that the accused desires to plead guilty without appearing before the magistrate, the clerk shall inform the prosecutor of the receipt of the notification and if at the time and place appointed for the trial or adjourned trial of the information the accused does not appear and the magistrate is satisfied, on oath or in such other manner as may be prescribed, that the notice and statement of facts referred to in subsection (1) have been served upon the accused with the summons, then

- (a) subject to section 33(3) and (4), the magistrate may proceed to hear and dispose of the case in the absence of the accused, whether or not the prosecutor is present, in like manner as if both parties had appeared and the accused had pleaded guilty; or

(b) if the magistrate decides not to proceed as aforesaid, the magistrate shall adjourn or further adjourn the trial for the purpose of dealing with the information as if the notification aforesaid had not been given.

(3) If at any time before the hearing the clerk receives an intimation in writing purporting to be given by or on behalf of the accused that he wishes to withdraw the notification under subsection (2), the clerk shall inform the prosecutor thereof and the magistrate shall deal with the information as if this section had not been passed.

(4) Before accepting the plea of guilty and convicting the accused in his absence under subsection (2), the magistrate shall cause to be read out before him the notification and statement of facts under subsection (1) including any submission received with the notification that the accused wishes to be brought to his attention with a view to mitigation of sentence.

(5) If the magistrate proceeds under subsection (2) to hear and dispose of the case in the absence of the accused, the magistrate shall not permit any statement to be made by or on behalf of the prosecutor with respect to any acts relating to the offence charged other than the statement of facts under subsection (1)(b) except on a resumption of the trial after an adjournment under section 32(3).

(6) In relation to an adjournment by reason of the requirements of subsection (2)(b) or to an adjournment on the occasion of the accused's conviction in his absence under that subsection, the notice required by section 32(2) shall include notice of the reason for the adjournment.

(7) This section shall apply in relation to such offences as may be specified in an order made by the Minister.

(8) An order made under subsection (7) is subject to affirmative resolution.

Non-
appearance
of accused:
issue of
warrant.

35. (1) Subject to this section, where the magistrate, instead of proceeding in the absence of the accused, adjourns or further adjourns the trial, the magistrate may, if the information has been substantiated on oath, issue a warrant for his arrest.

(2) Where a summons has been issued, the magistrate shall not issue a warrant under this section unless it is proved to his satisfaction on oath or in such other manner as may be prescribed, that the summons was served on the accused within what appears to the magistrate to be a reasonable time before the trial or adjourned trial or the accused has appeared on a previous occasion to answer to the information.

(3) A warrant for the arrest of any person who has attained the age of 16 shall not be issued under this section unless

- (a) the offence to which the warrant relates is punishable with imprisonment; or
- (b) the magistrate, having convicted the accused, proposes to impose a disqualification on him.

(4) Where the magistrate adjourns the trial after having either on that or on a previous occasion received any evidence or convicted the accused without hearing evidence on his pleading guilty under section 31(3), the magistrate shall not issue a warrant under this section unless he thinks it undesirable, by reason of the gravity of the offence, to continue the trial in the absence of the accused.

Proceedings
invalid
where
accused did
not know of
them.

36. (1) Where a summons has been issued under section 12 and a magistrate has begun to try the information to which the summons relates, then, if

- (a) the accused, at any time during or after the trial, makes a statutory declaration that he did not know of the summons or the proceedings until a date specified after the magistrate has begun to try the information; and
- (b) within 21 days of that date the declaration is served on the clerk,

without prejudice to the validity of the information, the magistrate shall, if satisfied as to the truth of the declaration, certify the summons and all subsequent proceedings shall be void.

(2) For the purposes of subsection (1) a statutory declaration shall be deemed to be duly served on the clerk if it is delivered to him, or left at his office, or is sent in a registered letter addressed to him at his office.

(3) If on the application of the accused the magistrate is of the view that it was not reasonable to expect the accused to serve such a statutory declaration as is mentioned in subsection (1) within the period allowed by that subsection, the magistrate may accept service of such a declaration by the accused after that period has expired; and a statutory declaration accepted under this subsection shall be deemed to have been served as required by that subsection.

37. (1) Where at the time and place appointed for the trial or adjourned trial of an information, the accused appears or is brought before the magistrate and the prosecutor does not appear, the magistrate may, if he is satisfied that the prosecutor has been informed, dismiss the information or, if evidence has been received on a previous occasion, proceed in the absence of the prosecutor.

Non-
appearance
of
prosecutor.

(2) Where, instead of dismissing the information or proceeding in the absence of the prosecutor, the magistrate adjourns the trial, he shall not remand the accused in custody unless he has been brought from custody or cannot be remanded on bail by reason of his failure to find sureties.

38. Subject to section 33(3) and (4) and to section 34, when at the time and place appointed for the trial or adjourned trial of an information neither the prosecutor nor the accused appears, the magistrate may dismiss the information for want of prosecution or, if evidence has been given on a previous occasion, proceed in their absence.

Non-
appearance
of both
parties.

39. Where an information is laid or made by one person against another and there is a cross-information by the accused in such first-named case either by himself or together with another person against

Cross-
information.

the informant in the first-named case either by himself or together with another person and such cross-informations are with reference to the same matter, the magistrate may, if he thinks fit, try such informations at one and the same time.

Hearing of
two or more
informations
at the same
time.

40. Where 2 or more informations are laid by one or more persons against another person or other persons and such informations are founded on the same facts or relate to a series or part of a series of offences of the same or a similar nature, the magistrate may, unless he is of opinion that the interests of justice would require separate trials, try such informations together.

Dismissal
for want of
prosecution
not to
operate as
bar to other
proceedings.

41. The dismissal of an information for want of prosecution shall not operate as a bar to any other proceedings in the same matter.

Parties
entitled to
copies of
proceedings.

42. (1) Any person against whom an information has been laid shall be entitled to obtain from the clerk a certified copy of such information if in writing, upon payment of the prescribed fee.

(2) Any party to any proceedings before a magistrate, or his attorney-at-law, shall be entitled, upon application to the magistrate at any stage of the proceedings or at any time within 12 months after the examination of the witnesses in such proceedings has been closed, to obtain a copy of the proceedings from the clerk upon payment of the prescribed fee.

Offences Triable on Indictment or Summarily

Certain
offences
triable either
way.
Second
Schedule.

43. (1) The offences listed in the *Second Schedule* are triable either way.

(2) Subsection (1) does not limit any other enactment under which any offence is triable either way.

44. Nothing in section 43 or in sections 45 to 55 affects any power, authority or jurisdiction whatsoever of the High Court over offences punishable under this Act.

Jurisdiction
of High
Court
preserved.

45. (1) Sections 46 to 50 have effect where a person who has attained the age of 16 appears or is brought before a magistrate on an information charging him with an offence triable either way.

Initial
procedure on
information
against adult
for offence
triable either
way.

(2) Without limiting section 33(1), everything that the magistrate is required to do under sections 46 to 49 must be done before any evidence is called and, subject to subsection (3) and section 50, with the accused present in court.

(3) The magistrate may proceed in the absence of the accused in accordance with such of the provisions of sections 46 to 50 as are applicable in the circumstances if the magistrate considers that by reason of the disorderly conduct of the accused it is not practicable for the proceedings to be conducted in his presence and subsections (3) to (5) of section 50, so far as applicable, shall have effect in relation to proceedings conducted in the absence of the accused by virtue of this subsection.

(4) A magistrate proceeding under sections 46 to 50 may adjourn the proceedings at any time, and on doing so on any occasion when the accused is present may remand the accused, and shall remand him if

- (a) on the occasion on which he first appeared, or was brought before, the magistrate to answer to the information he was in custody or, having been released on bail, surrendered to the custody of the court; or
- (b) he has been remanded at any time in the course of proceedings on the information,

and where the magistrate remands the accused, the time fixed for the resumption of the proceedings shall be that at which he is required to appear or be brought before the magistrate in pursuance of the remand.

Court to begin by considering which mode of trial appears more suitable.

46. (1) The magistrate shall consider whether, having regard to the matters mentioned in subsection (3) and any representations made by the prosecutor or the accused, the offence appears to him more suitable for summary trial or for trial on indictment.

(2) Before so considering, the magistrate

- (a) shall cause the charge to be written down, if this has not already been done, and read to the accused; and
- (b) shall afford first the prosecutor and then the accused an opportunity to make representations as to which mode of trial would be more suitable.

(3) The matters to which the magistrate is to have regard under subsection (1) are

- (a) the nature of the case;
- (b) whether the circumstances make the offence one of serious character;
- (c) whether the punishment that he would have power to inflict for the offence would be adequate; and
- (d) any other circumstances that appear to him to make it more suitable for the offence to be tried in one way rather than the other.

(4) If the prosecution is being carried on by the Director of Public Prosecutions and he applies for the offence to be tried on indictment, subsections (1) to (3) and sections 47 and 48 shall not apply, and the magistrate shall proceed to inquire into the information as an examining magistrate.

Procedure where summary trial appears more suitable.

47. (1) If, where the magistrate has considered as required by section 46(1), it appears to him that the offence is more suitable for summary trial, the following provisions of this section shall apply, unless excluded by section 50.

(2) The magistrate shall explain to the accused in ordinary language

- (a) that it appears to the magistrate more suitable for him to be tried summarily for the offence, and that he can either consent to be so tried or, if he wishes, be tried by a jury; and
- (b) that if he is tried summarily and is convicted by the magistrate, he may be committed for sentence to the High Court under section 65 if the magistrate, on obtaining information about his character and antecedents, is of opinion that they are such that greater punishment should be inflicted than he has power to inflict for the offence.

(3) After explaining to the accused as provided by subsection (2) the magistrate shall ask him whether he consents to be tried summarily or wishes to be tried by a jury, and

- (a) if he consents to be tried summarily, shall proceed to the summary trial of the information;
- (b) if he does not so consent, shall proceed to inquire into the information as an examining magistrate.

48. If, where the magistrate has considered as required by section 46, it appears to him that the offence is more suitable for trial on indictment, he shall tell the accused that he has decided that it is more suitable for him to be tried for the offence by a jury, and shall proceed to inquire into the information as an examining magistrate.

Procedure where trial on indictment appears more suitable.

49. (1) The offences listed in Part I of the *Third Schedule* are triable summarily if the value does not exceed \$1 500.

Certain offences to be tried summarily if value involved is small. Third Schedule. Cap. 113B.

- (2) An offence under section 3 of the *Criminal Damage Act*, of
 - (a) aiding, abetting, counselling or procuring the commission of such an offence;
 - (b) attempting to commit such an offence; or
 - (c) inciting another to commit such an offence,

is triable summarily if the value involved as set out in Part II of the *Third Schedule* does not exceed \$5 000.

(3) Subsection (2) does not apply

- (a) where the offence charged is arson;
- (b) where the offence charged is one of 2 or more offences with which the accused is charged on the same occasion and which appear to the magistrate to constitute or form part of a series of 2 or more offences of the same or a similar character; or
- (c) where the offence charged consists in the incitement to commit 2 or more offences under subsection (2).

(4) If, where subsection (2) applies, it appears to the magistrate not clear for any reason whether for the offence charged the value involved does or does not exceed \$5 000, the provisions of subsections (5) and (6) shall apply.

(5) The magistrate shall cause the charge to be written down, if this has not already been done, and read to the accused, and shall explain to him in ordinary language

- (a) that he can, if he wishes, consent to be tried summarily for the offence and that if he consents to be so tried, he will be tried in that way; and
- (b) that if he is tried summarily and he is convicted, his liability to imprisonment or a fine will be limited as provided in section 61.

(6) After explaining to the accused as provided by subsection (5) the magistrate shall ask him whether he consents to be tried summarily and

- (a) if he so consents, shall proceed to try him summarily; and
- (b) if he does not so consent, shall proceed in accordance with section 46.

(7) Where a person is convicted by a magistrate of an offence under subsection (2), it shall not be open to him to appeal to the Court of Appeal against the conviction on the ground that the magistrate's decision as to the value involved was mistaken.

50. (1) Where

- (a) the accused is represented by an attorney-at-law who in his absence signifies to the magistrate the accused's consent to the proceedings for determining how he is to be tried for the offence being conducted in his absence; and
- (b) the magistrate is satisfied that there is good reason for proceeding in the absence of the accused,

Power of court with consent of legally-represented accused to proceed in his absence.

the following provisions of this section shall apply.

(2) Subject to subsections (3) to (5), the magistrate may proceed in the absence of the accused in accordance with such of the provisions of sections 46 to 49 as are applicable in the circumstances.

(3) If, in a case where subsection (2) of section 49 applies, it appears to the magistrate that subsection (4) of that section applies, subsections (5) and (6) of that section shall not apply and the magistrate

- (a) if the accused's consent to be tried summarily has been or is signified by the person representing him, shall proceed in accordance with subsection (2) of that section as if that subsection applied; or
- (b) if that consent has not been and is not so signified, shall proceed in accordance with subsection (3) of that section as if that subsection applied.

(4) If, where the magistrate has considered as required by section 46(1), it appears to him that the offence is more suitable for summary trial then

- (a) if the accused's consent to be tried summarily has been or is signified by the person representing him, section 47 shall not apply, and the court shall proceed to the summary trial of the information; or
- (b) if that consent has not been and is not so signified section 47 shall not apply and the magistrate shall proceed to inquire into the information as an examining magistrate and may adjourn the hearing without remanding the accused.

(5) If, where the magistrate has considered as required by section 46(1), it appears to him that the offence is more suitable for trial on indictment, section 48 shall not apply and the magistrate shall proceed to inquire into the information as an examining magistrate and may adjourn the hearing without remanding the accused.

Summary
trial of
information
against child
or young
person for
indictable
offence.
Cap. 138.

51. (1) Where a person under the age of 16 appears or is brought before a magistrate on an information charging him with an indictable offence other than homicide, he shall be tried summarily unless

- (a) he has attained the age of 14 years and the offence is such as is mentioned in section 15 of the *Juvenile Offenders Act*, and the magistrate considers that if he is found guilty of the offence it ought to be possible to sentence him in pursuance of that section; or
- (b) he is charged jointly with a person who has attained the age of 16 and the magistrate considers it necessary in the interests of justice to commit them both for trial;

and accordingly in a case falling within paragraph (a) or (b), the magistrate shall commit the accused for trial if either he is of opinion that there is sufficient evidence to put him on trial or he has power under section 20 so to commit him without consideration of the evidence.

(2) Where, in a case falling within subsection (1)(b), a magistrate commits a person under the age of 16 for trial for an offence with which he is charged jointly with a person who has attained that age, the magistrate may also commit him for trial for any other indictable offence with which he is charged at the same time, whether jointly with

the person who has attained that age or not, if that other offence arises out of circumstances that are the same as or connected with those giving rise to the first-mentioned offence.

(3) If on trying a person summarily in pursuance of subsection (1) the magistrate finds him guilty, he may impose a fine of \$250 or subject to section 13 of the *Juvenile Offenders Act* may sentence him to imprisonment for a term not exceeding 3 months. Cap. 138.

52. (1) Subsections (2) to (4) have effect where a person who has attained the age of 16 appears or is brought before a magistrate on an information charging him with an offence triable either way. Power to change from summary trial to committal proceedings and vice versa.

(2) Where the magistrate has begun to try the information summarily, he may at any time before the conclusion of the evidence for the prosecution, discontinue the summary trial and proceed to inquire into the information as an examining magistrate and, on doing so, may adjourn the hearing without remanding the accused.

(3) Where the magistrate has begun to inquire into the information as an examining magistrate, then, if at any time during the inquiry it appears to him, having regard to any representations made in the presence of the accused by the prosecutor, or made by the accused, and to the nature of the case, that the offence is after all more suitable for summary trial, he may, after doing as provided in subsection (4), ask the accused whether he consents to be tried summarily and, if he so consents, may proceed to try the information summarily; but if the prosecution is being carried on by the Director of Public Prosecutions, the magistrate shall not act under this subsection without his consent.

(4) Before asking the accused under subsection (3) whether he consents to be tried summarily, the magistrate shall in ordinary language

- (a) explain to him that it appears to the magistrate more suitable for him to be tried summarily for the offence, but that this can only be done if he consents to be so tried; and
- (b) unless the magistrate has already done so, explain to him, as provided in section 47(2)(b), about the magistrate's power to commit to the High Court for sentence.

(5) Where a person under the age of 16 appears or is brought before a magistrate on an information charging him with an indictable offence other than homicide, and the magistrate

- (a) has begun to try the information summarily on the footing that the case does not fall within paragraph (a) or (b) of section 51(1) and must therefore be tried summarily, as required by the said section 51(1); or
- (b) has begun to inquire into the case as an examining magistrate on the footing that the case does so fall,

subsection (6) or (7), as the case may be, shall have effect.

(6) If, in a case falling within subsection (5)(a), it appears to the magistrate at any time before the conclusion of the evidence for the prosecution that the case is after all one that under the said section 51(1) ought not to be tried summarily, he may discontinue the summary trial and proceed to inquire into the information as an examining magistrate and, on doing so, may adjourn the hearing without remanding the accused.

(7) If, in a case falling within subsection (5)(b), it appears to the magistrate at any time during the inquiry that the case is after all one that under the said section 49(2) ought to be tried summarily, he may proceed to try the information summarily.

Power to
issue
summons to
accused in
certain
circum-
stances.

53. (1) Where section 50(4) or (5) or section 52(2) or (6) apply, and the magistrate adjourns the hearing in pursuance of that subsection without remanding the accused, the magistrate may issue a summons directed to the accused requiring his presence before him.

(2) If the accused is not present at the time and place appointed for the resumption of the hearing, the magistrate may issue a warrant for his arrest.

Effect of
dismissal of
information
for offence
triable either
way.

54. Where on the summary trial of an information for an offence triable either way the magistrate dismisses the information, the dismissal shall have the same effect as an acquittal on indictment.

55. Where under section 52(3) or (7) a magistrate, having begun to inquire into an information as an examining magistrate, proceeds to try the information summarily, then, subject to sections 132(10) and 133(3), any evidence already given before the magistrate shall be deemed to have been given in and for the purposes of the summary trial.

Using in summary trial evidence given in committal proceedings.

Power to Remit Person Under 16 for Trial to Juvenile Court

56. (1) Where

- (a) a person under the age of 16 appears or is brought before a court other than a juvenile court on an information jointly charging him and one or more other persons with an offence; and
- (b) that other person, or any of those other persons, has attained that age,

Power of magistrate to remit a person under 16 for trial to a juvenile court in certain circumstances.

subsection (2) shall have effect notwithstanding the provisions of section 3(2) of the *Juvenile Offenders Act*.

Cap. 138.

(2) If

- (a) the magistrate proceeds to the summary trial of the information in the case of both or all of the accused, and the older accused or each of the older accused pleads guilty; or
- (b) the magistrate
 - (i) in the case of the older accused or each of the older accused, proceeds to inquire into the information as an examining magistrate and either commits him for trial or discharges him, and
 - (ii) in the case of the juvenile, proceeds to the summary trial of the information,

then, if in either situation the juvenile pleads not guilty, the magistrate may before any evidence is called in his case remit him for trial to the juvenile court.

(3) A person remitted to a juvenile court under subsection (2) shall be brought before and tried by a juvenile court accordingly.

(4) Where a person is so remitted to a juvenile court

(a) he shall have no right of appeal against the order of remission; and

(b) the magistrate may give such directions as appear to be necessary with respect to his custody or for his release on bail until he can be brought before the juvenile court.

(5) This section applies in relation to a corporation as if it were an individual who has attained the age of 16.

(6) In this section

"juvenile" means a person under the age of 16;

"the older accused" means such one or more of the accused as have attained the age of 16.

Remand for Medical Examination

Remand for
medical
examination.

57. (1) If, on the trial by a magistrate of an offence punishable on summary conviction with imprisonment, the magistrate is satisfied that the accused did the act or made the omission charged but is of opinion that an inquiry ought to be made into his physical or mental condition before the method of dealing with him is determined, the magistrate shall adjourn the case to enable a medical examination and report to be made and shall remand him; but the adjournment shall not be for more than 3 weeks at a time when the magistrate remands him in custody nor for more than 4 weeks at a time when he remands him on bail.

Cap. 122A.

(2) Where on an adjournment under subsection (1) the accused is remanded on bail, the magistrate shall impose conditions under section 12 of the *Bail Act*, which conditions shall include requirements that the accused

(a) undergo a medical examination by a duly qualified medical practitioner or, where the inquiry is into his mental condition and the magistrate so directs, 2 such practitioners; and

- (b) for that purpose attend such an institution or place, or on such practitioner, as the magistrate directs and, where the inquiry is into his mental condition, comply with any other directions which may be given to him for that purpose by any person specified by the magistrate or by a person of any class so specified.

Powers in Respect of Offenders

58. Without limiting section 69 and subject to section 59 and any other enactment, a magistrate shall not have power to impose imprisonment for a term of more than 2 years.

General limit on powers of magistrate to impose imprisonment.

59. (1) On summary conviction of any of the offences triable either way listed in the *Second Schedule* or in any enactment, a person shall be liable

Penalties on summary conviction for offences triable either way. Second Schedule.

- (a) on a first conviction to a fine of \$2 500 or to a term of imprisonment for 2 years or both; and
- (b) on a second or subsequent conviction to a fine of \$5 000 or to a term of imprisonment for 5 years or both.
- (2) Notwithstanding subsection (1)
- (a) a magistrate shall not have the power to impose imprisonment for an offence listed in the *Second Schedule* if the High Court would not have that power in the case of an adult convicted of it on indictment;
- (b) on summary conviction of an offence consisting in the incitement to commit an offence triable either way a person shall not be liable to any greater penalty than he would be liable to on summary conviction of the last-mentioned offence; and
- (c) on summary conviction of attempting to commit an offence triable either way a person shall not be liable to any greater penalty than he would be liable to on summary conviction of the completed offence.

Second
Schedule.

(3) For any offence triable either way that is not listed in the *Second Schedule*, being an offence under any other enactment, the fine that may be imposed on summary conviction shall by this subsection be the prescribed sum unless the offence is one for which by an enactment other than this subsection a larger fine may be imposed on summary conviction.

(4) Where a person summarily convicted of an offence triable either way would, apart from this section, be liable to a fine of one amount in the case of the first conviction and of a different amount in the case of a second or subsequent conviction, subsection (3) shall apply irrespective of whether the conviction is a first, second or subsequent one.

(5) Subsection (3) shall not affect so much of any enactment as, in whatever words, makes a person liable on summary conviction to a fine of a specified amount for each day on which a continuing offence is continued after conviction or the occurrence of any other specified event.

Cap. 131.

(6) Subsection (3) shall not apply on summary conviction of any of the offences under the *Drug Abuse (Prevention and Control) Act*.

(7) Where, as regards any offence triable either way, there is under any enactment, however framed or worded, a power by subsidiary instrument to restrict the amount of the fine that on summary conviction can be imposed in respect of that offence

- (a) subsection (3) shall not affect that power or override any restriction imposed in the exercise of that power; and
- (b) the amount to which that fine may be restricted in the exercise of that power shall be any amount less than the fine that could be imposed on summary conviction in respect of the offence apart from any restriction so imposed.

(8) Where there is under any enactment, however framed or worded, a power by subsidiary instrument to impose penal provisions, being a power that allows the creation of offences triable either way,

- (a) the fine that may in the exercise of that power be authorised on summary conviction in respect of an offence triable either way shall under this subsection be the prescribed sum unless some larger fine can be authorised on summary conviction in respect of such an offence under an enactment other than this subsection; and
- (b) subsection (3) shall not override any restriction imposed in the exercise of that power on the amount of the fine that on summary conviction can be imposed in respect of an offence triable either way created in the exercise of the power.

(9) In this section

"fine" includes a pecuniary penalty but does not include a pecuniary forfeiture or pecuniary compensation;

"the prescribed sum" means \$1 000.

60. (1) Subject to this section, a magistrate may defer passing sentence on an offender for the purpose of enabling him to have regard, in determining his sentence, to his conduct after conviction, including, where appropriate, the making by him of reparation for his offence, or to any change in his circumstances. Deferment
of sentence.

(2) Any deferment under this section shall be until such date as the magistrate may specify, but must not be more than 6 months after the date of the conviction; and where the passing of sentence has been deferred under this section it shall not be further deferred thereunder.

(3) The power conferred by this section is exercisable only if the offender consents and the magistrate is satisfied, having regard to the nature of the offence and the character and circumstances of the offender, that it would be in the interests of justice to exercise the power.

(4) A magistrate who under this section has deferred passing sentence on an offender may pass sentence on him before the expiration of the period of deferment if during that period he is convicted of any offence.

(5) Where a magistrate who under this section has deferred passing sentence on an offender proposes to sentence him, whether on the date he originally specified or, under subsection (4), before that date, the magistrate may issue a summons requiring him to appear before him, or may issue a warrant for his arrest.

(6) Notwithstanding section 45(4), a magistrate shall not be obliged to remand an offender in whose case he defers the passing of sentence under this section.

Penalties on
summary
conviction
in pursu-
ance of
section 49.

61. (1) A person guilty of an offence under section 49(1) shall be liable to imprisonment for a term of 2 years or a fine of \$2 500 or both.

(2) Where in pursuance of section 49(2) a magistrate proceeds to the summary trial of an information, then, if the accused is summarily convicted of the offence, the magistrate may impose on him in respect of that offence imprisonment for a term of 2 years or a fine of \$2 000 or both.

(3) In subsection (2) "fine" includes a pecuniary penalty but does not include a pecuniary forfeiture or pecuniary compensation.

Mitigation
of penal-
ties, etc.

62. (1) Where under any enactment whether passed before or after the commencement of this Act a magistrate has power to sentence an offender to imprisonment for a period specified by the enactment, or to a fine of an amount specified by the enactment, then, the magistrate may sentence him to imprisonment for less than that period or, as the case may be, to a fine of less than that amount.

(2) Where under any such enactment an offender sentenced on summary conviction to imprisonment or a fine is required to enter into a recognisance with or without sureties to keep the peace or observe any other condition, the magistrate convicting him may dispense with or modify the requirement.

(3) Where under any such enactment a magistrate has power to sentence an offender to imprisonment or other detention but not to a fine, then, the magistrate may, instead of sentencing him to imprisonment or other detention, impose a fine that

- (a) for an offence triable either way, shall not exceed \$2 500; and
- (b) for a summary offence, shall
 - (i) not exceed \$1 000, and
 - (ii) not be of such an amount as would subject the offender, in default of payment of the fine, to a longer term of imprisonment or detention than the term to which he is liable on conviction of the offence.

63. In fixing the amount of a fine, a magistrate shall take into consideration among other things the means of the person on whom the fine is imposed so far as they appear or are known to the court.

Fixing
amount
of fine.

64. (1) Where a person under 16 years of age is found guilty by a magistrate of an offence for which, apart from this section, the magistrate would have power to impose a fine of an amount exceeding \$1 000, the amount of any fine imposed by the magistrate shall not exceed \$1 000.

Restriction
on fines in
respect of
young
persons.

(2) In relation to a person under the age of 14 subsection (1) shall have effect as if for the words "\$1 000", in both the places where they occur, there were substituted the words "\$500".

65. Where on the summary trial of an offence triable either way a person who is not less than 16 years old is convicted of the offence, then, if on obtaining information about his character and antecedents the magistrate is of opinion that they are such that greater punishment should be inflicted for the offence than he has power to inflict, he may commit him in custody or on bail to the High Court for sentence.

Committal
for sentence
on summary
trial of
offence
triable
either way.

66. (1) Where a person who has attained the age of 16 ("the offender") has been convicted by a magistrate ("the convicting magistrate") of an offence to which this section applies ("the instant offence") and

Cases where
magistrate
may remit
offender to
another
magistrate
for
sentence.

- (a) it appears to the convicting magistrate that some other magistrate ("the other magistrate") has convicted him of another such offence in respect of which the other magistrate has neither

passed sentence on him nor committed him to the High Court for sentence nor dealt with him in any other way; and

- (b) the other magistrate consents to his being remitted under this section to him,

the convicting magistrate may remit him to the other magistrate to be dealt with in respect of the instant offence by that other magistrate instead of by the convicting magistrate.

(2) The offender, if remitted under this section, shall have no right of appeal against the order of remission.

(3) Where the convicting magistrate remits the offender to the other magistrate under this section, he shall adjourn the trial of the information charging him with the instant offence, and

- (a) section 220 and all other enactments, whenever passed, relating to remand or the granting of bail in criminal proceedings shall have effect in relation to the convicting magistrate's power or duty to remand the offender on that adjournment as if any reference to the magistrate before whom the person remanded is to be brought or appear after remand were a reference to the magistrate to whom he is being remitted; and
- (b) subject to subsection (4), the other magistrate may deal with the case in any way in which he would have power to deal with it, including, where applicable, the remission of the offender under this section to another magistrate in respect of the instant offence if all proceedings relating to that offence that took place before the convicting magistrate had taken place before the other magistrate.

(4) Nothing in this section precludes the convicting magistrate from making any order that he has power to make under section 31 of the *Theft Act* by virtue of the offender's conviction of the instant offence.

Cap. 155.

(5) Where the convicting magistrate has remitted the offender under this section to the other magistrate, that other magistrate may remit him back to the convicting magistrate; and the provisions of

subsection (3), so far as applicable, shall apply with the necessary modifications in relation to any remission under this subsection.

(6) This section applies to

- (a) any offence punishable with imprisonment; and
- (b) any offence in respect of which the convicting magistrate has a power or duty to order the offender to be disqualified under the *Road Traffic Act*,

Cap. 295.

and in this section "conviction" includes a finding under section 57(1) that the person in question did the act or made the omission charged, and "convicted" shall be construed accordingly.

67. (1) Where the complete commission of the offence charged is not proved but the evidence establishes an attempt to commit the offence, the accused may be convicted of such an attempt and punished accordingly.

Offence charged, attempt proved.

(2) After conviction under subsection (1) for such an attempt, the accused shall not be liable to be prosecuted again for the same offence which he was charged with committing.

(3) Where an attempt to commit an offence is charged but the evidence establishes the commission of the full offence, the accused shall not be entitled to have the information dismissed, but he may be convicted of the attempt and punished accordingly.

(4) After conviction under subsection (3) for such an attempt, the accused shall not be liable to be prosecuted again for the offence which he was charged with attempting to commit.

68. Every information shall be deemed divisible; and where the commission of the offence charged, as described in the enactment creating the offence or as charged in the information, includes the commission of any other offence, the accused may be convicted of any offence so included which is proved, although the whole information charged is not proved, or he may be convicted of an attempt to commit any offence so included.

Conviction of offence involved in offence charged.

Consecutive
terms of
imprison-
ment.

69. (1) A magistrate imposing imprisonment on any person may order that the term of imprisonment shall commence at the expiration of any other term of imprisonment imposed by him or by any other magistrate or court, but when a magistrate imposes 2 or more terms of imprisonment to run consecutively, the aggregate of such terms shall not, subject to this section, exceed 3 years.

(2) Where 2 or more of the terms imposed by the magistrate are imposed in respect of an offence triable either way that was tried summarily, the aggregate of the terms so imposed and any other terms imposed by the magistrate may exceed 3 years but shall not, subject to the following provisions of this section, exceed 5 years.

(3) The limitations imposed by subsections (1) and (2) shall not operate to reduce the aggregate of the terms that the magistrate may impose in respect of any offences below the term which the magistrate has power to impose in respect of any one of those offences.

(4) Where a person has been sentenced by a magistrate to imprisonment and a fine for the same offence, a period of imprisonment imposed for non-payment of the fine or for want of sufficient distress to satisfy the fine shall not be subject to the limitations imposed by subsections (1), (2) and (3).

(5) For the purposes of this section, a term of imprisonment shall be deemed to be imposed in respect of an offence if it is imposed as a sentence or in default of payment of an amount adjudged to be paid by the conviction or for want of sufficient distress to satisfy such an amount.

Restitution
of property.

70. Where any person has been summarily convicted under this Act of an offence that is also an offence triable on indictment, the magistrate may make the like order for the restitution of property as might have been made by the court before which the offender would have been tried on indictment.

Males under
16 may be
ordered to
be whipped.

71. (1) Where any male person who, in the opinion of the magistrate, is under the age of 16 years but over the age of 7 years and of sufficient capacity to commit crime, is convicted of an offence punishable upon summary conviction, the magistrate may, in his discretion,

in lieu of or in addition to any punishment to which he may be subject, sentence him to be privately whipped at the police station in the district in which the magistrate's court is situate on one occasion only by a member of the Police Force in the presence of a registered medical practitioner and a sergeant of police with a tamarind or other similar rod, with not more than 12 strokes.

(2) The parent or guardian of such male person shall be allowed to be present at such whipping if he so desires.

Award of Compensation

72. (1) Subject to section 74 and subsections (2) and (3), where a magistrate has convicted an accused or made an order against a defendant, he may, in addition to the sentence or penalty, if any, imposed on such accused or defendant and to any costs ordered under section 166 order the accused or defendant to pay to the informant or complainant or any other person such compensation as to the magistrate may seem just and reasonable.

Power to
award com-
pensation.

(2) The magistrate shall not award compensation in respect of damages for injury or loss suffered by the informant, complainant or that other person as a result of the offence or matter upon which the information or complaint was founded unless the informant or complainant or that other person consents.

(3) The award of any such compensation mentioned in subsection (2) shall release the accused or defendant from all civil proceedings for the same cause.

(4) The amount of any compensation ordered to be paid under subsection (1) shall be specified in the conviction or order, as the case may be.

(5) Subject to subsection (6), any amount of money awarded for compensation under this section shall be enforceable as an amount adjudged to be paid by conviction or order.

(6) Any compensation awarded on a complaint for a maintenance order or for the enforcement, variation, revocation, discharge or revival of such an order, against the person liable to make payments under the order shall be enforceable as an amount ordered to be paid by a maintenance order.

(7) In this section and in sections 73 and 74 "compensation order" means an order made by a magistrate requiring a person convicted of an offence to pay compensation for any personal injury, loss or damage resulting from that offence or any other offence that is taken into consideration by the magistrate in determining sentence.

Compensation orders against convicted persons.

73. (1) Subject to section 74, the magistrate may, on convicting a person of an offence, instead of or in addition to dealing with him in any other way, on application or otherwise make a compensation order requiring him to pay compensation for any personal injury, loss or damage resulting from that offence or any other offence that is taken into consideration by him in determining sentence.

(2) Compensation under subsection (1) shall be of such amount as the magistrate considers appropriate, having regard to any evidence and to any representations that are made by or on behalf of the accused or the prosecutor.

Cap. 155.

(3) In the case of an offence under the *Theft Act*, when the property in question is recovered, any damage to the property occurring while it was out of the owner's possession shall be treated for the purposes of subsection (1) as having resulted from the offence, however and by whomsoever the damage was caused.

(4) No compensation order shall be made in respect of any loss suffered by the dependants of a person in consequence of his death, and no such order shall be made in respect of injury, loss or damage due to an accident arising out of the presence of a motor vehicle on a road except such damage is treated by subsection (3) as resulting from an offence under the *Theft Act*.

(5) Where the magistrate considers

(a) that it would be appropriate both to impose a fine and to make a compensation order; but

- (b) that the offender has insufficient means to pay both an appropriate fine and appropriate compensation, the magistrate shall give preference to compensation though he may impose a fine as well.

(6) In determining whether to make a compensation order against any person, and in determining the amount to be paid by any person under such an order, the magistrate shall have regard to his means as far as they appear or are known to him.

74. The compensation to be paid under a compensation order made by a magistrate in respect of any offence of which the magistrate has convicted the offender shall not exceed \$5 000; and the compensation or total compensation to be paid under a compensation order or compensation orders made by a magistrate in respect of any offence or offences taken into consideration in determining sentence shall not exceed the difference, if any, between the amount or total amount which under the preceding provisions of this section is the maximum for the offence or offences of which the offender has been convicted and the amount or total amounts, if any, which are in fact ordered to be paid in respect of that offence or those offences.

Restriction on amount payable under compensation order of magistrates.

Miscellaneous

75. A person charged with high treason, treason or murder may be granted bail in accordance with the *Bail Act*.

Grant of bail in treason or murder.
Cap. 122A.

76. (1) Any person found committing an offence punishable on summary conviction under this Part may be taken into custody without a warrant by any police officer or parish constable or may be apprehended by the owner of the property on or with respect to which the offence is committed or by his servant or by any person authorised by him and may be detained until he can be delivered into the custody of a police officer or parish constable to be dealt with according to law.

Arrest without warrant of person found committing certain offences.

(2) Every police officer or parish constable may stop, search and detain any vessel, boat, cart or carriage, or other vehicle in or upon which there is reason to suspect that anything stolen or unlawfully

obtained may be found and also any person who may be reasonably suspected of having or conveying in any manner anything stolen or unlawfully obtained.

(3) Any person to whom any property is offered to be sold, pawned or delivered, if he has reasonable cause to suspect that any such offence has been committed with respect to such property or that the same or any part thereof has been stolen or otherwise unlawfully obtained, is hereby authorised to apprehend and detain and, as soon as may be, to deliver such offender into the custody of a police officer or parish constable, together with such property, to be dealt with according to law.

Bail on
arrest
without
warrant.
Cap. 122A.

77. (1) On a person's being taken into custody for an offence without a warrant, a police officer not below the rank of inspector, or the police officer in charge of the police station to which the person is brought, may grant him bail in accordance with the *Bail Act*.

(2) Where a person has been granted bail under subsection (1), the magistrate before whom he is to appear may appoint a later time as the time at which he is to appear and may enlarge the recognizances of any sureties for him to that time.

(3) Where, on a person's being taken into custody for an offence without a warrant, it appears to any such officer referred to in subsection (1) that the inquiry into the case cannot be completed forthwith, he may grant him bail with or without sureties subject to a duty to appear at such police station and at such a time as the officer appoints unless he previously receives a notice in writing from the officer in charge of that police station that his attendance is not required; and the recognizance of any surety for that person may be enforced as if it were conditioned for the appearance of that person before the magistrate of the district in which the police station named in the recognizance is situated.

(4) Where a person is taken into custody for an offence without a warrant and is retained in custody, he shall be brought before a magistrate as soon as practicable.

78. (1) Where

- (a) a summons or warrant has been issued requiring any person to appear or be brought before a magistrate to answer to an information;
- (b) any person has been arrested; or
- (c) any person has been arrested without a warrant for an offence,

Return of
property
taken from
accused.

and property has been taken from him after the issue of the summons or warrant or, as the case may be, on or after his arrest without a warrant, the police shall report the taking of the property, with particulars of the property, to the magistrate who deals with the case.

(2) Where the magistrate, being of opinion that the whole or any part of the property can be returned to the accused consistently with the interests of justice and the safe custody of the accused, so directs, the property or such part of it as the magistrate directs shall be returned to the accused or to such other person as he may require.

79. (1) A person who aids, abets, counsels or procures the commission by another person of a summary offence shall be guilty of the like offence and may be tried, whether or not he is charged as a principal, either by a magistrate having jurisdiction to try that other person or by a magistrate having by virtue of his own offence jurisdiction to try him.

Aiders and
abettors.

(2) Any offence consisting in aiding, abetting, counselling or procuring the commission of an offence triable either way, other than an offence listed in the *Second Schedule*, shall by virtue of this subsection be triable either way.

Second
Schedule.

80. (1) Any offence consisting in the incitement to commit a summary offence shall be triable only summarily.

Incitement.

(2) Subsection (1) is without prejudice to any other enactment by virtue of which any offence is triable only summarily.

(3) On conviction of an offence consisting in the incitement to commit a summary offence a person shall be liable to the same penalties as he would be liable to on conviction of the last-mentioned offence.

Corpora-
tions.
Fourth
Schedule.

81. The provisions of the *Fourth Schedule* have effect where a corporation is charged with an offence before a magistrate.

Service of
summons
out of time
after failure
to prove
service by
post.

82. Where any enactment requires, expressly or by implication, that a summons in respect of an offence be issued or served within a specified period after the commission of an offence and service of the summons may under the rules be effected by post, then, if under the rules service of the summons is not treated as proved, but it is shown that a letter containing the summons was posted at such time as to enable it to be delivered in the ordinary course of post within that period, a second summons may be issued on the same information; and the enactment shall have effect, in relation to that summons, as if the specified period were a period running from the return day of the original summons.

Taking of
finger-
prints.

83. (1) Where any person not less than 16 years old

- (a) who has been taken into custody is charged with an offence before a magistrate; or
- (b) appears before a magistrate in answer to a summons for an offence punishable with imprisonment,

the magistrate may, if he thinks fit and if the offence appears to him to be of a serious nature, on the application of a police officer not below the rank of inspector, order the finger-prints of that person to be taken by a constable.

(2) Finger-prints taken in pursuance of an order under this section shall be taken either at the place where the magistrate is sitting or, if the person to whom the order relates is remanded in custody, at any place to which he is committed; and a constable may use such reasonable force as may be necessary for that purpose.

(3) The provisions of this section shall be in addition to those of any other enactment under which finger-prints may be taken.

(4) Where the finger-prints of any person have been taken in pursuance of an order under this section, then, if he is acquitted, or the examining magistrate determines not to commit him for trial, or if the information against him is dismissed, the finger-prints and all copies and records of them shall be destroyed.

(5) In this section "finger-prints" includes palm-prints.

84. (1) Any magistrate who is satisfied by proof upon oath that there is reasonable ground for believing that there is in any building, ship, boat, vehicle, box, receptacle or place

Issue of search warrants and detention or disposal of articles seized thereunder.

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

may at any time issue a warrant under his hand authorising some police officer or parish constable, named therein to search such building, ship, boat, vehicle, box, receptacle or place for any such thing, and to seize and carry it before the magistrate issuing the warrant or some other magistrate, to be by him dealt with according to law.

(2) A search warrant under subsection (1) may be issued and executed on a Sunday and shall be executed between the hours of 5 o'clock in the morning and 8 o'clock at night; but the magistrate, in his discretion, may, by the warrant, authorise the constable to execute it at any hour.

(3) When anything mentioned in subsection (1) is seized and brought before any magistrate, he may detain or cause it to be detained, taking reasonable care that it be preserved, until the conclusion of the inquiry or the case according as the charge is for an indictable offence or for an offence triable summarily; and where any person is committed for trial or sentence or any appeal is made, he may order it to be further detained for the purpose of evidence on the trial or on the hearing of the appeal or pending the appeal.

(4) Where no person is committed or convicted, or no appeal is filed, the magistrate shall direct such thing to be restored to the person from whom it was taken except in the cases hereinafter mentioned, unless he is authorised or required by law to dispose of it otherwise.

(5) Where under any warrant issued under subsection (1) there is brought before any magistrate any forged banknote, paper, instrument or other thing the possession of which in the absence of lawful excuse is an indictable offence, the magistrate may direct such thing to be detained for production in evidence or to be otherwise dealt with as the case may require.

(6) Where under any warrant issued under subsection (1) there is brought before any magistrate any counterfeit coin or other thing the possession of which, with knowledge of its nature and without lawful excuse, is an offence, every such thing shall be delivered up to the Accountant-General or to any person authorised by him to receive the same as soon as it has been produced in evidence or as soon as it appears that it will not be required to be so produced.

(7) Where the thing to be searched for is gunpowder or any other explosive or dangerous or noxious substance or thing, it shall be disposed of in the manner directed by any statute relating to such substance or thing or, in default of such direction, as the magistrate may order.

(8) Where pursuant to subsection (3) any property is seized and is of such a nature as to change form during a lengthy period of detention the magistrate shall order that a photograph or other pictorial record be made of the said property, and that the property then be returned to the person from whom it was taken.

85. (1) Subject to subsection (2),

Construction
of references
to com-
plaints
in other
enactments.

(a) where any enactment confers power on a magistrate to deal with an offence or to issue a summons or warrant against a person suspected of an offence or liable to any fine, penalty, imprisonment or other punishment, on the complaint of any person; or

(b) where any enactment provides that a fine, penalty, term of imprisonment or other punishment shall be imposed, enforced or recovered summarily or before a magistrate or court of summary jurisdiction, whether on complaint or information,

then all such proceedings shall be brought by way of information in accordance with the provisions of this Act relating to informations and the procedure thereon.

(2) Any proceedings brought or instituted under any of the enactments specified in the *Fifth Schedule* shall be brought or instituted by way of complaint in accordance with the provisions of this Act relating to complaints and the procedure thereon; but where any such enactment contains any special provision with respect to the powers of the magistrate hearing, or the procedure to be followed at or consequent upon, the proceedings, then to the extent to which such special provisions are in conflict or inconsistent with this Act, such provisions shall prevail over this Act.

Fifth
Schedule.

(3) Any other proceedings to which neither subsections (1) and (2) nor section 86 apply shall be instituted and maintained before a magistrate in such manner as the enactment upon which they are founded directs and, if there is no such direction, then in accordance with the provisions of this Act relating to complaints and the procedure thereon.

PART V

JURISDICTION AND PROCEDURE
RELATING TO COMPLAINTS*Complaints: Jurisdiction*

Complaints. **86.** Subject to this Act, any proceeding before a magistrate, being a proceeding in which an order is sought against some person for the payment of money or for the doing, or abstaining from doing, of some act, and not being a proceeding in respect of an offence punishable either on summary conviction or on indictment or a matter in respect of his civil jurisdiction, shall be by way of complaint.

Issue of summons on complaint. **87.** Subject to this Act, where a complaint is made to a magistrate concerning any matter in respect of which the magistrate has jurisdiction, under this or any other enactment, to make an order against any person, the magistrate may issue a summons directed to that person requiring that person to appear before him to answer to the complaint.

Jurisdiction to deal with complaints. **88.** Where no express provision is made by any enactment or the rules specifying which magistrate has jurisdiction to hear a complaint, a magistrate shall have such jurisdiction if the complaint relates to anything done within the district to which the magistrate is assigned or anything left undone that ought to have been done there or ought to have been done either there or elsewhere or relates to any other matter arising within that district.

Hearing of Complaint

Procedure on hearing. **89.** (1) On the hearing of a complaint, the magistrate shall, if the defendant appears, state to him the substance of the complaint.

(2) The magistrate, after hearing the evidence and the parties, shall make the order for which the complaint is made or shall dismiss the complaint.

(3) Where the complaint is for an order for the variation of the rate of any periodical payments ordered by a magistrate to be made or for such other matter as may be prescribed, the magistrate may make the order with the consent of the defendant without hearing evidence.

90. (1) A magistrate may at any time, whether before or after beginning to hear a complaint, adjourn the hearing. Adjournment.

(2) The magistrate may when adjourning either fix the time and place at which the hearing is to be resumed or, unless he remands the defendant under section 91, leave the time and place to be determined later by him; but the hearing shall not be resumed at that time and place unless the magistrate is satisfied that the parties have had adequate notice thereof.

91. (1) Where at the time and place appointed for the hearing or adjourned hearing of a complaint the complainant appears but the defendant does not and does not sufficiently excuse his absence, the magistrate may, subject to subsection (3), proceed in his absence. Non-appearance of defendant.

(2) Where the magistrate, instead of proceeding in the absence of the defendant, adjourns or further adjourns the hearing, the magistrate may, if the complaint has been substantiated on oath and subject to the following provisions of this section, issue a warrant for his arrest.

(3) The magistrate shall not begin to hear the complaint in the absence of the defendant or issue a warrant under this section unless either it is proved to the satisfaction of the magistrate, on oath or in such other manner as may be prescribed, that the summons was served on the defendant within what appears to the magistrate to be a reasonable time before the hearing or adjourned hearing or the defendant has appeared on a previous occasion to answer to the complaint.

(4) Where the defendant fails to appear at an adjourned hearing, the magistrate shall not issue a warrant under this section unless he is satisfied that the defendant had adequate notice of the time and place of the adjourned hearing.

(5) Where the defendant is arrested under a warrant issued under this section, the magistrate may, on any subsequent adjournment of the hearing but subject to subsection (6), remand him.

(6) The magistrate shall not issue a warrant or remand a defendant under this section or further remand him by virtue of section 218 after he has given evidence in the proceedings.

(7) Where the magistrate remands the defendant, the time fixed for the resumption of the hearing shall be that at which he is required to appear or be brought before the magistrate in pursuance of the remand.

Non-
appearance
of complain-
ant.

92. Where, at the time and place appointed for the hearing or adjourned hearing of a complaint, the defendant appears but the complainant does not, the magistrate may dismiss the complaint or, if evidence has been received on a previous occasion, proceed in the absence of the complainant.

Non-
appearance
of both
parties.

93. Where at the time and place appointed for the hearing or adjourned hearing of a complaint neither the complainant nor the defendant appears, the magistrate may dismiss the complaint.

Cross-
complaints.

94. Where a complaint is made by one person against another and there is a cross-complaint by the defendant in such first-named case either by himself or together with another person against the complainant in the first-named case either by himself or together with another person and such cross-complaints are with reference to the same matter, the magistrate may, if he thinks fit, hear such complaints at one and the same time.

Hearing of
two or more
complaints
at the same
time.

95. Where 2 or more complaints are laid by one or more persons against another person or other persons and such complaints are founded on the same facts, the magistrate may, unless he is of opinion that the interests of justice would require separate proceedings, hear such complaints together.

Dismissal
because of
complain-
ant's failure
to proceed.

96. The dismissal of a complaint because of the failure of the complainant to proceed shall not operate as a bar to any other proceedings in the same matter.

97. (1) Any person against whom a complaint has been made shall be entitled to obtain from the clerk a certified copy of such complaint if in writing, upon payment of the prescribed fee.

Parties
entitled to
copies of
proceedings.

(2) Any party to any proceedings before a magistrate, or his attorney-at-law, shall be entitled, upon application to the magistrate at any stage of the proceedings or at any time within 12 months after the examination of the witnesses in such proceedings has been closed, to obtain a copy of the proceedings from the clerk upon payment of the prescribed fee.

Orders for Periodical Payments

98. (1) Where a magistrate orders money to be paid periodically by one person to another, the magistrate may order that the payment be made to the clerk or to the clerk of the magistrate's court of any other district.

Periodical
payment
through
clerks.

(2) Where the order is a maintenance order under the *Maintenance Act*, an order under the *Minors Act*, or an order under the *Family Law Act* the magistrate shall, unless upon representations expressly made in that behalf by the applicant for the order and he is satisfied that it is undesirable to do so, exercise his power under subsection (1).

Cap. 216.
Cap. 215.
Cap. 214.

(3) Where periodical payments under an order of any court are required to be paid to or through the clerk of a magistrate's court and any amounts payable under the order are in arrear, the clerk shall, if the person for whose benefit the payment should have been made so requests in writing, and unless it appears to the clerk that it is unreasonable in the circumstances to do so, proceed in his own name for the recovery of those amounts; but the person for whose benefit the payment should have been made shall have the same liability for all the costs properly incurred in or about the proceedings as if the proceedings had been taken by him.

(4) Nothing in this section affects any right of a person to proceed in his own name for the recovery of sums payable on his behalf under an order of a magistrate.

Revocation,
variation,
etc., of
orders for
periodical
payments.

99. (1) Where a magistrate has made an order for the periodical payment of money, the magistrate may, by order on complaint, revoke, revive or vary the order.

(2) The power to vary an order under subsection (1) includes power to suspend the operation of any provision of that order temporarily and to revive the operation of any provision so suspended.

Periodical
payments
payable by
one person
under more
than one
order.

100. (1) The power to make rules conferred by section 268 shall, without limiting subsection (1) of that section, include power to make provision

- (a) for enabling a person to make one complaint for the recovery of payments required to be made to him by another person under more than one periodical payments order; and
- (b) for apportioning between 2 or more periodical payments orders, in such manner as may be prescribed by the rules, any amount paid to the clerk to a magistrate's court on any date by the person liable to make payments under the orders which is less than the total amount required to be paid on that date to that clerk by that person in respect of those orders, being orders one of which requires payments to be made for the benefit of a child to the person with whom the child has his home and one or more of which require payments to be made to that person either for his own benefit or for the benefit of another child who has his home with him.

(2) In this section

"child" means a person who has not attained the age of 18;

"periodical payments order" means an order made by a magistrate or registered in a magistrate's court under the *Maintenance Orders (Reciprocal Enforcement) Act*, that requires the making of periodical payments;

and any payments required under a periodical payments order to be made to a child shall for the purposes of subsection (1) be treated as if they were required to be made to the person with whom the child has his home.

101. (1) Where under any Act a magistrate has power to require the doing of any thing, other than the payment of money, or to prohibit the doing of any thing, any order of the magistrate for the purpose of exercising that power may contain such provisions for the manner in which any thing is to be done, for the time in which any thing is to be done or during which any thing is not to be done and generally for giving effect to the order, as the magistrate thinks fit.

Orders
other than
for payment
of money.

(2) The magistrate may by order on complaint suspend or rescind an order referred to in subsection (1).

(3) Where any person disobeys an order of a magistrate to do any thing, other than the payment of money, or to abstain from doing any thing, the magistrate may

- (a) order him to pay an amount not exceeding \$10 for every day during which he is in default; or
- (b) commit him to custody until he has remedied the default or for a period not exceeding 60 days.

(4) A person shall not by virtue of subsection (3) be ordered to pay more than \$250 or be committed for more than 60 days in all for disobeying one or more orders to do or abstain from doing the same thing.

(5) Any amount ordered to be paid under subsection (3) shall for the purposes of this Act be treated as an amount adjudged to be paid on conviction by a magistrate.

(6) Subsections (1) to (5) do not apply to any order for the enforcement of which provision is made by any other enactment.

Payments to Children

Provisions
as to
payments
required to
be made to
a child, etc.

102. (1) Where

- (a) periodical payments are required to be made, or a lump sum is required to be paid, to a child under an order made by a magistrate; or
- (b) periodical payments are required to be made to a child under an order which is registered in a magistrate's court,

any amount required under the order to be paid to the child may be paid to the person who has the care and control of the child and that person

- (i) may proceed in his own name for the variation, revival or revocation of the order, and
- (ii) may either proceed in his own name for the recovery of any sum required to be paid under the order or request the clerk to the magistrate's court, under subsection (3) of section 98, to proceed for the recovery of that sum.

(2) Where a child has a right under any enactment to apply for the revival of an order made by a magistrate that provided for the making of periodical payments to or for the benefit of the child, the person who has the care and control of the child may proceed in his own name for revival of that order.

(3) Where any person by whom periodical payments are required to be paid to a child under an order made by a magistrate or registered in a magistrate's court makes a complaint for the variation or revocation of that order, the person who has the care and control of the child may answer the complaint in his own name.

(4) Nothing in subsections (1) and (2) affects any right of a child to proceed in his own name for the variation, revival or revocation of an order or for the recovery of any sum payable thereunder.

(5) In this section references to the person who has the care and control of the child include the Child Welfare Officer and the Child Care Board.

(6) In this section any reference to an order registered in a magistrate's court is a reference to an order registered in a magistrate's court under the *Family Law Act*, the *Maintenance Act* or the *Maintenance Orders (Reciprocal Enforcement) Act*.

Cap. 214.
Cap. 216.
Cap. 217.

(7) In this section "child" means a person who has not attained the age of 18.

Costs

103. (1) On the hearing of a complaint, a magistrate shall have power in his discretion to make such order as to costs

Power to
award costs
and enforce-
ment of
costs.

- (a) on making the order for which the complaint is made, to be paid by the defendant to the complainant;
- (b) on dismissing the complaint, to be paid by the complainant to the defendant,

as he thinks just and reasonable; but if the complaint is for an order for the periodical payment of money, or for the revocation, revival or variation of such an order, or for the enforcement of such an order, the magistrate may, whatever adjudication he makes, order either party to pay the whole or any part of the other's costs.

(2) The amount of any sum ordered to be paid under subsection (1) shall be specified in the order, or order of dismissal, as the case may be.

(3) Subject to subsection (4), an order for the payment of costs under this section shall be enforceable as a civil debt.

(4) Any costs awarded on a complaint for a maintenance order or order enforceable as a maintenance order, or for the enforcement, variation, revocation, discharge or revival of such an order, against the person liable to make payments under the order shall be enforceable as a sum ordered to be paid by a maintenance order.

(5) This section has effect subject to any other Act enabling a magistrate to order a successful party to pay the other party's costs.

Domestic Proceedings

Sitting of
magistrate's
courts for
domestic
proceedings.

104. (1) The business of a magistrate's court shall, so far as is consistent with the due despatch of business, be arranged in such manner as may be necessary for separating the hearing and determination of domestic proceedings from other business.

(2) Subject to any rules to the contrary, relatives or friends of either party and welfare or probation officers may be present in court unless, in a particular case, the court otherwise orders.

(3) During the taking in any domestic proceedings of any evidence that, in the opinion of the magistrate is of an intimate or indecent character, he may, if he thinks it necessary in the interest of the administration of justice or of public decency, direct that all persons, not being members or officers of the court or parties to the case, their attorneys-at-law or other persons directly concerned in the case, be excluded from the court during the taking of that evidence.

(4) The powers conferred on a magistrate by this section are in addition and without prejudice to any other powers of the court to hear proceedings *in camera*.

(5) Nothing contained in this section affects the exercise by a magistrate of the power to direct that witnesses shall be excluded from the court until they are called for examination.

Publication
of domestic
proceedings.
Cap. 216.
Cap. 214.

105. (1) No person may print or publish, or cause or procure to be printed or published, in relation to any proceedings under the *Maintenance Act* or the *Family Law Act* any particulars of the proceedings.

(2) A person who contravenes this section is guilty of an offence and liable on summary conviction to a fine of \$1 000 or imprisonment for 6 months or both.

(3) Notwithstanding subsection (1) no person other than a proprietor, editor, master printer or publisher is liable to be convicted for a contravention of this section.

- (4) This section does not apply to
- (a) the printing of any pleadings, transcript of evidence or other document for use in connection with proceedings or the communication of any such documents to persons concerned in the proceedings;
 - (b) the printing or publishing of a notice or report in pursuance of the directions of the court;
 - (c) the printing or publishing in good faith of any publication intended primarily for the use of members of the legal or medical profession, being
 - (i) a separate volume or part of a series of law reports, or
 - (ii) any other publication of a technical character.

106. (1) Where in any domestic proceedings in which an order may be made for the payment of money by any person, or in any proceedings for the enforcement or variation of any such order, a magistrate has requested a probation officer to investigate the means of the parties to the proceedings, he may direct the probation officer to report the results of his investigation to him in accordance with this section; but in the case of any such domestic proceedings no direction to report shall be given to a probation officer under this subsection until the magistrate has determined all issues arising in the proceedings other than the amount to be directed to be paid by such an order.

Report by probation officer on means of parties.

(2) Where the magistrate directs a probation officer under this section to report to him the result of his investigation under subsection (1), he may require him

- (a) to furnish him with a statement in writing about his investigation; or
- (b) to make an oral statement to him about his investigation.

(3) Where the magistrate requires a probation officer to furnish a statement in writing under subsection (2)

- (a) a copy of the statement shall be given to each party to the proceedings or to his attorney-at-law at the hearing; and

(b) the magistrate may, if he thinks fit, require that the statement, or such part of the statement as he may specify, shall be read aloud at the hearing.

(4) The magistrate may and, if requested to do so at the hearing by a party to the proceedings or his attorney-at-law shall, require the probation officer to give evidence about his investigation, and if the officer gives such evidence, any party to the proceedings may give or call evidence with respect to any matter referred to either in the statement or in the evidence given by the officer.

(5) Any statement made by a probation officer in a statement furnished or made by him under subsection (2), or any evidence that he is required to give under subsection (4), may be received by the magistrate as evidence, notwithstanding anything to the contrary in any enactment or rule of law relating to the admissibility of evidence.

Examination
of witness
by magis-
trate.

107. Where in any domestic proceedings or maintenance proceedings it appears to the magistrate that any party to the proceedings who is not legally represented is unable effectively to examine or cross-examine a witness, the magistrate shall ascertain from that party what are the matters about which the witness may be able to depose or on which the witness ought to be cross-examined, as the case may be, and shall put, or cause to be put, to the witness such questions in the interests of that party as may appear to the magistrate to be proper.

Reasons for
decisions in
domestic
proceedings.

108. (1) Without limiting subsection (1) of section 268, the power to make rules conferred by that section includes power to make provision for the recording by a magistrate, in such manner as may be prescribed by the rules, of reasons for a decision made in such domestic proceedings or class of domestic proceedings as may be so prescribed, and for making available a copy of any record made in accordance with those rules of the magistrate's reasons for his decision to any party to the proceedings who requests a copy thereof.

PART VI

SATISFACTION AND ENFORCEMENT

General Provisions

109. (1) A magistrate by whose conviction or order a sum is adjudged to be paid may, instead of requiring immediate payment, allow time for payment or order payment by instalments.

Power to dispense with immediate payment.

(2) Where a magistrate has allowed time for payment, he may, on application by or on behalf of the person liable to make the payment, allow further time or order payment by instalments.

(3) Where a magistrate has ordered payment by instalments and default is made in the payment of any instalment, proceedings may be taken as if the default had been made in the payment of all the instalments then unpaid.

110. (1) Subject to the following provisions of this Part, where default is made in paying a sum adjudged to be paid by a conviction or order of a magistrate, the magistrate may issue a warrant of distress for the purpose of levying the sum or issue a warrant committing the defaulter to prison.

Enforcement of sum adjudged to be paid.

(2) A warrant of commitment may be issued

(a) where it appears on the return to a warrant of distress that the money and goods of the defaulter are insufficient to satisfy the amount with the costs and charges of levying the same and that for want of sufficiency of land or other real estate no proceedings have been taken under subsection (5); or

(b) where it appears on the return to a warrant of distress after proceedings have been taken under subsection (5) that the land or other real estate of the defaulter levied on, taken in execution and sold was insufficient to satisfy the amount or any part thereof outstanding together with the cost and charges incurred in levying on the goods of the defaulter and the costs of the execution and fees of the Chief Marshal incurred in the taking of such proceedings; or

(c) instead of a warrant of distress.

Sixth
Schedule.

(3) The period for which a person may be committed to prison under such warrant as aforesaid shall not exceed the period applicable to the case under the *Sixth Schedule*.

(4) Where a magistrate has issued a warrant of distress for enforcing the payment of any penal or other amount adjudged to be due and owing, the Marshal to whom the same is issued shall, where the goods of the defaulter are insufficient to satisfy that amount with the costs and charges incurred in levying on the same but the defaulter is to the knowledge of the Marshal possessed of a sufficiency of land or other real estate to satisfy that amount or any part thereof outstanding together with any costs and charges incurred in levying on the goods of the defaulter, return such warrant to the Chief Marshal first endorsing thereon a description of the land or other real estate of the defaulter for the information of the Chief Marshal.

(5) Upon the return pursuant to subsection (4) of any warrant of distress to the Chief Marshal, the Chief Marshal shall, if satisfied with the information supplied by the Marshal, take the same proceedings for levying on, taking in execution and selling the land or other real estate of the defaulter as if execution to levy on, take in execution and sell the same had been issued out of the Supreme Court, but if not so satisfied shall direct the Marshal to make a return to the warrant.

(6) Where any land or other real estate is levied on, taken in execution and sold under subsection (5), the magistrate by whom the warrant of distress was issued or his successor in office shall have the like powers touching the land and other real estate so levied on and the sale or disposition thereof as a Judge has touching any land or other real estate levied on, taken in execution and sold by virtue of any execution issuing out of the Supreme Court.

Postpone-
ment of
issue of
warrant.

111. Where a magistrate has power to issue

(a) a warrant of distress; or

(b) a warrant of commitment,

under this Part, he may, if he thinks it expedient to do so, postpone the issue of the warrant until such time and on such conditions, if any, as he thinks fit.

112. (1) A warrant of distress issued for the purpose of levying an amount adjudged to be paid by the conviction or order of a magistrate shall not, if it states that the amount has been so adjudged to be paid, be held void by reason of any defect in the warrant.

Defect in
distress
warrant and
irregularity
in its
execution.

(2) A person acting under a warrant of distress shall not be deemed to be a trespasser from the beginning by reason only of any irregularity in the execution of the warrant.

(3) Nothing in this section prejudices the claim of any person for special damages in respect of any loss caused by a defect in the warrant or irregularity in its execution.

(4) Any person who removes any goods marked in accordance with the rules as articles impounded in the execution of a warrant of distress or defaces or removes any such marks shall be liable on summary conviction to a fine of \$500.

(5) Any person charged with the execution of a warrant of distress who wilfully retains from the proceeds of sale of the goods on which distress is levied, or otherwise exacts, any greater costs and charges than those properly payable, or makes any improper charge shall be liable on summary conviction to a fine of \$500.

113. (1) Where imprisonment or other detention has been imposed on any person by the order of a magistrate in default of payment of any amount adjudged to be paid by the conviction or order of a magistrate or for want of sufficient distress to satisfy that amount, then, on payment of that amount, together with the costs and charges of the commitment and distress, the order shall cease to have effect; and if the person has been committed to custody he shall be released unless he is in custody for some other cause.

Release from
custody and
reduction of
detention on
payment.

(2) Where, after a period of imprisonment or other detention has been imposed on any person in default of payment of any amount adjudged to be paid by the conviction or order of a magistrate or for

want of sufficient distress to satisfy that amount, payment is made, in accordance with the rules, of part of that amount, the period of detention shall be reduced by such number of days as bears to the total number of days in that period less one day the same proportion as the amount so paid bears to so much of that amount and the costs and charges of any distress levied to satisfy that amount as was due at the time the period of detention was imposed.

(3) In calculating the reduction required under subsection (2) any fraction of a day shall be left out of account.

Application
of money
found on
defaulter to
satisfy
amount
adjudged

114. (1) Where a magistrate has adjudged a person to pay an amount by a conviction or has ordered the enforcement of an amount due from a person under a maintenance order or an order enforceable as a maintenance order, the magistrate may order him to be searched.

(2) Any money found on the arrest of a person adjudged to pay such amount or on such a search or on his being taken to prison or other place of detention in default of payment of such an amount or for want of sufficient distress to satisfy such an amount, may, unless the magistrate otherwise directs, be applied towards payment of that amount, and the balance, if any, shall be returned to him.

(3) A magistrate shall not allow the application of any money found on a person if he is satisfied that the money does not belong to him or that the loss of the money would be more injurious to his family than would be his detention.

Amounts Adjudged to be Paid by a Conviction

Enforcement
of fines
imposed on
juvenile
offenders.
Cap. 138.

115. (1) Where a magistrate would, but for section 13 of the *Juvenile Offenders Act* have power to commit to prison a person under the age of 16 for a default consisting in failure to pay, or want of sufficient distress to satisfy, an amount adjudged to be paid by a conviction, the magistrate may, subject to the following provisions of this section, make

- (a) an order requiring the defaulter's parent or guardian to enter into a recognizance to ensure that the defaulter pays so much of that amount as remains unpaid; or

(b) an order directing so much of that amount as remains unpaid to be paid by the defaulter's parent or guardian instead of by the defaulter.

(2) An order under subsection (1) shall not be made in respect of a defaulter

(a) in pursuance of paragraph (a) of that subsection, unless the parent or guardian in question consents;

(b) in pursuance of paragraph (b) of that subsection, unless the magistrate is satisfied in all the circumstances that it is reasonable to make the order.

(3) A magistrate shall not make an order under subsection (1) in consequence of a default of a person under the age of 16 years consisting in failure to pay or want of sufficient distress to satisfy an amount adjudged to be paid by a conviction unless the magistrate has since the conviction inquired into the defaulter's means in his presence on at least one occasion.

(4) A magistrate shall not make an order under subsection (1) unless the magistrate is satisfied that the defaulter has, or has had since the date on which the amount in question was adjudged to be paid, the means to pay the amount or any instalment of it on which he has defaulted, and refuses or neglects or, as the case may be, has refused or neglected, to pay it.

(5) An order under subsection (1) may be made in pursuance of paragraph (b) of that subsection against a parent or guardian who, having been required to attend, has failed to do so; but, save as aforesaid, an order under that subsection shall not be made in pursuance of that paragraph without giving the parent or guardian an opportunity of being heard.

(6) A parent or guardian may appeal to the High Court against an order under subsection (1) made in pursuance of paragraph (b) of that subsection.

(7) Any amount ordered under subsection (1)(b) to be paid by a parent or guardian may be recovered from him in like manner as if the order had been made on the conviction of the parent or guardian of an offence.

(8) In this section

Cap. 138.

"amount adjudged to be paid by a conviction" means any fine, costs, compensation or other amount adjudged to be paid by an order made on a finding of guilt, including an order made under the *Juvenile Offenders Act*;

"guardian", in relation to a person under the age of 16, means a person appointed, according to law, to be his guardian by deed or will, or by order of a court of competent jurisdiction.

Restriction
on power to
impose
imprison-
ment on
conviction.

116. (1) A magistrate on adjudging a person to pay a sum upon conviction shall, subject to subsection (2), allow him at least 7 days to pay the sum or the first instalment of the sum.

(2) Where the offender fails to pay the sum on the occasion of his conviction and

- (a) he appears to the magistrate to have sufficient means to pay the sum forthwith; or
- (b) on being asked by the magistrate whether he wishes to have time for payment, he does not ask for time; or
- (c) he fails to satisfy the magistrate that he has a fixed abode; or
- (d) there is some other special circumstance appearing to the magistrate to justify immediate committal,

the magistrate may on that occasion issue a warrant of commitment under this Part and, if he does so, shall state in the warrant the reasons for not allowing the offender time to pay.

(3) Where time is allowed for payment or payment by instalments is ordered, a magistrate may, on the occasion of the conviction, impose a term of imprisonment in the event of a future default in paying the sum adjudged to be paid.

(4) Where a magistrate has imposed a term of imprisonment as provided by subsection (3), then, if at any time the offender asks the magistrate to commit him to prison immediately, the magistrate may do so notwithstanding anything in subsection (1).

(5) Nothing in this section shall affect the power of a magistrate to enforce by distress payment of a sum adjudged to be paid by a conviction.

117. (1) Where the magistrate does not on the occasion of the conviction issue a warrant of commitment or fix a term of imprisonment as provided by section 116, he shall not commit an offender to prison for failing to pay a sum adjudged to be paid by a summary conviction or for want of sufficient distress to satisfy such a sum, unless on an occasion subsequent to the conviction the magistrate has enquired into his means in his presence.

Restriction
on committal
after
conviction:
means
enquiry.

(2) Subsection (1) shall not apply where the offender is in prison.

(3) A magistrate may, for the purpose of enabling an enquiry to be made under this section

- (a) issue a summons requiring the offender to appear before him at the time and place appointed in the summons; or
- (b) issue a warrant to arrest the offender and bring him before the magistrate.

(4) On the failure of the offender to appear before the magistrate in answer to a summons under this section, the magistrate may issue a warrant to arrest him and bring him before the magistrate.

(5) Notwithstanding anything in section 216, a warrant under this section shall cease to have effect where the sum in respect of which the warrant is issued is paid to the constable holding the warrant.

118. (1) Where a magistrate has imposed a fine on conviction of an offender, the magistrate may remit the whole or any part of the fine if he thinks it just to do so having regard to any change in his circumstances since the conviction, and where the magistrate remits the whole or part of the fine after a term of imprisonment has been fixed,

Power to
remit fine.

he shall also reduce the term by an amount that bears the same proportion to the whole term as the amount remitted bears to the whole fine or, as the case may be, shall remit the whole term.

(2) In calculating the reduction in a term of imprisonment required by this subsection any fraction of a day shall be left out of account.

(3) Notwithstanding the definition of "fine" in section 2, references in this section to a fine do not include any other amount adjudged to be paid on conviction, whether as a pecuniary penalty, forfeiture, compensation or otherwise.

Variation of instalments of sum adjudged to be paid by conviction.

119. Where under section 109 a magistrate orders that an amount adjudged to be paid by a conviction shall be paid by instalments, the magistrate, on an application made by the person liable to pay that amount, shall have power to vary that order by varying the number of instalments payable, the amount of any instalment payable, and the date on which any instalment becomes payable.

Amounts Adjudged to be Paid by Default on Order

Restriction on power to impose imprisonment for default on order.

120. (1) A magistrate shall not exercise his power under section 110 to issue a warrant to commit to prison a person who makes default in paying an amount adjudged to be paid by an order made by the magistrate except where the default is under

(a) a magistrate's court maintenance order; or

(b) an order for the payment of any taxes, contributions, premiums or liabilities specified in Part I of the *Seventh Schedule*.

Seventh Schedule.

(2) This section does not affect the power of a magistrate to issue a warrant of committal in the case of default in paying an amount adjudged to be paid by a conviction or treated, by any enactment relating to the collection or enforcement of fines, costs, compensation or forfeited recognizances, as so adjudged to be paid.

(3) In this section

"magistrate's court maintenance order" means a maintenance order enforceable by a magistrate's court;

"maintenance order" means any order specified in Part II of the *Seventh Schedule* and includes such an order that has been discharged, if any arrears are recoverable thereunder.

Seventh
Schedule.

121. Where a defendant is detained or imprisoned under a warrant of commitment issued by a magistrate, the detention or imprisonment shall not operate to discharge the defendant from his liability to pay the amount in respect of which the warrant was issued.

Detention or
imprison-
ment does
not discharge
liability to
pay.

122. Where a person is committed to custody under this Part for failure to pay an amount due under a maintenance order or order enforceable as a maintenance order, then, unless the magistrate otherwise directs, no arrears shall accrue under the order while he is in custody.

Effect of
committal
on arrears.

123. On the hearing of a complaint for the enforcement, revocation, revival, variation or discharge of a maintenance order or an order enforceable as a maintenance order, the magistrate may remit the whole or any part of the amount due under the order.

Power to
remit arrears.

124. (1) A magistrate shall not commit any person to prison or other detention in default of payment of an amount enforceable under an order for the payment of any taxes, contributions, premiums or liabilities specified in Part I of the *Seventh Schedule* or for want of sufficient distress to satisfy such an amount except by an order made on complaint and on proof to his satisfaction that that person has, or has had since the date on which the amount was adjudged to be paid, the means to pay the amount or any instalment of it on which he has defaulted, and refuses or neglects or, as the case may be, has refused or neglected to pay it.

Civil debt:
complaint
for non-
payment.

(2) A complaint under this section may be made at any time notwithstanding anything in this or any other Act.

(3) Where a magistrate on any such complaint commits the defendant to custody, he may direct that the costs or part thereof incurred by the complainant in proceedings for the enforcement of the amount shall be included in the amount on payment of which the defendant may be released from custody.

This Part
additional to
any other
powers
under other
enactments.

125. The provisions of this Part are in addition to, and not in derogation of, the provisions of any other enactment relating to satisfaction on enforcement in respect of convictions or enforcement in respect of convictions or orders by magistrates.

PART VII

WITNESSES AND EVIDENCE

Procuring Attendance of Witnesses

Summons to
witness and
warrant for
his arrest.

126. (1) Where a magistrate is satisfied that any person is likely to be able to give material evidence or to produce any document or thing likely to be material evidence at any enquiry into an indictable offence or at the summary trial of an information or hearing of a complaint and that that person will not voluntarily attend as a witness or will not voluntarily produce the document or thing, the magistrate shall issue a summons directed to that person requiring him to attend before the magistrate at the time and place appointed in the summons to give evidence or to produce the document or thing.

(2) Where a magistrate is satisfied on oath of the matters mentioned in subsection (1), and also that it is probable that a summons under subsection (1) would not procure the attendance of the person in question, the magistrate may instead of issuing a summons issue a warrant to arrest that person and bring him before the magistrate at a time and place specified in the warrant.

(3) On the failure of any person to attend before a magistrate in answer to a summons under this section, if

- (a) the magistrate is satisfied by evidence on oath that he is likely to be able to give material evidence or produce any document or thing likely to be material evidence in the proceedings; and
- (b) it is proved on oath or in such other manner as may be prescribed that he has been duly served with the summons; and
- (c) it appears to the magistrate that there is no just excuse for the failure,

the magistrate may issue a warrant to arrest him and bring him before the magistrate at a time and place specified in the warrant.

(4) Where any person attending or brought before a magistrate refuses without just excuse to be sworn or give evidence or produce any document or thing, the magistrate may commit him to custody until the expiration of such period not exceeding 7 days as may be specified in the warrant or until he sooner gives evidence or produces the document or thing.

127. (1) A magistrate may, upon application on affidavit by either party, issue an order signed by him and under the seal of the court for bringing up before the court any prisoner or person confined in any gaol, prison or place under any sentence or under commitment for trial or otherwise to be examined as a witness in any action or matter pending or to be enquired of or determined in or before such court.

Magistrate may issue warrant for bringing up a prisoner to give evidence.

(2) The person required by any such warrant or order to be brought before such court shall be so brought under the same care and custody, and be dealt with in like manner in all respects, as a prisoner required by any writ of *habeas corpus* awarded by the High Court to be brought before the High Court to be examined as a witness in any cause or matter pending before the High Court.

Evidence Generally

128. Subject to the provisions of any enactment or rule of law authorising the reception of unsworn evidence, evidence given before a magistrate shall be on oath.

Evidence on oath.

129. Where a magistrate, otherwise than in the exercise of his civil jurisdiction, has ordered one person to pay to another any amount of money and proceedings are taken before him or any other magistrate to enforce payment of the amount, then

Proof of non-payment of amount adjudged.

- (a) if the person to whom the amount is ordered to be paid is a clerk of a magistrate's court, a certificate purporting to be signed by the clerk that the amount has not been paid to him; and

- (b) in any other case a document purporting to be a declaration sworn before a person authorised to administer oaths by the person to whom the amount is ordered to be paid that the amount has not been paid to him,

shall be admissible as evidence that the amount has not been paid to him, unless the magistrate requires the clerk or other person to be called as a witness.

Statement of
wages to be
evidence.

130. A statement in writing to the effect that wages of any amount have been paid to a person during any period, purporting to be signed by or on behalf of his employer, shall be evidence of the facts therein stated in any proceedings taken before a magistrate

- (a) for enforcing payment by the person to whom the wages are stated to have been paid of an amount adjudged to be paid by a summary conviction or order; or
- (b) on any application made by or against that person for the making of a maintenance order or an order enforceable as a maintenance order, or for the variation, revocation, discharge or revival of such an order.

Onus of
proving
exceptions,
etc.

131. Where the defendant to an information or complaint relies for his defence on any exception, exemption, proviso, excuse or qualification, whether or not it accompanies the description of the offence or matter of complaint in the enactment creating the offence or on which the complaint is founded, the burden of proving the exception, exemption, proviso, excuse or qualification shall be on him; and this notwithstanding that the information or complaint contains an allegation negating the exception, exemption, proviso, excuse or qualification.

Evidence in Criminal Cases

Written
statements
before an
examining
magistrate.

132. (1) Where it appears to an examining magistrate that the conditions mentioned in subsection (2) are satisfied, a written statement by any person is admissible as evidence to the like extent as oral evidence to the like effect by that person.

(2) The conditions that must be satisfied for the purposes of subsection (1) are

- (a) the statement purports to be signed by the person who made it;
- (b) the statement contains a declaration by that person to the effect that it is true to the best of his knowledge and belief, and that he made the statement knowing that, if it were tendered in evidence, he would be liable to prosecution if he wilfully stated in it anything which he knew to be false or did not believe to be true;
- (c) before the statement is tendered in evidence, a copy of the statement is given, by or on behalf of the party proposing to tender it, to each of the other parties to the proceedings; and
- (d) none of the other parties, before the statement is tendered in evidence at the enquiry, objects to the statement being so tendered under this section.

(3) Paragraphs (a), (b) and (c) of this subsection shall apply to any written statement tendered in evidence

- (a) if the statement is made by a person under the age of 18, it shall give the age of that person;
- (b) if it is made by a person who cannot read, it shall be read to him before he signs it and shall be accompanied by a declaration by the person who so read the statement to the effect that it was so read; and
- (c) if it refers to any other document as an exhibit, the copy given to any other party to the proceedings under subsection (2)(c) must be accompanied by a copy of that document or by such information as may be necessary in order to enable the party to whom it is given to inspect that document or a copy thereof.

(4) Notwithstanding that a written statement made by any person may be admissible under this section at an enquiry, the examining magistrate may, on his own motion or on the application of any party to the proceedings, require that person to attend before him and give evidence.

(5) So much of any statement as is admitted in evidence under this section shall, unless the magistrate commits the accused for trial under section 20 or the magistrate otherwise directs, be read aloud at the hearing, and where the magistrate so directs an account shall be given orally of so much of any statement as is not read aloud.

(6) Any document or object referred to as an exhibit and identified in a written statement tendered in evidence under this section shall be treated as if it had been produced as an exhibit and identified in court by the maker of the statement.

Cap. 127. (7) Section 25 of the *Criminal Procedure Act* applies to any written statement tendered in evidence in committal proceedings under this section as it applies to a deposition taken in such proceedings, but in its application to any such statement that section has effect as if the words "and where it is also proved that such deposition was taken in the presence of the person so accused and that he or his attorney-at-law had a full opportunity of cross-examining the witness, then if such deposition purport to be signed by the magistrate by or before whom the same purports to have been taken" were omitted therefrom.

Cap. 127. (8) In subsection (3) of section 4 of the *Criminal Procedure Act*, the reference to facts disclosed in any deposition taken before a magistrate in the presence of the accused shall be construed as including a reference to facts disclosed in any written statement under this section.

(9) A person whose written statement is tendered in evidence under this section shall be treated for the purposes of section 30 as a witness who has been examined by the magistrate.

(10) Nothing in this section shall be deemed as permitting any written statement tendered under this section to be used for the purposes of section 55.

Evidence of
children in
committal
proceedings
for sexual
offences.

133. (1) In any proceedings before a magistrate inquiring into a sexual offence as an examining magistrate

- (a) a child shall not be called as a witness for the prosecution; but
- (b) any statement made in writing by or taken in writing from the child shall be admissible in evidence of any matter of which his oral testimony would be admissible,

except in a case where the application of this subsection is excluded under subsection (2).

(2) Subsection (1) does not apply

- (a) where at or before the time when such a statement is tendered in evidence the defence objects to the application of that subsection; or
- (b) where the prosecution requires the attendance of the child for the purpose of establishing the identity of any person; or
- (c) where the magistrate is satisfied that it has not been possible to obtain from the child a statement that may be given in evidence under this section; or
- (d) where the inquiry into the offence takes place after the magistrate has discontinued to try it summarily and the child has given evidence in the summary trial.

(3) Section 55 does not apply to any statement admitted in pursuance of subsection (1).

(4) In this section "child" has the same meaning as in the *Prevention of Cruelty to Children Act*, and "sexual offence" means any offence under the *Sexual Offences Act* or any attempt to commit such an offence. Cap. 145.
Cap. 154.

134. Where a person is convicted of a summary offence by a magistrate, other than in a juvenile court, and Proof of
previous
convictions.

- (a) it is proved to the satisfaction of the magistrate, on oath or in such other manner as may be prescribed, that not less than 7 days previously a notice was served on the accused in the prescribed form and manner specifying any alleged previous conviction of the accused of a summary offence proposed to be brought to the notice of the magistrate in the event of his conviction of the offence charged; and
- (b) the accused is not present in person before the magistrate,

the magistrate may take account of any such previous conviction so specified as if the accused had appeared and admitted it.

Deposition
of person
dangerously
ill.

135. (1) Where a person appears to a magistrate to be able and willing to give material information relating to an indictable offence or to any person accused of an indictable offence and

- (a) the magistrate is satisfied, on a representation made by a registered medical practitioner, that the person able and willing to make the statement is dangerously ill and unlikely to recover; and
- (b) it is not practicable for the examining magistrate to take the evidence of the sick person in accordance with this Act and the rules,

the magistrate may take in writing the deposition of the sick person on oath.

(2) A deposition taken under this section may be given in evidence before an examining magistrate inquiring into an information against the offender or in respect of the offence to which the deposition relates and, if the offender or any person be committed for trial in respect of the offence, at the trial of such offender or person, but subject to such conditions as may be prescribed.

Offences

False written
statements
tendered in
evidence.

136. (1) Any person who, in a written statement tendered in evidence in criminal proceedings under section 132, wilfully makes a statement material in those proceedings that he knows to be false or does not believe to be true is liable on conviction on indictment to imprisonment for a term of 2 years or a fine of \$5 000 or to both.

Cap. 142.

(2) The *Perjury Act* has effect as if this section were contained in that Act.

137. Any person who, in any solemn declaration, certificate or other writing made or given for the purpose of its being used in pursuance of the rules as evidence of the service of any document or the handwriting or seal of any person, makes a statement that he knows to be false in a material particular or recklessly makes any statement that is false in a material particular, is liable on summary conviction to a fine of \$1 000 or imprisonment for a term of one year or both.

False statement in declaration proving service, etc.

PART VIII

RECOGNIZANCES

Recognizances to Keep the Peace or be of Good Behaviour

138. (1) The power of a magistrate on the complaint of any person to adjudge any other person to enter into a recognizance, not exceeding 12 months with or without sureties, to keep the peace and be of good behaviour towards the complainant shall be exercised by order on complaint.

Binding over to keep the peace or be of good behaviour.

(2) Where a complaint is made under this section, the power of the magistrate to remand the defendant under subsection (5) of section 91 shall not be subject to the restrictions imposed by subsection (6) of that section.

(3) Where any person ordered by a magistrate under subsection (1) to enter into a recognizance, with or without sureties, to keep the peace or be of good behaviour fails to comply with the order, the magistrate may commit him to custody for a period not exceeding 6 months or until he sooner complies with the order.

139. A magistrate shall have power on any information for a summary offence, whether the information be dismissed or the accused be convicted, to bind both the informant, accused and any witness in the case, or all or any of them, with or without sureties, to be of good behaviour and may order any person so bound, in default of compliance with the order, to be imprisoned for 12 months in addition to any other punishment to which such person is liable.

Power to bind parties to be of good behaviour.

Discharge of
recogni-
zance to
keep the
peace or be
of good
behaviour.

140. (1) On a complaint being made to a magistrate by a surety to a recognizance to keep the peace or to be of good behaviour entered into before a magistrate that the person bound by the recognizance as principal has been, or is about to be, guilty of conduct constituting a breach of the conditions of the recognizance, the magistrate may, if the complaint alleges that the principal is, or is believed to be, in his district or if the recognizance was entered into before a magistrate for that district, issue a warrant to arrest the principal and bring him before the magistrate of that district, or a summons requiring the principal to attend before such magistrate; but the magistrate shall not issue a warrant unless the complaint is in writing and substantiated on oath.

(2) The magistrate before whom the principal appears or is brought in pursuance of such a summons or warrant may, unless he adjudges the recognizance to be forfeited, order the recognizance to be discharged and order the principal to enter into a new recognizance, with or without sureties, to keep the peace or to be of good behaviour.

Other Provisions

Warrant
endorsed
for bail.

141. (1) A magistrate on issuing a warrant for the arrest of any person may grant him bail by endorsing the warrant with a direction in accordance with subsection (2).

(2) A direction for bail endorsed on a warrant under subsection (1) shall,

- (a) in the case of bail in criminal proceedings, state that the person arrested is to be released on bail on his entering into such recognizance, with or without sureties, subject to a duty to appear before a magistrate at the time and place specified in the endorsement;
- (b) in the case of bail otherwise than in criminal proceedings, state that the person arrested is to be released on bail on his entering into such recognizance, with or without sureties, conditioned for his appearance before a magistrate as may be specified in the endorsement;

and the endorsement shall fix the amounts in which any sureties and, in a case falling within paragraph (b), that person is or are to be bound.

(3) Where a warrant has been endorsed for bail under subsection (1), then, on the person referred to in the warrant being taken to a police station on arrest under the warrant, the officer in charge of the police station shall, subject to his approving any surety tendered in compliance with the endorsement, release him from custody as directed in the endorsement.

142. Where a magistrate has committed a person to custody in default of finding sureties, the magistrate may, on application by or on behalf of the person committed and after hearing fresh evidence, reduce the amount in which it is proposed that any surety should be bound or dispense with any of the sureties or otherwise deal with the case as he thinks fit.

Varying or dispensing with requirements as to sureties.

143. (1) Where a magistrate has power to take any recognizance, he may, instead of taking it, fix the amount in which the principal and his sureties, if any, are to be bound; and thereafter the recognizance may be taken by any such person as may be prescribed.

Postponement of taking recognizances.

(2) Where, in pursuance of this section, a recognizance is entered into otherwise than before the magistrate who fixed the amount of it, the same consequences shall follow as if it had been entered into before that magistrate; and references in this or any enactment to the magistrate or court before which a recognizance was entered into shall be construed accordingly.

(3) Nothing in this section shall enable a magistrate to alter the amount of a recognizance fixed by the High Court.

144. (1) Where a recognizance to keep the peace or to be of good behaviour has been entered into before a magistrate or any recognizance is conditioned for the appearance of a person before a magistrate or for his doing any other thing connected with a proceeding before a magistrate and the recognizance appears to the magistrate to be forfeited, the magistrate may, subject to subsection (2), declare the recognizance to be forfeited and adjudge the persons bound thereby, whether as principal or sureties, or any of them to pay the amount in which they are respectively bound.

Forfeiture of recognizances.

(2) Where a recognizance is conditioned to keep the peace or to be of good behaviour, the magistrate shall not declare it to be forfeited except by order made on complaint.

(3) The magistrate who declares the recognizance to be forfeited may, instead of adjudging any person to pay the whole amount in which he is bound, adjudge him to pay part only of the amount or remit the amount.

(4) Payment of any amount adjudged to be paid under this section, including any costs awarded against the defendant, may be enforced, and any such amount shall be applied as if it were a fine and as if the adjudication were a summary conviction; but, at any time before the issue of a warrant of commitment to enforce payment of the amount, or before the sale of goods under a warrant of distress to satisfy the amount, the magistrate may remit the whole or any part of the amount either absolutely or on such conditions as he thinks just.

(5) Where any recognizance, entered into before a magistrate, is conditioned for the appearance of a person before the High Court or for his doing any other thing connected with proceedings before the High Court, the clerk shall transmit such recognizance to the Registrar.

(6) Where any such recognizance as is mentioned in subsection (5) has been forfeited by the High Court, the Registrar shall transmit it to the magistrate before whom it was entered into, together with a certificate of its forfeiture and the directions of the High Court; and the magistrate shall thereupon enforce the recognizance in accordance with such directions.

Warrant in
breach of
recogni-
zance.

145. Where any person charged with or convicted of an offence has entered into a recognizance conditioned for his appearance before a magistrate and in breach of that recognizance fails to appear, the magistrate may, without prejudice to his power to enforce the recognizance, issue a warrant for his arrest.

PART IX

CIVIL JURISDICTION AND PROCEDURE

Preliminary

146. In this Part the expression

Interpreta-
tion.

"clerk of court" means any person assigned to perform the duties of, or a part of the duties of, a clerk of a magistrate's court;

"person" includes a body corporate or politic;

"prescribed limit" means the amount of \$10 000 whether on balance of account or otherwise, or such other amount as may from time to time be prescribed by the Minister;

"return day" means the day appointed in any summons or proceedings for the appearance of the defendant or any other day fixed for the trial or hearing of any plaint.

Jurisdiction

147. (1) Subject to subsection (2), every magistrate's court shall have jurisdiction to hear and determine any action founded on contract or tort where the debt, demand or damages claimed do not exceed the prescribed limit.

General
jurisdiction
in actions of
contract and
tort.

(2) A magistrate's court shall not, except as in this Act provided, have jurisdiction to hear and determine any action

- (a) for the recovery of land; or
- (b) in which the title to any hereditament or to any franchise is in question; or
- (c) for malicious prosecution; or
- (d) for defamation; or

(e) in which the validity of any device, bequest or limitation under any will or settlement may be disputed.

(3) A magistrate's court shall have jurisdiction to hear and determine any action where the debt or demand claimed consists of a balance not exceeding the prescribed limit after a set-off of any debt or demand claimed or recoverable by the defendant from the plaintiff, being a set-off admitted by the plaintiff in the particulars of his claim or demand.

Money
recoverable
by statute.

148. A magistrate's court shall have jurisdiction to hear and determine an action for the recovery of an amount recoverable by virtue of any enactment for the time being in force, if it is expressly provided by that or any other enactment that such amounts shall be recoverable in a magistrate's court.

Abandon-
ment of part
of claim to
give court
jurisdiction.

149. (1) Where a plaintiff has a cause of action for more than the prescribed limit in which, if it were not for more than the prescribed limit, a magistrate's court would have jurisdiction, the plaintiff may abandon the excess and thereupon a magistrate's court shall have jurisdiction to hear and determine the action, but the plaintiff shall not recover in the action an amount exceeding the prescribed limit.

(2) Where a magistrate's court has jurisdiction to hear and determine an action by virtue of this section, the judgment of the magistrate's court in the action shall be in full discharge of all demands in respect of the cause of action, and entry of the judgment shall be made accordingly.

Division of
causes of
action.

150. It shall not be lawful for any plaintiff to divide any cause of action for the purpose of bringing 2 or more actions in one or more magistrate's courts.

Jurisdiction
under other
enactments.

151. A magistrate's court shall have jurisdiction to hear and determine any matter where any enactment expressly provides that a magistrate's court shall have jurisdiction.

Procedure

152. (1) A plaintiff desiring to bring an action under this Part shall file with the clerk of the court a request for the issue of a summons together with a plaint in writing with copies for every defendant named in the action. Plaint to be entered by clerk.

(2) Every plaint shall state the names and last-known places of residence of the parties, the substance of the action intended to be brought and the relief or remedy which the plaintiff seeks, and shall be numbered in every year according to the order in which it is entered.

(3) On filing the documents mentioned in subsection (1) the clerk shall

- (a) enter the plaint in the records of the court;
- (b) prepare a summons and make any necessary copies;
- (c) annex to or incorporate in the summons and every copy so made a copy of the plaint.

(4) Thereupon a summons, stating the substance of the action and bearing the number of the plaint in the margin thereof, shall be issued according to such form, and be served on the defendant so many days before the day on which the court at which the action is to be heard is sitting, as is directed by the rules of court.

(5) Delivery of such summons to the defendant or in such other manner as is specified in the rules of court shall be deemed good service and no misnomer or inaccurate description of any person or place in any such plaint or summons shall vitiate the same, provided that the person or place be therein described so as to be commonly known.

153. A summons under section 152 shall issue in the district in which the cause of action arose. Where summons may issue.

When
plaintiff may
proceed if
defendant
out of
Barbados or
cannot be
found.

154. Where a defendant is out of Barbados and has no attorney-at-law on record authorised to accept service on his behalf, or where the place of residence in Barbados of any defendant cannot be ascertained, the magistrate may, upon an affidavit of the fact, direct the service of the summons to be effected within such time and in such manner as he may think fit.

Parties to Proceedings

Process
where
persons
jointly
answerable.

155. (1) Where any plaintiff has any demand recoverable under this Part against 2 or more persons jointly answerable, it shall be sufficient if any of such persons be served with process, and judgment may be obtained and execution issued against the person or persons so served notwithstanding that others jointly liable may not have been served or sued or may not be within the jurisdiction of the court.

(2) Every such person against whom judgment is obtained under this Part and who satisfies such judgment shall be entitled to demand and recover in the court contribution from any other person jointly liable with him.

Minor
capable of
suing.

156. Any person under the age of 18 years may sue in any magistrate's court for any amount of money not greater than the prescribed limit which may be due to him for wages or piece-work or for work as a servant, in the same manner as if he were of full age.

Executor
can sue and
be sued.

157. Any executor or administrator may sue and be sued in any magistrate's court in like manner as if he were a party in his own right, and judgment and execution shall be such as in the like case would be given or issued in the High Court.

Bankruptcy
of plaintiff
not to cause
action to
abate.

158. The bankruptcy of the plaintiff in any action in any magistrate's court which the Official Assignee might maintain for the benefit of the creditors shall not cause the action to abate, but the same may be continued by the Official Assignee.

Default Summons

159. (1) In any action brought in any magistrate's court for a debt or liquidated money demand, the plaintiff may at his option cause to be issued a summons in the ordinary form or a default summons in the form or to the effect given in the rules of court.

Issue of
default
summons.

(2) Where a default summons is issued, it shall be personally served on the defendant, and if the defendant does not within 6 days after service of the summons, inclusive of the day of service, give notice in writing, signed by himself or his attorney-at-law, to the clerk of the court from which the summons issued of his intention to defend, the magistrate shall, at the expiration of such 6 days, upon an affidavit being filed in the office of the clerk sworn to before a Justice of the Peace of the due service of such summons, enter judgment against the defendant for the amount claimed and costs.

160. (1) Where personal service of a default summons cannot be effected and the court is satisfied by affidavit sworn before a Justice of the Peace that reasonable efforts have been made to effect such service and either that the summons has come to the knowledge of the defendant or that he wilfully evades service of the same, the court may order that a copy of such summons shall be left at the last-known place of residence of the defendant.

Proceedings
where
personal
service of
default
summons
cannot be
effected.

(2) At the expiration of 6 days after such summons has been so left, inclusive of the day of leaving the same, should the defendant not have given notice of his intention to defend as required by section 159, the court, upon proof by affidavit sworn before a Justice of the Peace of the summons having been left at the defendant's last-known place of residence, shall enter judgment for the amount claimed and costs.

161. The order upon the judgment to be entered under sections 159 and 160 shall be for payment forthwith or at such time or times and by such instalments, if any, as the plaintiff or his attorney-at-law in writing consents to take at the time of the entry of the plaint or of the judgment, and execution shall issue upon such judgment in the same manner as executions issuing upon judgments recovered in open court.

Orders on
judgment by
default.

Defences

Proceedings
where notice
of defence is
given.

162. Where the defendant has given notice of defence, the clerk shall, immediately upon receipt of such notice send a letter to the plaintiff by post stating therein that the defendant has given notice of his intention to defend and shall send by post to both plaintiff and defendant notice of the day upon which he has fixed that the trial shall take place, at least 6 clear days before the day so fixed.

Defendant
not to be
allowed to
set-off debts
without
consent.

163. (1) Subject to the power of amendment conferred by this Part, no defendant shall be allowed to set-off any debt or demand claimed or recoverable by him from the plaintiff, or to set up by way of defence and to claim and have the benefit of infancy or any statute of limitations or of his discharge under any statute relating to bankrupts, without the consent of the plaintiff, unless the prescribed notice thereof is given to the clerk of court.

(2) In every case in which the practice of the court requires such notice to be given, the clerk of the court shall, as soon as it is convenient after receiving such notice, communicate the same to the plaintiff by post or by causing the same to be delivered at his usual place of residence or business.

(3) It shall not be necessary for the defendant to prove on the trial that such notice was communicated to the plaintiff by the clerk.

*Confession, Consents and
Payments into Court*

Defendant
may confess
the debt.

164. (1) Any person against whom a plaint is entered in any magistrate's court may, if he thinks fit, before the hearing of the plaint, in the presence of the clerk of the court in which such plaint is entered or in the presence of an attorney-at-law, sign a statement confessing and admitting the amount of the debt or demand, or part of the amount of the debt or demand, for which such plaint is entered.

(2) The clerk of the court shall, as soon as it is convenient after receiving such statement, send notice thereof to the plaintiff by post or by causing the same to be delivered at his usual place of residence or business.

(3) Thereupon it shall not be necessary for the plaintiff to prove the debt or demand so confessed and admitted but the magistrate of that court at the next sitting of the court, whether the parties or either of them attend or not, shall, upon proof by affidavit of the signature of the party, if such statement were not made in the presence of the clerk, proceed to give judgment for the debt or demand so confessed and admitted, in the same manner and subject to the same conditions as if he had tried the action and given judgment thereupon under this Act.

165. (1) Where the person against whom any plaint is entered in any magistrate's court can agree with the person on whose behalf such plaint is entered upon the amount of the debt or demand in respect of which such plaint is entered and upon the terms and conditions upon which the same shall be paid or satisfied, such persons respectively may in the presence of the clerk of the court in which such plaint is entered or in the presence of an attorney-at law, sign a statement of the amount of the debt or demand so agreed upon between them and of the terms and conditions upon which the same shall be paid or satisfied.

Plaintiff and defendant may consent to amount of debt, etc.

(2) The clerk of the court shall receive such statement and shall thereupon, upon proof by affidavit of the signature of the party, if such statement were not made in the presence of the clerk, enter judgment for the plaintiff for the amount of the debt or demand so agreed on and upon the terms and conditions mentioned in such statement, and such judgment shall to all intents and purposes be the same, and have the same effect, and shall be enforced and enforceable in the same manner, as if it had been a judgment of the court.

166. (1) The defendant in any action brought under this Part may, within such time as is prescribed by the rules of court pay into court such amount of money as he thinks a full satisfaction for the demand of the plaintiff together with the costs incurred by the plaintiff up to the time of such payment.

Defendant may pay into court in satisfaction of demand.

(2) Notice of such payment shall be communicated by the clerk of the court to the plaintiff by post or by causing the same to be delivered at his place of residence or business and the said amount of money shall be paid to the plaintiff.

(3) Where the plaintiff elects to proceed and recovers no further amount in the action than was so paid into court, he shall pay to the defendant the costs incurred by the defendant in the action after such payment, and such costs shall be settled by the court and an order shall thereupon be made by the court for the payment of such costs by the plaintiff.

Witnesses and Discovery

Summons
for witnesses
and
discovery.

167. (1) Either of the parties to the action or any other proceeding under this Part may obtain, at the office of the clerk of the court, summonses to witnesses to be served by one of the writ officers of the court with or without a clause requiring the production of books, deeds, papers and writings in their possession or control.

(2) In any such summons any number of names may be inserted.

Witnesses
not
appearing or
producing
books after
summons.
1956-57.

168. (1) Every person on whom any such summons is served either personally or in such other manner as shall be directed by the rules of court and to whom at the same time payment or a tender of payment of his expenses is made on such scale of allowance as is for the time being in force and who refuses or neglects, without sufficient cause, to appear or to produce any books, papers or writings required by such summons to be produced, and also every person present in court who is required to give evidence and refuses to be sworn and give evidence, shall forfeit and pay such fine not exceeding \$500 as the magistrate shall impose on him.

(2) The whole or any part of such fine, in the discretion of the magistrate, after deducting the costs, shall be applicable toward indemnifying the party injured by such refusal or neglect.

Magistrate
may issue
warrant for
bringing up
a prisoner to
give
evidence.

169. (1) Any magistrate may, upon application on affidavit by either party, issue an order signed by him and under the seal of the court for bringing up before the court any prisoner or person confined in any gaol, prison or place under any sentence or under commitment for trial or otherwise to be examined as a witness in any pending action or matter pending or to be enquired of or determined in or before such court.

(2) Subject to subsection (3), the person required by any such warrant or order to be brought before such court shall be so brought under the same care and custody, and be dealt with in like manner in all respects, as a prisoner required by a writ of *habeas corpus* awarded by the High Court to be brought before the High Court to be examined as a witness in any cause or matter pending before the High Court.

(3) The person having the custody of such prisoner or person shall not be bound to obey such order unless a tender be made to him of a reasonable sum for the conveyance of a proper officer or officers and of the prisoner or person in going to and returning from such court.

Hearing

170. (1) On the day named in that behalf in any summons under this Part, the plaintiff shall appear either in person or by attorney-at-law, and thereupon the defendant shall be required to appear either in person or by his attorney-at-law to answer such claim.

Summary proceedings upon appearance of plaintiff and defendant.

(2) An answer being made in court, the magistrate shall proceed in a summary way to try the case and give judgment, without further pleading or formal joinder of issue, and shall take a note in writing of the facts given in evidence before him, and the note so taken shall in all cases of appeal be deemed part of the proceedings before him.

171. Subject to the power of amendment conferred by this Part, no evidence of any demand or claim shall be given by the plaintiff on the trial or hearing, except such as is stated in the summons or other proceeding under this Act directed to be issued or taken.

Evidence of claim stated in summons only to be given by plaintiff on hearing.

172. (1) Where, on the day of the return of any summons or at any continuation or adjournment of the court or of the action for which the summons has been issued, the plaintiff, his attorney-at-law or agent does not appear, the action shall be struck out.

Proceedings when plaintiff does not appear.

(2) In either case, where the defendant appears and does not admit the demand, the magistrate may award to the defendant, in addition to costs such further amount, not exceeding \$100, by way of satisfaction for his trouble and attendance, as the magistrate in his discretion thinks

fit, and such amount shall be recoverable from the plaintiff by such ways and means as any debt or damages ordered to be paid by the same court can be recovered.

(3) From any award for costs and satisfaction to a defendant under subsection (2) an appeal shall lie as in the case of any other judgment of the court.

(4) Where the plaintiff, his attorney-at-law or agent does not appear when called upon and the defendant, his attorney-at-law, or, in approved cases, his agent, appears and admits the cause of action to the full amount claimed and pays the fees payable in the first instance by the plaintiff, the court, if it thinks fit, may proceed to give judgment as if the plaintiff, his attorney-at-law or agent had appeared.

Proceeding
when
defendant
does not
appear.

173. Where on the day so named in the summons, or at any continuation or adjournment of the court or action in which the summons was issued, the defendant does not appear or sufficiently excuse his absence or neglects to answer when called in court, the magistrate may, upon due proof of service of summons, proceed to the hearing or trial of the action on the part of the plaintiff only, and the judgment thereupon shall be as valid as if both parties had attended.

Magistrate
may grant
time.

174. Where a judgment has been obtained in a magistrate's court, the magistrate may order the amount of such judgment and the costs to be paid at such time or times and by such instalments, if any, as he thinks fit, provided the whole time allowed shall not exceed 6 months.

Interest

Power to
award
interest on
debts and
damages.

175. Subject to rules of court, in proceedings before a magistrate's court for the recovery of a debt or damages there may be included in any amount for which judgment is given simple interest, at such rate as the court thinks fit or as may be prescribed, on all or any part of the debt or damages in respect of which judgment is given, or payment is made before judgment, for all or any part of the period between the date when the cause of action arose and

- (a) in the case of any amount paid before judgment, the date of payment; and
- (b) in the case of the amount for which judgment is given, the date of the judgment.

Costs

176. (1) All the fees and costs of any action or proceeding in the court, not otherwise provided for, shall be paid by or apportioned between the parties in such manner as the magistrate thinks fit, and, in default of any special direction, shall abide the event of the action.

Costs not otherwise provided for to be apportioned by magistrate.

(2) Execution may issue for the recovery of any such fees and costs in like manner as for any debt adjudged in the magistrate's court.

177. Whenever an action is brought in any magistrate's court which the court has no jurisdiction to try, the court shall order the action to be struck out and shall have power to award costs in the same manner, to the same extent and recoverable in the same manner, as if the court had jurisdiction in the matter of such plaint and the plaintiff had not appeared or had appeared and failed to prove his demand.

Court may award costs where cause is struck out for want of jurisdiction.

178. Where any party sues another in any magistrate's court for any debt or other cause of action for which he has already sued him and obtained judgment in any other court, the proof of such former suit having been brought and judgment obtained may be given, and the party so suing shall not be entitled to recover in such second suit and shall be adjudged to pay the costs of such second suit to the opposite party.

Parties suing after obtaining judgment in the matter in another court not to recover, and to pay defendant's costs.

Miscellaneous

179. (1) The magistrate may at all times amend all defects and errors in any proceeding in his court, whether there is anything in writing to amend or not, and whether the defect or error be of the party applying to amend or not.

Power of magistrate to amend proceedings.

(2) All such amendments may be made with or without costs and upon such terms as to the magistrate may seem fit.

(3) All such amendments as may be necessary for the purpose of determining in the existing action the real question in controversy between the parties shall be so made, if duly applied for.

Magistrate
may grant
time for
conduct of
action.

180. The magistrate may in any case make orders for granting time to the plaintiff or defendant to proceed with or defend the action and also may from time to time adjourn any court or the hearing or further hearing of any cause in such manner as to the magistrate may seem fit.

Affidavits.

181. An affidavit to be used in a court may be sworn before any magistrate without the payment of any fee or before any Justice of the Peace.

Arbitration
in certain
cases.

182. (1) The magistrate may in any case, with the consent of both parties to the suit, order the same, with or without other matters within the jurisdiction of the court in dispute between such parties, to be referred to arbitration to such person or persons, and in such manner, and on such terms, as he thinks reasonable and just.

(2) Such reference shall not be recoverable by either party except by consent of the magistrate.

(3) The award of the arbitration or arbitrators or umpire shall be entered as the judgment in the action, and shall be as binding and effectual to all intents as if given by the magistrate.

(4) Notwithstanding the foregoing provisions of this section, the magistrate may, if he thinks fit, on application to him at the first sitting of court after the expiration of one week after the entry of such award, set aside any such award or may, with the consent of both parties, revoke the reference or order another reference to be made in the manner provided by subsection (1).

(5) Either party may appeal from any such award entered as the judgment of the court just as in the case of the judgment of any magistrate.

183. (1) Where a magistrate makes an order for the payment of money, the amount shall be recoverable in case of default or failure of payment thereof forthwith, or at the time or times and in the manner thereby directed, by execution under the hand and seal of the magistrate against the goods and chattels, land and hereditaments of the party against whom the order is made.

Order recoverable forthwith by execution in default of payment.

(2) The precise time when any application is made to the clerk of the court to issue a warrant against a party shall be entered by him in the execution book and on the warrant.

(3) When more than one warrant is delivered to the Chief Marshal to be executed, he shall execute them in the order of the times so entered.

184. In default of payment by the defendant of any amount of money awarded against him by a magistrate, either as debt or damages, or of any instalment thereof, it shall be lawful for the magistrate to issue a writ of execution against such defendant.

Execution to issue in default of payment.

185. (1) Every Marshal executing such writ may by virtue thereof seize and take the moneys, bank-notes, bills of exchange, promissory notes, specialities, goods, chattels and effects of the party against whom such execution is issued except the wearing apparel and bedding of such person or of his family and the tools and implements of his trade to the value of \$1 000 which shall be to that extent protected from seizure.

Levy to be made on personal property.

(2) Where no moneys, bank-notes, bills of exchange, promissory notes, specialities, goods, chattels and effects can be found sufficient to satisfy such execution but it appears that the debtor has lands and houses, the writ officer shall endorse thereon a description of the lands, houses or other real estate and return the writ into the court.

186. (1) The Marshal aforesaid shall deliver over to the clerk of the court any cheques, bills of exchange, promissory notes, bonds, specialities or other securities for money which have been seized or taken under section 185.

Writ officers to hand over certain securities to clerk of court.

(2) The clerk of the court shall hold the same as a security or securities for the amount directed to be levied by such execution or so much thereof as has not been otherwise levied or raised for the benefit of the plaintiff.

(3) The plaintiff may sue in the name of the defendant, or in the name of any person in whose name the defendant might have sued, for the recovery of the amount or amounts secured or made payable thereby when the time of payment thereof arrives.

Execution
not to issue
upon order
of payment
by instal-
ment until
default.

187. Where the magistrate makes any order for the payment of any amount of money by instalments, execution upon such order shall not issue against the party until after default in payment of some instalment according to such order; and execution or successive executions may then issue for the whole of the said amount of money and costs then remaining unpaid, or for such portions thereof as the magistrate orders, either at the time of making the original order or at any subsequent time.

Cross-
judgments.

188. Where there are cross-judgments between the parties, execution shall be taken out by that party only who has obtained judgment for the larger amount and for so much only as remains after deducting the smaller amount, and satisfaction for the remainder shall be entered, as well as satisfaction on the judgment for the smaller sum and, if both amounts are equal, satisfaction shall be entered upon both judgments.

Manner of
direction of
execution.

189. (1) In all cases in which judgment is given in any magistrate's court for an amount not exceeding \$500, the writ of execution to be issued thereon shall be directed in such manner as is provided by the rules in force for the time being relating to Marshals.

(2) All writs of execution for a greater amount than \$500 shall be directed to the Chief Marshal and shall be executed by him in like manner as similar writs issuing out of the High Court.

Proceedings
of writ
officer
entrusted
with
execution.

190. Any Marshal entrusted with any execution shall in all things conform with the provisions of the law for the execution of such writs by him and of the rules relating to writ officers.

191. (1) Where any Marshal has endorsed on the writ of execution that he cannot find any personal estate or effects of the debtor but that he has land and where such execution is subsequently delivered to the Chief Marshal to be levied and he discovers that the debtor is possessed of any personal property authorised to be taken by this Act, he shall attach the same and dispose of it in due course of law.

Proceedings of Chief Marshal upon officer's return of writ.

(2) Where the net proceeds are insufficient to satisfy such execution and the costs thereon, the Chief Marshal shall then proceed to deal with any real estate which may be the property of the debtor, in satisfaction of what may remain due and owing on the execution.

192. (1) In or upon every warrant of execution issued against any person whomsoever, the clerk of the court shall cause to be inserted or endorsed the amount of money and costs adjudged, with the amounts allowed by this Act as increased costs for the execution of such warrant.

Entries on face of execution warrant.

(2) Where, before an actual sale of the goods and chattels, the party against whom such execution is issued pays or causes to be paid or tendered to the clerk of the court out of which such warrant of execution has issued or to the officer holding the warrant of execution such amount of money and costs or such part thereof as the person entitled thereto agrees to accept in full satisfaction of his debt or damages and costs, together with the prescribed fees, the execution shall be superseded and the goods and chattels of the said party shall be discharged and set at liberty.

193. All writs of execution issuing from the magistrate's courts shall, except where otherwise ordered, bear interest from the date of judgment and shall in respect of real estate continue in force for 20 years from such date or from the date of the last payment made on account thereof or from the date of any written acknowledgement made in respect thereof, as the case may be, and such execution shall, as against purchasers for valuable consideration, mortgagees or creditors, bind real estate only from the date on which they are lodged in the Court Process Office.

Execution to bear interest ordered and, in respect of real estate, to be in force 20 years.

Expenses of
Chief
Marshal to
be deducted
from
proceeds of
property
attached.

194. (1) The Chief Marshal shall be entitled to charge on executions issued from the magistrate's courts, and to demand and receive in advance, where it is necessary to proceed to the appraisalment of real estate, the expenses to be incurred for travelling and advertising and also a fee of \$50.

(2) Such fee shall be in full satisfaction of appraisements, sales and all other matters in connection therewith and shall be deducted by the Chief Marshal from the proceeds of any property or effects attached under any execution and shall be payable whether the Chief Marshal attaches real property or personal estates.

(3) Only the actual expenses incurred shall be charged for keeping possession of goods for sale, removal or storage, and in cases of dispute the amount shall be fixed by appraisalment.

Officers
to pay
proceeds of
executions
at next
sitting of
court after
receipt of
moneys.

195. All moneys coming to the hands of any Marshal, being the proceeds of executions, shall be paid by him to the clerk of the court from which such execution issued at the next sitting of the court after the receipt of such money, under a penalty of \$500 on each execution, to be recovered in a summary manner before a magistrate.

Clerks to
account to
Magistrate
once a
month.

196. The clerks of the court shall account once a month, or oftener if required, to the magistrate for all moneys which have been received by them under this Part, and the magistrate is empowered to call for and examine the plaint book and all other books and papers in any way relating to the business of the court which he shall consider necessary to the elucidation of such accounts and the proper checking thereof.

Suitors'
money.

197. Besides the general account of money received in the course of business by the several clerks of the court, a distinct account shall be kept by such clerks of suitors' money in a separate book, in which accounts shall be entered of all moneys coming to their hands belonging to suitors and all moneys paid out by them to the parties respectively entitled thereto.

198. The clerk of the court for District "A" shall deposit in a bank approved by the magistrate, in his name as clerk of the court for District "A", all suitors' moneys coming into his hands.

Suitors' money received by clerk of District "A" to be deposited in a bank.

199. (1) The clerks of the court shall pay over to the Accountant-General to an account to be styled the "Money Account" all suitors' moneys coming into their hands, and not drawn within 3 months, and such money shall then be only payable by order of the magistrate.

Suitors' money not called for to be paid quarterly to Accountant-General.

(2) All moneys remaining unclaimed after 6 years shall be transferred by the Accountant-General to the Consolidated Fund.

200. (1) Where an action is brought by an officer of a magistrate's court in the court of which he is an officer, the magistrate shall, at the request of the defendant, order that the venue be changed and that the cause be sent for hearing to the court of some convenient district of which he is not the magistrate.

Actions by officers.

(2) The clerk of the first-mentioned court shall forthwith transmit by post to the clerk of such last-mentioned court a certified copy of the plaint as entered in the plaint book, the duplicate copy of the summons and particulars served on the defendant and a certified copy of the order for changing the venue, as entered in the minute book.

(3) The magistrate of such last-mentioned court shall appoint a day for hearing, notice whereof shall be sent by post or otherwise by the clerk of such last-mentioned court to both parties.

201. Where an action is brought against an officer of a magistrate's court, the summons may issue in the district of which he is an officer or in any adjoining district, the magistrate of which is not the magistrate of the court of which the defendant is an officer.

Actions against officers.

Magistrate
may order
officer to
pay damages
sustained by
his
negligence
etc.

202. (1) Where any writ officer of any court who is employed to levy any execution against goods and chattels by neglect or connivance or omission loses the opportunity of levying any such execution, then upon complaint of the party aggrieved by reason of such neglect, connivance or omission (and the fact alleged being proved to the satisfaction of the court on the oath of any credible witness), the magistrate shall order such Marshal to pay such damages as it appears that the plaintiff has sustained thereby, not exceeding in any case the amount of money for which the said execution issued; and the writ officer shall be liable therefor.

(2) Where upon demand made thereof such writ officer refuses so to pay and satisfy the same, payment thereof shall be enforced by such ways and means as are herein provided for enforcing a judgment recovered in the court.

Magistrate
may order
officer guilty
of extortion
etc. to pay
damages.

203. (1) Where any clerk, Marshal or other officer of any court, acting under colour or pretence of the process of the court, is charged with extortion or misconduct or with not duly paying or accounting for any money levied by him under the authority of this Act, it shall be lawful for the magistrate to enquire into such matter in a summary way and for that purpose to summon and enforce the attendance of all necessary parties in like manner as the attendance of witnesses in any case may be enforced and to make such order thereupon for the repayment of any money extorted or for the due payment of any money so levied and for the payment of such damages and costs as he thinks just.

(2) Where the magistrate thinks fit, he may impose such fines upon the clerk, writ officer or other officer, not exceeding \$500 for each offence, as he deems adequate.

(3) In default of payment of any money so ordered to be paid, payment of the same may be enforced by such ways and means as are herein provided for enforcing a judgment recovered in the said court.

204. No officer of a magistrate's court in executing any warrant and no person at whose instance any such warrant is so executed, shall be deemed a trespasser by reason of any irregularity or informality in any proceedings on the validity of which such warrant depends or in the form of such warrant or in the mode of executing it, but the party aggrieved may bring an action for any special damage which he may have sustained by reason of such irregularity or informality against the party guilty thereof, and in such action he shall recover no costs unless the damages awarded exceed \$10.

No action for trespass to be against officer executing warrant except in special cases.

205. Where any officer or Marshal of any court is assaulted while in the execution of his duty or any rescue is made or attempted of any goods levied under process of the court, the person so offending shall be liable to a fine of \$1 000 to be recovered in a summary manner before a magistrate.

Assaulting officer in execution of his duty.

206. (1) Notice in writing of an action or prosecution to be commenced against any person for anything done in pursuance of sections 183 to 205 and of the cause thereof shall be given to the defendant one month at least before the commencement thereof.

Notice of certain actions and prosecutions.

(2) No plaintiff shall recover in any such action if tender of sufficient amends has been made before action brought or if after action brought a sufficient amount of money has been paid into court with costs by or on behalf of the defendant.

207. In any action commenced against any person for anything done in pursuance of this Part, the production of the warrant under the seal of the court shall be deemed sufficient proof of the authority of the court previous to the issuing of such warrant, and where the plaintiff has judgment given against him, or discontinues, the defendant shall in any such case be allowed his costs.

Production of warrant sufficient proof of authority.

208. Payment of any fine imposed by any court under the authority of this Part may be enforced upon the order of the magistrate in like manner as payment of any debt adjudged in the court and shall be accounted for as herein provided.

Enforcement of penalties.

PART X

MISCELLANEOUS

Supplementary

Magistrate
to sit in
open court.

209. (1) A magistrate shall not try an information summarily or hear a complaint or exercise his civil jurisdiction unless he is sitting in open court.

(2) This section shall have effect subject to the provisions of any law conferring power on a magistrate to sit *in camera* and to any enactment relating to domestic proceedings or maintenance proceedings or in a juvenile court.

Appearance
by attorney-
at-law.

210. (1) Subject to this section, a party to any proceedings before a magistrate may be represented by an attorney-at-law.

(2) Subject to subsection (3) or (4) an absent party represented by an attorney-at-law shall be deemed not to be absent.

(3) Appearance of a party by an attorney-at-law shall not satisfy any provision of any enactment or any condition of a recognizance expressly requiring his presence.

(4) Where a magistrate is of the opinion that the proceedings cannot properly be adjudicated without the appearance in person of the accused or defendant, the magistrate may require the accused or defendant to appear personally and, in default of his appearance at the appointed time, may issue a warrant for his arrest.

(5) A party to any proceedings before a magistrate sitting in the exercise of his civil jurisdiction may appear by agent in such cases, and subject to such conditions, as may be prescribed.

(6) Notwithstanding anything to the contrary contained in this Act, any department of Government may be represented in any proceedings before a magistrate by an officer of the said department duly authorised for the purpose by the head of the said department.

211. (1) Any person may lay an information or make a complaint unless it appears from the enactment on which the information or complaint is founded that the information or complaint may be laid or made only by a particular person or class of persons.

Who may lay an information or bring a complaint.

(2) Notwithstanding anything to the contrary contained in any enactment, a constable may lay an information in a case of assault or battery, even though the party aggrieved declines or refuses to lay an information.

(3) Any constable may, in the name of the Commissioner of Police,

- (a) lay an information; or
- (b) make a complaint; or
- (c) appear and conduct proceedings on his behalf.

(4) Proceedings under subsection (3) shall not be dismissed only on the failure of the Commissioner of Police to appear in person or by an attorney-at-law if he is represented by a constable for the time being present in court; and that constable is the informant or complainant for all purposes of this Act, other than those specified in subsection (3).

Process

212. (1) No objection shall be allowed to any information or complaint, or to any summons or warrant to procure the presence of the defendant, for any defect in it in substance or in form, or for any variance between it and the evidence adduced on behalf of the prosecutor or complainant at the hearing of the information or complaint.

Defect in process.

(2) Where it appears to a magistrate that any variance between a summons or warrant and the evidence adduced on behalf of the prosecutor or complainant is such that the defendant has been misled by the variance, the magistrate shall, on the application of the defendant, adjourn the hearing.

Objection to jurisdiction allowed unless taken at hearing when order made.

213. No person may impeach in any proceedings, or in any other manner whatever, any conviction by a magistrate on the trial of an information or any order made by a magistrate on the hearing of a complaint or any judgment or order given or made in the exercise of his civil jurisdiction, on the ground that the magistrate had no jurisdiction to convict or make the order or give the judgment, unless the objection to jurisdiction was taken at the trial of the information or on the hearing of the complaint or civil claim.

Process valid notwithstanding death etc. of magistrate.

214. A warrant or summons issued by a magistrate does not cease to have effect by reason of his death or his ceasing to be a magistrate.

Magistrate's process to run throughout Barbados.

215. Any summons, warrant or other process issued by a magistrate may be served or executed anywhere in Barbados or in the territorial waters surrounding Barbados.

Warrants.

216. (1) A warrant of arrest, warrant of commitment, warrant of distress or search warrant issued by a magistrate shall remain in force until it is executed or withdrawn.

(2) A warrant of arrest, warrant of commitment, warrant of distress or search warrant issued by a magistrate may be executed anywhere in Barbados by any person to whom it is directed or by any constable.

(3) The issue or execution of any warrant under this Act for the arrest of a person charged with an offence or of a search warrant shall be as effectual on Sunday as on any other day.

(4) A warrant to arrest a person charged with an offence may be executed by a constable or Marshal notwithstanding that it is not in his possession at the time; but the warrant shall, on the demand of the person arrested, be shown to him as soon as practicable.

Limitation of Time

217. (1) Except as otherwise expressly provided by any enactment and subject to subsection (2), a magistrate shall not try an information or hear a complaint unless the information was laid, or the complaint made, within 6 months from the time when the offence was committed, or the matter of complaint arose. Limitation of time.

(2) Nothing in

(a) subsection (1); or

(b) subject to subsection (4), any other enactment, however framed or worded, that, as regards any offence to which it applies, would but for this section impose a time-limit on the power of a magistrate to try an information summarily or impose a limitation on the time for taking summary proceedings,

applies in relation to any indictable offence.

(3) Without limiting paragraph (b) of subsection (2), that paragraph includes enactments that impose a time-limit that applies only in certain circumstances, for example, when the proceedings are not instituted by or with the consent of the Director of Public Prosecutions or some other specified authority.

(4) Where, as regards any indictable offence, any enactment, however framed or worded, and whether falling within paragraph (b) of subsection (2) or not, imposes a limitation on the time for taking proceedings on indictment for that offence, no summary proceedings for that offence shall be taken after the latest time for taking proceedings on indictment.

(5) Nothing in this section applies

(a) to any maintenance order; or

(b) to any proceedings for the recovery of

- Cap. 66. (i) any rents, charges, expenses, duties and any other amounts of money whatsoever payable under the *Customs Act* or any other enactment for the time being in force relating to customs; or
- Cap. 73. (ii) any tax payable under the *Income Tax Act*; or
- Cap. 87. (iii) any tax payable under the *Value Added Tax Act*; or
- Cap. 78A. (iv) any tax payable under the *Land Tax Act*; or
- Cap. 295. (v) any tax payable under Part III of the *Road Traffic Act*.

Remand

Remand in
custody or
on bail.
Cap.122A.

218. (1) Where a magistrate has power to remand any person, then, subject to the *Bail Act*, the magistrate may

- (a) remand him in custody, that is to say, commit him to custody to be brought before the magistrate at the end of the period of remand or at such earlier time as the magistrate may require; or
- (b) when he is inquiring into or trying an offence alleged to have been committed by that person or has convicted him of an offence, remand him on bail subject to any condition requiring him to appear as provided in subsection (4); or
- (c) except in a case falling within paragraph (b), remand him on bail by taking from him a recognizance, with or without sureties, conditioned as provided in subsection (4);

and may, in a case falling within paragraph (c) instead of taking recognizances in accordance with that paragraph, fix the amount of the recognizances with a view to their being taken subsequently in accordance with section 143.

(2) Where the magistrate fixes the amount of a recognizance under section 143 with a view to its being taken subsequently, the magistrate shall in the meantime commit the person so remanded in custody in accordance with subsection (1)(a).

(3) Where a person is brought before the magistrate after remand, the magistrate may further remand him.

(4) Where a person is remanded on bail under subsection (1), the magistrate may direct him to appear or, in any other case, direct that his recognizance be conditioned for his appearance

- (a) before the magistrate at the end of the period of remand; or
- (b) at every time and place to which during the course of the proceedings the hearing may be from time to time adjourned;
- (c) at every time and place to which during the course of the proceedings the hearing may be from time to time adjourned and also before the High Court and in the event of the person so bailed being committed for trial there;

and, when the magistrate remands him on bail conditionally on his providing a surety during an inquiry into an offence alleged to have been committed by him, may direct that the recognizance of the surety be conditioned to secure that the person so bailed appears.

(5) Where a person is directed to appear or a recognizance is conditioned for a person's appearance in accordance with paragraph (b) or (c) of subsection (4), the fixing at any time of the time for his next appearance shall be deemed to be a remand; but nothing in this subsection or subsection (4) deprives the magistrate of power at any subsequent hearing to remand him afresh.

(6) Subject to sections 218A and 219, a magistrate shall not remand a person for a period exceeding 8 clear days, except that 2002-3.

- (a) if the magistrate remands him on bail, he may remand him for a longer period if such person consents;
- (b) where the magistrate adjourns a trial under subsection (3) of section 33 or section 57, he may remand him for the period of the adjournment;

- (c) where the magistrate is trying summarily a person charged with an offence triable either way, he may remand him for the period of the adjournment.

Remand in custody for more than 8 days.
2002-3.

218A. (1) Notwithstanding subsection (6) of section 218, a magistrate referred to in that section may remand a person charged with an offence in custody for a period exceeding 8 clear days where

- (a) the person has been previously remanded for the offence;
- (b) the person is before the magistrate;
- (c) the magistrate, after affording the parties an opportunity to make representations, has set a date on which the magistrate expects that it will be possible for the next stage in the proceedings, other than a hearing relating to a further remand in custody or on bail, to take place;

but the period of remand shall be a period ending not later than the date set for the next state of proceedings referred to in paragraph (c) or a period of 28 clear days, whichever is the lesser period.

(2) Nothing in this section affects the right of the person to apply for bail during the period of the remand.

Further remand.

219. (1) Where a magistrate is satisfied that any person who has been remanded is unable by reason of illness or accident to appear or to be brought before the magistrate at the expiration of the period for which he was remanded, the magistrate may, in his absence, remand him for a further time, and subsection (1) of section 218 shall not apply.

(2) Notwithstanding anything in subsection (1) of section 218, the power of a magistrate under subsection (1) to remand a person on bail for a further time

- (a) where he was granted bail in criminal proceedings, includes power to enlarge the recognizance of any surety for him to that time;

(b) where he was granted bail otherwise than in criminal proceedings, may be exercised by enlarging his recognizance and those of any sureties for him to a later time.

(3) Where a person remanded on bail is bound to appear before a magistrate at any time and the magistrate has no power to remand him under subsection (1), the magistrate may in his absence

(a) where he was granted bail in criminal proceedings, appoint a later time as the time at which he is to appear and enlarge the recognizances of any sureties for him to that time;

(b) where he was granted bail otherwise than in criminal proceedings, enlarge his recognizance and those of any sureties for him to a later time;

and the appointment of the time or the enlargement of recognizance shall be deemed to be a further remand.

(4) Where a magistrate commits a person for a trial on bail and the recognizance of any surety for him has been conditioned in accordance with section 219(3)(a), the magistrate may, in the absence of the surety, enlarge his recognizance so that he is bound to secure that the person so committed for trial appears also before the High Court.

220. (1) Where a magistrate remands an accused person in custody and that person is already detained under a custodial sentence, he may remand him for a period up to 28 clear days; but if on inquiry it appears to the magistrate that the expected date of his release from detention will be before the 28 days have expired he shall remand the person for not more than 8 clear days or, if longer, a period ending with that date.

Remand of
accused
already in
custody.

(2) A magistrate may hear and determine an application for an accused person detained under a custodial sentence to be further remanded without his appearance before him if the person is represented by an attorney-at-law who signifies the accused's consent to the application being heard in his absence.

Detention for Short Periods

221. (1) A magistrate who has power to commit to prison a person convicted of an offence, or would have that power but for section 120, may order him to be detained within the precincts of the court-house or any police station until such hour, not later than 4 o'clock in the afternoon of the day on which the order is made, as the magistrate may direct, and, if he does so, shall not, where he has power to commit him to prison, exercise that power.

Detention of
offender for
one day in
court-house
or police
station.

(2) A magistrate shall not make such an order under this section as will deprive the offender of a reasonable opportunity of returning to his abode on the day of the order.

222. (1) A magistrate who has power to commit to prison a person in default of payment of a sum adjudged to be paid by a summary conviction may issue a warrant for his detention in a police station, and, if he does so, shall not, where he has the power to commit him to prison, exercise that power.

Committal to
custody
overnight at
police station
for non-
payment of
sum
adjudged by
conviction.

(2) A warrant under this section, unless the sum adjudged to be paid by the conviction is sooner paid,

(a) shall authorise any police constable or marshal to arrest the defaulter and take him to a police station; and

(b) shall require the officer in charge of the station to detain him there until 8 o'clock in the morning of the day following that on which he is arrested or, if he is arrested between midnight and 8 o'clock in the morning, until 8 o'clock in the morning of the day on which he is arrested.

(3) Notwithstanding subsection (2)(b), the officer may release the defaulter at any time within 4 hours before 8 o'clock in the morning if the officer thinks it expedient to do so in order to enable him to go to his work or for any other reason appearing to the officer to be sufficient.

Fees, Fines, Forfeitures etc.

Fees. **223.** (1) The fees to be charged and taken by a clerk to a magistrate's court in every proceeding before a magistrate shall be such as may be prescribed.

(2) A table of fees to be charged and taken must be affixed to some conspicuous part of every magistrate's court and police station.

(3) A constable acting as such or any public officer in his official capacity is not to be charged fees.

Remission of fees. **224.** A magistrate may on the ground of poverty or for other reasonable cause remit in whole or in part any fee payable in proceedings before the court.

Clerk to receive and account for all fees, penalties, forfeitures etc. **225.** (1) The clerk shall receive and duly account for all fees, penalties, forfeitures and sums of money payable to the court in respect of any proceedings, conviction, order or adjudication.

(2) The clerk shall keep an account of all such fees, penalties, forfeitures and sums of money in such manner as may be prescribed.

Disposal of amounts adjudged to be paid on conviction. **226.** A clerk shall apply moneys received by him on account of a sum adjudged to be paid on conviction

(a) in the first place in payment of any compensation adjudged by the conviction to be paid to any person;

- (b) in the second place in payment of any costs so adjudged to be paid to the prosecutor; and
- (c) the balance to the fund to which, or the person to whom, he is required to pay the sum by or under any enactment relating to the sum.

227. Subject to the provisions of any other enactment to the contrary, anything other than money forfeited on a conviction by a magistrate or the forfeiture of which may be enforced by a magistrate shall be sold or otherwise disposed of in such manner as the magistrate may direct; and the proceeds shall be applied as if they were a fine imposed under the enactment on which the proceedings for the forfeiture are founded.

Disposal
of non-
pecuniary
forfeitures.

Power to Rectify Mistakes etc.

228. (1) Subject to subsection (4), a magistrate may vary or rescind a sentence or other order imposed or made by him when dealing with an offender; and it is hereby declared that this power extends to replacing a sentence or order that for any reason appears to be invalid by another that the magistrate has power to impose or make.

Power of
magistrate to
re-open
cases to
rectify
mistakes etc.

(2) When a magistrate finds a person guilty in a case in which he has pleaded not guilty or the magistrate has proceeded in his absence under section 33(1), and it subsequently appears to the magistrate that it would be in the interests of justice that the case should be heard again by another magistrate, the magistrate may, subject to subsection (4), so direct.

- (3) Where a magistrate gives a direction under subsection (2)
 - (a) the finding of guilty and any sentence or other order imposed or made in consequence thereof shall be of no effect; and
 - (b) section 32 (4) applies as if the trial of the person in question had been adjourned.

(4) The powers conferred by subsections (1) and (2) are exercisable only within the period of 28 days beginning with the day on which the sentence or order was imposed or made or the person was found guilty, as the case may be.

(5) Where a sentence or order is varied under subsection (1), the sentence or other order, as so varied, takes effect from the beginning of the day on which it was originally imposed or made unless the magistrate otherwise directs.

PART XI

ADMINISTRATION OF JUSTICE

Offences

Offences
relating to
administra-
tion of
justice in
proceedings
before
magistrate.

229. The following shall be deemed offences under this Act and shall be dealt with as hereinafter provided

- (a) indecent, violent, insulting, abusive or threatening language used in court or addressed to any magistrate in court or in going to or returning from court or used against any party to any matter in the course of a hearing or to any witness or other person then lawfully being in the court room or within the precincts of the court;
- (b) violent, indecent, insulting, abusive or threatening gestures or conduct in court while the magistrate is actually sitting;
- (c) any assault or battery committed on a magistrate in court or in going to or returning from the court or on any officer or servant of the court or on any party to any matter or witness or other person in court;
- (d) wilfully interrupting or obstructing any proceedings of the court or any other misbehaviour in court;
- (e) actual and express disobedience in court to any direction, ruling or order of the magistrate made in the course of the trial or hearing;
- (f) any resistance to or obstruction of any servant of the court in the discharge of his duty, whether in the service of any process of the court or in obedience to or in the execution of any warrant or command of the magistrate in court;

- (g) the writing or uttering to the magistrate, whether in court or otherwise, of any abusive, indecent or threatening letter or language or sending to such magistrate any threatening message relating to any pending proceedings or of any letter calculated or intended to prejudice the mind of the magistrate in relation to any proceedings then pending or in relation to any person about to give evidence before him in any such proceedings.

230. (1) If in the opinion of the magistrate any offence mentioned in section 229 is committed by any person, a constable may on the oral order of the magistrate if the person is present in court, or on the warrant of the magistrate if the person is not present in court, take the person into custody and thereupon the magistrate may if he thinks fit

Procedure
against
offender.

- (a) admonish and discharge him; or
- (b) order him to be removed from the court; or
- (c) order him to pay a fine of \$1 000; or
- (d) without the imposition of any fine, by warrant under his hand, commit him to prison for one year.

(2) If any fine imposed under this section is not paid by the offender within such time as the magistrate may order, the magistrate may on such default commit the offender by warrant to prison for one year.

(3) If any such offender is a practitioner before the court, the magistrate shall report the matter in writing to the Chief Justice.

(4) Nothing in this section shall be construed to be in derogation of the provisions of any other enactment prescribing penalties for any assault or battery committed on any magistrate, but no person shall be twice punished for the same offence.

Appeal.

231. (1) If any person ordered by any magistrate to pay a fine or to be imprisoned under the authority of section 230 is dissatisfied with such order, such person may, at the time of such order, give notice in writing to such magistrate, hereinafter referred to as the "convicting magistrate", of his intention to appeal to the Court of Appeal against such order.

(2) The giving of such notice signed by the appellant or his attorney-at-law shall not operate as a stay of such order unless the appellant, within 2 days after the giving thereof, enters before a magistrate into a recognizance with one surety in the amount of \$500 acknowledged before a magistrate and conditioned that the appellant do personally appear and do not depart the court without leave and abide by the judgment of the Court of Appeal thereupon and pay such costs as may be awarded by the Court of Appeal.

(3) Upon such notice being given and such recognizance being entered into, the magistrate before whom such recognizance is entered into shall liberate the appellant, if in custody, and thereupon the appeal shall be proceeded with in accordance with the following provisions of this Part.

Cause of
committal to
be stated.

232. (1) The convicting magistrate shall, within 7 days after the making of the recognizance, sign and transmit to the Registrar a full statement of the case specifying fully the causes of such conviction.

(2) The Court of Appeal shall consider the statement by the magistrate of the causes of conviction and also such grounds of appeal as may be set forth by the appellant.

If con-
firmed,
order to be
enforced.

233. If the Court of Appeal confirms the order of the convicting magistrate, any magistrate may, on receipt of a certificate of such confirmation, proceed to enforce such order as if there had been no appeal against the same.

Protection
of officers.

234. No action shall be brought against any magistrate for any act or order done or made by him acting under the authority of section 230 or against any officer or servant of the court or against any constable for any act done by him or them in obedience to the command of any magistrate acting thereunder.

235. If, upon any appeal from an order under section 231, the order of any magistrate is quashed by the Court of Appeal and the person alleged to have offended has been actually in custody, the Court of Appeal may in its discretion award to the appellant such amount of money by way of compensation and satisfaction in respect of the committal by such magistrate as to the Court of Appeal may seem reasonable and proper; and such award shall be a bar to any civil proceedings whatever in respect of such order.

Compensation where order quashed.

236. The magistrate whose order is quashed shall not, be made personally liable to pay any compensation or costs which the Court of Appeal may award to the appellant, but the same shall be paid to the appellant out of moneys voted for the purposes of this Act by Parliament.

Magistrate not liable to pay compensation.

237. This Part shall apply to any court in which a magistrate is sitting for the exercise of his jurisdiction conferred under this Act or any other law and to any inquest held by a coroner under the *Coroners Act*.

Application of this Part.
Cap. 113.

PART XII

APPEAL AND CASE STATED

Appeal

238. (1) Subject to this Part,

Right of appeal to Court of Appeal.

- (a) where a magistrate dismisses an information or complaint or refuses to convict or make an order, the informant or complainant may appeal to the Court of Appeal;
- (b) where a magistrate convicts or makes an order, the person convicted or against whom the order is made, may appeal to the Court of Appeal against such conviction or order;
- (c) where a magistrate gives judgment or makes an order in exercise of his civil jurisdiction, either party to the action in which such judgment was given or order made may appeal to the Court of Appeal.

(2) In the case of a conviction where the appellant has pleaded guilty before the magistrate, the appeal shall only be against sentence.

(3) This Part shall not apply to the exercise by a magistrate of any of the powers conferred on him under Part XI.

Right of
appeal under
former Acts.

239. Subject to this Act, where a right of appeal is given by any enactment passed before the commencement of this Act to any person whomsoever whether in respect of the conviction, order, judgment or decision of a magistrate against such person or in respect of any refusal by a magistrate to convict, make an order or give a judgment or decision against any person, then and in every such case an appeal shall lie under this Act and the proceedings upon such appeal shall be according to this Act.

Notice of
appeal to
be given.

240. (1) An appeal shall be commenced by the appellant giving to the clerk notice of such appeal, which may be verbal or in writing in the prescribed form, and if verbal shall be forthwith reduced to writing in the prescribed form by the clerk and signed by the appellant or by his attorney-at-law.

(2) The notice of appeal shall, subject to subsection (3), be given in every case within 7 days after the day on which the magistrate dismissed the information or complaint, convicted or made the order or refused to convict or make the order or gave his judgment or decision.

(3) Where a magistrate has adjourned the trial of an information after conviction, the notice of appeal shall be given within 7 days after the day on which the magistrate sentences or otherwise deals with the offender.

(4) The clerk shall, within 21 days, transmit to the Registrar a copy of every notice of appeal given under this section; and the Registrar shall cause particulars thereof to be entered in a register to be known as the "Register of Magistrates Appeals", which shall be kept at the Registry.

(5) The Registrar shall, once every quarter, make a return of the particulars mentioned in subsection (4) to the Chief Justice.

Magistrate
to state
reasons for
decision.

241. (1) Where notice of appeal has been given in accordance with section 240, the magistrate shall within 21 days of the perfecting of that appeal draw up, sign and hand over to the clerk a statement of his reasons for decision.

(2) For the purposes of this Act the record of proceedings need not include the statement of a magistrate's reasons for decision if the magistrate has not complied with subsection (1); and accordingly the Court of Appeal may proceed to hear the appeal in the absence of the reasons.

(3) Where a magistrate

(a) has not complied with subsection (1); or

(b) resigns or retires, as the case may be, without having complied with subsection (1),

he may be summoned to appear before the Court of Appeal; and the Court Appeal may give such directions as it considers fit and he shall comply with the directions.

(4) The appellant and respondent shall be entitled upon application to the clerk or the Registrar, as the case may be, to obtain a copy of any statement of reasons for decision that the magistrate has provided.

242. An appellant shall, either at the time of giving notice of appeal or at any time within 14 days of the giving of such notice, serve a written notice of grounds of appeal upon the clerk. Grounds of appeal to be given.

243. A notice of grounds of appeal may set forth all or any of the following grounds, and no others: Admissible grounds of appeal.

- (a) that the magistrate had no jurisdiction in the case: but the Court of Appeal shall not entertain such grounds of appeal unless objection had been formally taken at some time during the progress of the case and before the pronouncing of the dismissal, conviction, order, refusal, judgment or decision as aforesaid; or
- (b) that the magistrate exceeded his jurisdiction in the case; or
- (c) that the magistrate was personally interested in the case; or
- (d) that the magistrate acted corruptly or maliciously in the case; or
- (e) that the dismissal, conviction, order, refusal, judgment or decision was obtained by fraud; or

- (f) that the magistrate refused to convict or make an order or that the appellant is not guilty, as the case may be, either of which grounds shall entitle the appellant to maintain
 - (i) that admissible evidence substantially affecting the merits of the case has been rejected by the magistrate; or
 - (ii) that inadmissible evidence has been admitted by the magistrate and there is not sufficient admissible evidence to sustain the decision on rejecting such inadmissible evidence; or
 - (iii) that there is no evidence to support the decision or that the decision is against the weight of evidence; or
- (g) that the decision is erroneous in point of law; or
- (h) that some other specific error, not hereinbefore mentioned and substantially affecting the merits of the case, has been committed in the course of the proceedings in the case; or
- (i) that the sentence imposed is excessive.

Manner of
setting forth
grounds of
appeal.

244. An appellant shall set forth in his notice of grounds of appeal such particulars in such manner as shall be prescribed.

Recogni-
zance to
prosecute
appeal.

245. (1) An appellant shall, within 3 days after giving notice of appeal, enter into a recognizance in the prescribed form for the due prosecution of the appeal, unless he remains in custody under section 247.

(2) A recognizance entered into under this section shall be in an amount not exceeding \$500 with or without a surety, except that a magistrate may, in lieu of a surety, accept a deposit equal to the amount of the recognizance.

Cap. 131.

(3) Where the magistrate has ordered an appellant to pay a fine exceeding \$500 on conviction of an offence under the *Drug Abuse (Prevention and Control) Act* or regulations made under that Act, or on conviction of any offence in the case of a person who is not a citizen,

a permanent resident or immigrant of Barbados, a recognizance entered under this section shall be in an amount equivalent to the amount of the fine with or without a surety except that the magistrate may *in lieu* of a surety accept a deposit equal to the amount of the recognizance.

246. (1) Subject to subsection (2), upon notice of appeal being given and such recognizance being entered into, the magistrate before whom the recognizance is entered into may liberate the appellant, if in custody, unless he is in custody in respect of any other charge or matter and the clerk shall, with all convenient dispatch, transmit to the Registrar

Procedure
after notice
of appeal
given.
2002-3.

- (a) three copies of the record of the proceedings; and
- (b) all writings and other articles exhibited by the witnesses or any of them inventoried and labelled or otherwise marked so that the same may be identified on the hearing of the appeal.

(2) An appellant who has been sentenced to a term of imprisonment for an offence under the *Drug Abuse (Prevention and Control) Act* or regulations made under that Act or an appellant not being a citizen, a permanent resident or immigrant of Barbados who has been sentenced to a term of imprisonment for any offence may not be liberated unless he is released on bail by a judge of the Court of Appeal pending the hearing of his appeal by the Court of Appeal.

Cap. 131.

(3) For the purposes of this Part, the record of the proceedings shall comprise such documents as may be prescribed.

(4) On receipt thereof the Registrar shall cause the appeal to be entered for the next convenient sitting of the Court of Appeal and shall notify the appellant and respondent, or their attorneys-at-law, of the day on which the appeal will in the ordinary course of business be on the list for hearing before the Court of Appeal: but where the appellant is in custody, either under a term of imprisonment imposed in respect of the conviction or order appealed against or under section 247, the Court of Appeal shall hear the appeal as soon as possible.

(5) Every notification required by this section to be given by the Registrar shall be in writing signed by him and may be transmitted

- (a) by registered post to the attorney-at-law of the appellant or respondent; or
- (b) by registered post to the appellant at the address appearing on the recognizance entered into by the appellant under section 245; or
- (c) by registered post to the respondent under section 245; or
- (d) by registered post to the respondent at his last known place of abode,

and shall be deemed to have been served at the time when any letter so transmitted would be delivered in the ordinary course of post.

(6) After the Court of Appeal has pronounced judgment on the appeal or made any order thereon under section 260, the Registrar shall with all convenient dispatch return to the clerk the said exhibits.

Where
recogni-
zance not
entered into.

247. (1) Where in the case of an appeal under paragraph (a) or (b) of section 238(1) an accused or defendant has given notice of appeal and has been required by the magistrate to find a surety or sureties but is unable to find the necessary surety or sureties, he may prosecute his appeal without entering into a recognizance, provided he remains in custody pending the hearing of the appeal; and in such case the magistrate shall, by warrant under his hand, direct the appellant to be detained in custody accordingly, notwithstanding that the appellant may have been allowed time for payment of any pecuniary penalty, and shall, in such warrant, intimate to the Superintendent of the Prisons that notice of appeal has been given.

(2) The appellant shall in such case be detained in custody and may be taken without any fresh order or warrant in custody of a constable or prison officer to the Court of Appeal to attend the hearing of the appeal.

(3) Notwithstanding anything in this section, an appellant may, at any time before his appeal is heard, enter into a recognizance in the form and subject to the conditions set out in section 245; and thereupon he shall be liberated unless he is in custody in respect of any other charge or matter.

248. The clerk shall, in the prescribed manner, transmit or cause to be served upon the respondent or his attorney-at-law a copy certified under his hand of the notice of appeal and of the grounds of appeal.

Copy of notice to be sent to respondent.

249. (1) An appellant may serve written notice upon the Registrar that he abandons his appeal and thereupon section 260 shall apply as if the Court of Appeal had affirmed the decision of the magistrate.

Abandonment of appeal.

(2) The Registrar shall give notice to the clerk and to the respondent of the abandonment of the appeal.

250. (1) Where the appellant makes default in duly perfecting his appeal, the magistrate shall thereupon treat the recognizance as forfeited and deal with the same in accordance with this Act.

Where appellant makes default in prosecuting appeal.

(2) Where the appellant making such default has been released from custody under section 246, and remains or becomes liable to be kept in custody, the magistrate shall at once issue a warrant for his apprehension, in order that he may be returned to prison accordingly.

(3) Where the appellant making such default has been fined and remains liable to pay that fine, the Magistrate shall forthwith issue a warrant for his apprehension, in order that he may pay that fine forthwith or be delivered to prison.

(4) For the purposes of this section and section 241(1) an appeal is perfected when an appellant, having filed a notice of appeal, subsequently enters into a recognizance to prosecute his appeal and files his grounds of appeal, all within the times fixed by this Act.

251. (1) Where, on the day of hearing or at any adjournment of the case, the appellant does not appear, the case shall be struck out and the decision shall be affirmed, unless the Court of Appeal thinks fit, for sufficient cause, to order otherwise.

Where appellant fails to appear.

(2) Where in any such case the respondent appears, the judgment shall be with costs of the appeal against the appellant, unless the Court of Appeal expressly orders otherwise, but where the respondent does not appear, the costs of the appeal shall be in the discretion of the court.

Where
appellant
appears.

252. Where on the day of hearing and at every adjournment of the case the appellant appears, the Court of Appeal shall, whether the respondent appears or not, proceed to the hearing or further hearing and the determination of the case and shall give judgment according to the rights of the case without regarding any imperfection or defect of form.

Appeal
limited to
grounds
given in
notice.

253. (1) Subject to subsection (2), on the hearing it shall not be competent for the appellant to go into, or to give evidence of, any other grounds of appeal than those set forth in his notice of grounds of appeal.

(2) Where, in the opinion of the Court of Appeal, grounds of appeal other than those set forth in the notice of grounds of appeal should have been given or the statement of grounds is defective, the Court of Appeal in its discretion may allow such amendments of the notice of grounds of appeal upon such conditions as to service upon the respondent and as to costs as it may think fit.

Objections
to form of
grounds of
appeal.

254. (1) No objection on account of any defect in the form of setting forth any ground of appeal shall be allowed and no objection to the reception of evidence offered in support of any ground of appeal shall prevail unless the Court of Appeal is of opinion that the ground of appeal is so imperfectly or incorrectly stated as to be insufficient to enable the respondent to inquire into the subject matter thereof or to prepare for the hearing.

(2) In any case where the Court of Appeal is of opinion that any objection to any ground of appeal or to the reception of evidence in support of any ground of appeal ought to prevail, it may, if it thinks fit, cause the ground of appeal forthwith to be amended by the Registrar upon such terms and conditions, if any, as it may think just.

Objections
to informa-
tion,
complaint,
conviction
or order.

255. (1) Where, on the hearing, it appears that there is any defect in form in the information, complaint or plaint, or any omission or mistake in the drawing up of the conviction, order or judgment, and it is shown to the satisfaction of the Court of Appeal that there was sufficient evidence before the magistrate making such conviction, order or judgment to have authorised the drawing up thereof free from such omission or mistake, the Court of Appeal shall amend such

information, complaint or plaint or such conviction, order or judgment and proceed thereafter as if no such defect, omission or mistake had existed.

(2) Nothing in this section affects section 253.

256. (1) Subject to subsection (2), on any appeal from any decision of a magistrate, no objection shall be taken or allowed to any proceedings before the magistrate for any defect or error that might have been amended by the magistrate, or to any information, complaint, plaint, summons, warrant or other process to or of the magistrate for any alleged defect therein in substance or form or for any variance between any information, complaint, plaint or summons and the evidence adduced in support thereof before the magistrate.

Defects in proceedings under appeal.

(2) Where

- (a) any error, defect or variance mentioned in subsection (1) appears to the Court of Appeal at the hearing of any appeal to be such that the appellant has been thereby misled;
- (b) the magistrate has not complied with subsection (1) of section 241 or the reasons are otherwise unavailable, without prejudice to subsection (2) of that section;
- (c) the record is otherwise defective or incomplete; or
- (d) for any reason, other than those mentioned in paragraphs (a) to (c), the Court of Appeal considers that the case cannot satisfactorily be disposed of,

it shall be lawful for the Court of Appeal either to refer the case back to the magistrate with directions to re-hear and re-determine the same or to reverse the decision appealed from or to make such other order for disposing of the case as justice may require.

257. (1) No objection shall be taken or allowed, on any appeal, to any notice of appeal that is in writing, or to any recognizance entered into under this Act for the due prosecution of the appeal, for any alleged error or defect therein.

Defects in notice of appeal or recognizance.

(2) Where any error or defect referred to in subsection (1) appears to the Court of Appeal to be such that the respondent on such appeal has been thereby deceived or misled, the Court of Appeal may amend the same and, if it is expedient to do so, may also adjourn the further hearing of the appeal; and the amendment and the adjournment, if any, shall be made on such terms as the Court may deem just.

Power of
Court of
Appeal to
take
evidence.

258. The Court of Appeal may, in any case where it considers it necessary that evidence should be adduced, either

- (a) order the evidence to be adduced before the Court of Appeal on some day to be fixed in that behalf;
- (b) order the evidence to be given by affidavit; or
- (c) refer the case back to the magistrate to take the evidence, and may in such case either direct the magistrate to adjudicate afresh after taking the evidence and subject to such directions in law, if any, as the Court of Appeal may think fit to give, or direct him, after taking the evidence, to report specific findings of fact for the information of the Court; and on any such reference the case shall, so far as may be practicable and necessary, be dealt with as if it were being heard in the first instance.

Neglecting
or refusing
to appear
when
summoned.

259. Every person who, being duly summoned to appear and give evidence upon any appeal, neglects or refuses without lawful excuse to appear at the time and place specified in the summons or who, having appeared, refuses without lawful excuse to give evidence or to answer any question put to him by the Court of Appeal shall be liable, on the order of the Court of Appeal, to a fine of \$100 or to imprisonment for 3 months.

Giving of
judgment.

260. (1) On the conclusion of the hearing, the Court of Appeal shall, either at the same or any subsequent sitting of the Court, pronounce judgment on the appeal.

- (2) In giving judgment, the Court of Appeal may
 - (a) affirm, modify, amend or reverse the conviction, order or decision, either in whole or in part, and, if the Court thinks that a different sentence should have been passed, quash the sentence passed by the magistrate and pass such other sentence

warranted in law, whether more or less severe, in substitution therefor as the Court thinks should have been passed; or

- (b) if any omission or mistake is made in drawing up any conviction, order or judgment and it is shown to the satisfaction of the Court that sufficient grounds were in proof before the magistrate making the conviction or order or giving the judgment to have authorised the drawing up thereof free from such omission or mistake, amend such conviction, order or judgment and adjudicate thereon as if no such omission or mistake existed; or
- (c) refer the case back to the magistrate with directions to re-hear the same or otherwise to deal with the same as the Court may think just and thereafter either to return the case to the Court for further hearing and determination or to determine the same, as the court may think fit, or refer the case back as mentioned in section 258; and in every such case paragraph (c) of section 258, applies; or
- (d) make such other order for disposing of the case as justice may require.

(3) The Court of Appeal may, so far as may be necessary for doing complete justice between the parties, review any order made by the magistrate.

261. (1) After the determination by the Court of Appeal of an appeal from a magistrate, the decision appealed against as confirmed or varied by the Court of Appeal or any decision of the Court of Appeal substituted for the decision appealed against may, without limiting the powers of the Court of Appeal to enforce the decision, be enforced

Enforcement
of judgment.

- (a) by the issue by that magistrate of any process that he could have issued if he had decided the case as the Court of Appeal decided it;
- (b) so far as the nature of any process already issued to enforce the decision of that magistrate, by that process;

and the decision of the Court of Appeal has effect as if it had been made by the magistrate against whose decision the appeal was brought.

(2) Where an order for the imprisonment of any person is affirmed on appeal whether with or without modification or amendment, or where the Court of Appeal orders the imprisonment of any person, the Court of Appeal may, if it considers it expedient to do so, forthwith commit such person to prison in pursuance and in execution of such order.

(3) The imprisonment of such person, if he is not actually in custody at the time, shall be reckoned to begin from the day on which he is in actual custody in the prison in which he may have been ordered to be imprisoned and, if he is actually in custody, from the day the order for his imprisonment is affirmed, unless the Court of Appeal otherwise directs.

General
power of
Court of
Appeal as
to costs.

262. Subject to this Act, the Court of Appeal may make such order as to the costs of any case both before the magistrate and in the Court of Appeal as it may think just.

Costs in
abandon-
ment or
withdrawal
of appeal.

263. Where an appeal is abandoned or withdrawn, the Court of Appeal may, on proof of notice of appeal having been given to the respondent, order that he shall receive such costs as the Court of Appeal may think fit, notwithstanding that the appeal has not been entered or prosecuted.

Payment
of costs.

264. Where any order as to costs is made by the Court of Appeal against either party to an appeal, such costs shall be payable to the clerk of the district from which the appeal came and shall be by him paid over to the party entitled to the same; and in the absence of any special direction of the Court of Appeal to the contrary such costs shall be payable forthwith.

Enforce-
ment of
order for
costs.

265. Where any such costs are not paid within the time limited by this Act or ordered by the Court of Appeal, the clerk shall, on the application of the person entitled to the same or of any person duly authorised on his behalf, grant to such party a certificate that such costs have not been paid, and, upon production of such certificate to any magistrate of the district from which the appeal came, such magistrate shall enforce the payment of such costs

- (a) in the case of an appeal under paragraph (c) of subsection (1) of section 238, in accordance with the provisions of sections 183 to 194 with respect to execution;
- (b) in the case of any other appeal, in the manner and subject to the conditions laid down in Part VI with respect to a sum of money adjudged to be paid by a conviction or order.

Case Stated

266. (1) After the hearing and determination of any information, complaint or plaint, the magistrate may, in his discretion, on the application of either party to such information, complaint or plaint or on his own motion without such application, state a case on any point of law arising in the case for the opinion of the Court of Appeal, and the statement of facts in such case so stated shall, for the purpose of the determination thereof, be conclusive.

Statement of
case by
magistrate.

(2) Where the case is stated on the application of a party, that party, hereinafter called the "appellant", shall, at the time of making his application, before the case is stated, enter into a recognizance in the sum of \$500 in the prescribed form with one or more sureties acknowledged before the magistrate and conditioned to appear and prosecute his appeal and to abide by the judgment of the Court of Appeal thereupon, and pay such costs as may be awarded by the Court of Appeal.

(3) Where the appellant is in custody, he shall be liberated upon such recognizance being entered into.

(4) The Director of Public Prosecutions may, by notice in writing under his hand, require a magistrate to state a case on any point of law, and, on receipt of such notice, the magistrate shall state such case accordingly.

(5) The case so stated shall be transmitted to the Registrar in a similar manner and with the same notice to the parties as in a case on appeal under this Act.

(6) This section does not affect the right of either party in such a case to appeal as to any determination of fact or any question of law not raised in the case stated by the magistrate, but such appeal shall be in such event independent of the case stated.

(7) The Court of Appeal may remit any case stated under this section to the magistrate stating the same for further information from such magistrate.

(8) The Court of Appeal shall hear and determine the questions of law arising on the case stated, and the provisions of this Act with respect to the hearing and judgment of appeal and of all matters incidental thereto shall, so far as applicable, apply to a case stated under this section.

Effect of
decision of
Court of
Appeal on
case stated
by magis-
trate.

267. Any conviction, order or judgment by a magistrate that is varied by the Court of Appeal on an appeal by way of case stated, and any judgment or order of the Court of Appeal on such an appeal, may be enforced as if it were a decision of the magistrate from whom the appeal is brought.

PART XIII

GENERAL

Rules.

268. (1) The Rules Committee may make rules for regulating and prescribing the procedure and practice to be followed in proceedings before a magistrate, and such rules may make provision as to

- (a) the practice and procedure of magistrates in exercising functions preliminary or incidental to proceedings before them;
- (b) the service and execution of process issued for the purposes of any proceedings before a magistrate;
- (c) the keeping of records of proceedings before magistrates and the manner in which things done in the course of, or as preliminary or incidental to, any such proceedings, or any proceedings on appeal from magistrates, may be proved in any legal proceedings;

- (d) the functions of clerks for the purpose of securing the attendance of persons bound over conditionally by examining magistrates to attend a trial on indictment;
- (e) the furnishing of copies of depositions and of the information, if it is in writing, to a person committed for trial;
- (f) which magistrate has jurisdiction to hear any complaint;
- (g) the matters additional to those specified in section 89 on complaint for which a magistrate shall have power to make an order with the consent of the defendant without hearing evidence;
- (h) any matter which by this Act is to be prescribed.

(2) For the purposes of this section the "Rules Committee" means the Committee established under section 81 of the *Supreme Court of Judicature Act*. Cap. 117A.

(3) When any Act expressly confers jurisdiction on any magistrate to hear a complaint, rules made under paragraph (f) of subsection (1) shall not take away that jurisdiction but may extend it to any other magistrate.

269. (1) The *Eighth Schedule* shall have effect in respect of the transitional provisions and savings set out in that *Schedule*.

Transitional
provisions
and repeal.
Eighth
Schedule.

(2) The *Magistrates Jurisdiction and Procedure Act* and the *Petty Debt Act* are repealed. Cap. 116.
Cap. 209.

FIRST SCHEDULE

(Section 6)

Magisterial Districts

2001/82. Barbados is hereby divided into the following magisterial districts:

District "A" comprising

Cap. 286.

- (i) that part of the City of Bridgetown situate within the parish of Saint Michael and lying within the boundaries of that City and described as follows: by a line starting from a point on the sea coast and running due north to the southern end of Rendezvous Road, thence along the middle of Rendezvous Road to its junction with Highway 6, thence in a north-westerly direction along the middle of Highway 6 to its junction with the Wildey-Upton Road, thence along the middle of the Wildey-Upton Road to its junction with the St. Barnabas-Haggatt Hall Road, thence along the middle of the St. Barnabas-Haggatt Hall Road (Crossing Highway 5) to its junction with Highway 4, thence in a westerly direction along the middle of Highway 4 to its junction with the Belle Road, thence by a straight line to the junction of Highway 3 and Waterford Cross Road, thence along the northern side of Waterford Cross Road to its junction with Highway 2, thence in a northerly direction along the middle of Highway 2 to its junction with the White Hall-Cave Hill Road, thence along the middle of the White Hall-Cave Hill Road to the point at which this road crosses the boundary between the parishes of Saint Michael and Saint James, thence along the latter boundary to the sea coast and thence in a southerly direction along the sea coast to the point of commencement; and including the Port of Bridgetown as defined in the *Second Schedule* to the *Barbados Harbours Act*, together with the enclosed wharf area and waterfront of the Deep Water Harbour and the land vested in the Crown by section 3 of the *Barbados Harbours Act*;
- (ii) the remaining part of the said parish of Saint Michael not included in the City of Bridgetown as described in paragraph (i); and
- (iii) that part of the parish of Christ Church which lies to the west of a line drawn from the point where the parishes of Saint Michael, Saint George and Christ Church touch each other, to the point where the entrance to Adams Castle Plantation joins the main road and to the west of the road which joins this point with Highway 7, and to the west of a line drawn due south from this point to a pillar of stone which has been erected near the sea shore by the Public Works Department.

District "B" comprising the parishes of Christ Church and Saint George, with the exception of the portion of the parish of Christ Church included in District "A";

District "C" comprising the parishes of Saint Philip and Saint John;

District "D" comprising the parish of Saint Thomas;

District "E" comprising the parishes of Saint Peter, Saint Lucy and Saint James;

District "F" comprising the parishes of Saint Andrew and Saint Joseph.

SECOND SCHEDULE

(Sections 43, 59)

Offences Triable Either Way by Virtue of Section 43

1. Offences at common law of public nuisance.
2. Offences under the following provisions of the *Post Office Act*, Cap. 27A
 - (a) section 31 (unlawfully taking away or opening mail bag);
 - (b) section 33 (fraudulent retention of mail bag or postal packets);
 - (c) section 35 (destruction etc. by officer of Post Office of postal packet);
 - (d) section 37 (opening or delaying of postal packets by officers of the Post Office).

3. Offences under section 8 of the *Cremation Act*, Cap. 40 (making false representations etc. with a view to procuring the burning of any human remains).

4. Offences under the following provisions of the *Stamp Duty Act*, Cap. 91:

- (a) section 40 (offences in relation to dies and stamps);
- (b) section 40 (offences in relation to stamps issued for the purpose of national insurance under the provisions of any enactments as applied to those stamps).

5. Offences under the following provisions of the *Coinage Offences Act*, Cap. 124:

- (a) section 8 (importing counterfeit coin);
- (b) section 9 (uttering coins etc. as gold or silver coins);
- (c) section 9 (uttering counterfeit gold or silver coin);
- (d) sections 9 and 10 (uttering counterfeit coin);
- (e) section 11 (possession of counterfeit gold or silver coin);
- (f) section 16 (defacing coins).

6. The following offences under the *Forgery Act*, Cap. 133:

- (a) offences under paragraph (a) or (c) of section 11 (forgery of valuable security etc.) in relation to
 - (i) any document being an accountable receipt, release, or discharge, or any receipt or other instrument evidencing the payment of money, or the delivery of any chattel personal; or
 - (ii) any document being an authority or request for the payment of money or for the delivery or transfer of goods and chattels, where the amount of money or the value of goods or chattels does not exceed \$2 500;
- (b) offences under section 16 (forgery of documents in general); and
- (c) offences under paragraph (a) of section 11 demanding property on forged documents, where the amount of the money or the value of the property in respect of which the offence is committed does not exceed \$2 500;

-
- (d) offences under section 20A (forgery of passports etc.).
7. All indictable offences under the *Theft Act*, Cap. 155 except
- (a) robbery, aggravated burglary;
- (b) burglary comprising the commission of or an intention to commit an offence that is triable only on indictment;
- (c) burglary in a dwelling if any person in the dwelling was subjected to violence or the threat of violence.
8. Offences under the following provisions of the *Criminal Damage Act*, Cap. 113B:
- (a) an indictable offence under section 3 (destroying or damaging property);
- (b) section 6 (threats to destroy or damage property);
- (c) section 7 (possessing anything with intent to destroy or damage property).
9. The following offences under the *Criminal Law (Arrestable Offences) Act*, Cap. 125A:
- offences under section 8(1) of assisting offenders.
10. Offences under the following provisions of the *Offences Against the Person Act*, Cap. 141:
- section 10 (threats to kill).
11. All offences under the *Perjury Act*, Cap. 142 except offences under
- (a) section 3 (perjury in judicial proceedings);
- (b) section 5 (false statements etc. with reference to marriage);
- (c) section 6 (false statements etc. as to births or deaths).
12. Offences under section 10 of the *Statistics Act*, Cap. 192 (disclosing census information).
13. Offences under section 20 of the *Electric Light and Power Act*, Cap. 278 (injuring works with intent to cut off electricity supply).

14. Uttering any forged document the forgery of which is an offence.

15. Aiding, abetting, counselling or procuring the commission of any offence listed in the preceding paragraphs of this Schedule except an offence mentioned in paragraph 9.

16. Any offence consisting in the incitement to commit an offence triable either way except an offence mentioned in paragraph 15.

THIRD SCHEDULE

SUMMARY OFFENCES

PART I

(Section 49(1))

Summary Offences under the *Theft Act, Cap. 155*

1. Dishonestly appropriating property belonging to another within the meaning of section 3 of the Act.

2. Robbing another of property within the meaning of section 8 of the Act.

3. Handling stolen property, knowing the property to be stolen within the meaning of section 19 of the Act.

4. Obtaining by deception property belonging to another within the meaning of the Act.

5. Obtaining by deception a pecuniary advantage for oneself or another within the meaning of the Act.

6. Obtaining by deception services for another within the meaning of the Act.

7. Evading any liability to make a payment within the meaning of the Act.

8. Making off without having paid for anything supplied or service done within the meaning of section 14 of the Act.

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PART II

Value Involved for the Purposes of Section 49(2)

<i>Offences</i>	<i>Value involved</i>	<i>How measured</i>
1. Offence under section 3 of the <i>Criminal Damage Act</i> , Cap. 125A destroying or damaging property excluding any offences committed by destroying or damaging property by fire.	As regards property alleged to have been destroyed, its value. As regards property alleged to have been damaged, the value of the alleged damage.	What the property would probably have cost to buy in the open market at the material time. (a) If immediately after the material time the damage was capable of repair, (i) what would probably then have been the market price for the repair of the damage, or (ii) what the property alleged to have been damaged would probably have cost to buy in the open market at the material time, whichever is the less; (b) if immediately after the material time the damage was beyond repair, what the property would probably have cost to buy in the open market at the material time.

<i>Offences</i>	<i>Value involved</i>	<i>How measured</i>
2. The following offences, namely:		
(a) aiding, abetting, counselling or procuring the commission of any offence mentioned in paragraph 1;	The value indicated in paragraph 1.	As for the corresponding entry in paragraph 1.
(b) attempting to commit any offence so mentioned;	The value indicated in paragraph 1.	As for the corresponding entry in paragraph 1.
(c) inciting another to commit any offence so mentioned.	The value indicated in paragraph 1.	As for the corresponding entry in paragraph 1.

FOURTH SCHEDULE

(Section 81)

Corporations

1. A magistrate may commit a corporation for trial by an order in writing empowering the prosecutor to prefer a bill of indictment in respect of the offence named in the order.

2. An order under paragraph 1 shall not prohibit the inclusion in the bill of indictment of counts that under section 4 of the *Criminal Procedure Act*, Cap. 127 may be included in the bill in substitution for, or in addition to, counts charging the offence named in the order.

3. A representative may on behalf of a corporation

- (a) make a statement before an examining magistrate in answer to the charge;
- (b) consent to the corporation being tried summarily;
- (c) enter a plea of guilty or not guilty on the trial by a magistrate of an information.

4. (1) Where a representative appears, any requirement of this Act that anything shall be done in the presence of the accused, or shall be read or said to the accused, shall be construed as a requirement that that thing shall be done in the presence of the representative or read or said to the representative.

(2) Where a representative does not appear, any such requirement, and any requirement that the consent of the accused shall be obtained for summary trial, shall not apply.

5. (1) Notification or intimation for the purposes of subsections (2) and (3) of section 34 may be given on behalf of a corporation by a director or the secretary or by a representative of the corporation; and those subsections apply in relation to a notification or intimation purporting to be so given as they apply to a notification or intimation purporting to be given by an individual accused.

(2) In this paragraph "director", in relation to a corporation that is established by or under any enactment for the purpose of carrying on under national ownership any industry or part of an industry or undertaking and whose affairs are managed by the members thereof, means a member of that corporation.

6. The provisions of this Act relating to committal to the High Court for sentence shall not apply to a corporation.

7. Subject to paragraphs 1 to 6 the provisions of this Act relating to the inquiry into and trial of indictable offences shall apply to a corporation as they apply to an adult.

8. Where a corporation and an individual who has attained the age of 16 are jointly charged before a magistrate with an offence triable either way, the magistrate shall not try either summarily unless each of them consents to be so tried.

9. For the purposes of this Schedule, the expression "representative" in relation to a corporation means a person duly appointed by the corporation to represent it for the purpose of doing any act or thing which a representative of a corporation is, under this Schedule, authorised to do; but a person so appointed shall not, by virtue of being so appointed, be qualified to act on behalf of the corporation before any court for any other purpose.

10. A representative for the purposes of this Schedule need not be appointed under the seal of the corporation, and a statement in writing purporting to be signed by a managing director of the corporation or by any person (by whatever name called) having, or being one of the persons having, the management of the affairs of the corporation to the effect that the person named in the statement has been appointed as the representative of the corporation for the purposes of this Schedule shall be admissible without further proof as *prima facie* evidence that that person has been so appointed.

FIFTH SCHEDULE

*(Section 85)**Enactments under which Proceedings are to be
Brought or Instituted by way of Complaint*

<i>Number</i>	<i>Short title</i>	<i>Proceedings to which section 85 applies</i>
Cap. 274A	Barbados Water Authority Act	sections 18, 24(7) and 27(2)
Cap. 58	Westbury Cemetery Act	sections 20 and 22
Cap. 111A	Court Process Act	section 69
Cap. 114	District Auctioneers Act	sections 12, 22, 23, 24 and 25
Cap. 124	Coinage Offences Act	section 19(3)
Cap. 145	Prevention of Cruelty to Children Act	sections 7(5), 9(4) and 10(a)
Cap. 166	Parish Constables Act	section 9(5)
Cap. 169	Reformatory and Industrial Schools Act	section 43
Cap. 172	Storage of Petroleum Act	section 22(2)
Cap. 219	Married Women Act	section 4
Cap. 226	Housing Act	sections 6(7) and 26(2)
Cap. 230	Landlord and Tenant Act	section 42(2) against the owner of a house, room or land for the recovery of a penalty
Cap. 282A	Barbados Telephone Company Act	section 16

<i>Number</i>	<i>Short title</i>	<i>Enactments mentioning proceedings to which section 85 applies</i>
Cap. 278	Electric Light and Power Act	sections 14, 27(1) and 32 and paragraphs 9(9), 16, 18, 24, 31(2), 33, 38, 41, 43(3), 49(c), 50 and 51 of the Order contained in the First Schedule.
Cap. 280	National Petroleum Corporation Act	section 8B
Cap. 42	Occupational Training Act	sections 16(3), 17(5), 20, 22(6), 23(4), 30(3), 31(3) and 34
Cap. 381	Child Care Board Act	sections 21 and 22
Cap. 212	Adoption Act	Part VII
1713-1	Three Houses Spring Act	sections 2, 4 and 6
1857-1	West Indian Church Association Act, 1857	section 9
1868-7	Barbados Chamber of Commerce (Incorporation) Act, 1868	section 5

*The following Acts of limited application are not
printed in the 1976 edition of the laws*

1873-1	Thorne's Jetty Act	section 2
1878-1	Ancient Order of Foresters Friendly Society Act, 1878	sections 5, 7 and 18
1881-2	Barbados Fire Insurance Company Act, 1881	section 35
1890-3	Agricultural Society's Act, 1890	section 7

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<i>Number</i>	<i>Short title</i>	<i>Enactments mentioning proceedings to which section 85 applies</i>
1913-4	Barbados Automobile Association Act, 1913	section 5
1921-7	Almair Home Act, 1921	sections 6 and 9
1922-5	Girl's Industrial Union Act, 1922	sections 6 and 9
1925-1	Barbados Produce Exporters Association (Incorporation) Act, 1925	section 5
1928-5	Barbados Horticultural Society Act, 1928	section 6
1929-2	Barbados Dairy and Stock Breeders' Association Act, 1929	section 5
1931-1	Barbados Co-operative Produce Marketing Association Act, 1931	section 5
1933-10	Barbados Museum and Historical Society Act, 1933	section 5
1933-12	Barbados Cricket Association Act	section 5
1935-11	Barbados Cotton Growers Association Act, 1935	section 5
1937-4	Chalky Mount Arrowroot Growers Association Act, 1937	section 5
1938-7	Young Men's Progressive Club Act, 1938	section 5
1945-14	Barbados Poultry Association Act, 1945	section 5

SIXTH SCHEDULE

(Section 110(3))

Maximum Periods of Imprisonment in Default of Payment

1. Subject to the following provisions of this Schedule, the periods set out in the second column of the following Table shall be the maximum periods applicable respectively to the amounts set out opposite thereto, being amounts due at the time imprisonment is imposed.

TABLE

For any sum not exceeding \$25	1 month
Exceeding \$25 but not exceeding \$100	6 weeks
Exceeding \$100 but not exceeding \$500	4 months
Exceeding \$500 but not exceeding \$750	6 months
Exceeding \$750 but not exceeding \$1 000	9 months
Exceeding \$1 000 but not exceeding \$1 500	12 months
Exceeding \$1 500 but not exceeding \$2 000	15 months
Exceeding \$2 000	2 years

2. Where the amount due at the time imprisonment is imposed is so much of a sum adjudged to be paid by a summary conviction as remains due after part payment, then subject to paragraph 3 the maximum period applicable to the amount shall be the period applicable to the whole sum reduced by such number of days as bears to the total number of days therein the same proportion as the part paid bears to the whole sum.

3. The maximum period applicable to a sum due under an order made on complaint shall be 6 weeks: but, in calculating the reduction required under paragraph 2 any fraction of a day shall be left out of account and the maximum period shall not be reduced to less than 5 days.

THE LAWS OF BARBADOS

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SEVENTH SCHEDULE

(Section 120)

PART I

*Taxes, Contributions, Premiums or Liabilities
Subject to Special Enforcement Proceedings*

- Cap. 73. 1. Income Tax or any other tax or liability, interest penalties, costs or other amounts payable under the *Income Tax Act*, and recoverable under section 73 of that Act.
- Cap. 47. 2. Contributions and fines, fees, penalties and costs due to the National Insurance Fund and recoverable under section 43 of the *National Insurance and Social Security Act*.
- Cap. 112A. 3. Legal services under section 25 of the *Community Legal Services Act*.

PART II

Maintenance Orders

- Cap. 216. 1. An order for maintenance under the *Maintenance Act*.
- Cap. 214. 2. An order for maintenance, or other payments to or in respect of a spouse or child, under the *Family Law Act*.
- Cap. 217. 3. A maintenance order, under the *Maintenance Order (Reciprocal Enforcements) Act*, registered in a magistrate's court.
- Cap. 215. 4. An order under section 10 of the *Minors Act*.
- Cap. 145. 5. An order under section 9 of the *Prevention of Cruelty to Children Act*.
- Cap. 169. 6. An order under the *Reformatory and Industrial Schools Act*.
- Cap. 212. 7. Recovery of arrears of a maintenance order under section 23 of the *Adoption Act*.

EIGHTH SCHEDULE

(Section 269)

TRANSITIONAL PROVISIONS AND SAVINGS

1. In this Schedule, reference to the old enactments are to enactments repealed or amended by this Act, and references to the appointed day are to the day on which this Act comes into force. Interpretation.
2. (1) Where proceedings were commenced before the appointed day, the old enactments relating to the proceedings continue to apply and nothing in this Act affects those enactments. Proceedings commenced before appointed day.
- (2) Without limiting the generality of sub-paragraph (1), the old enactments relating to proceedings that continue in force by virtue of it include any provision of those enactments that creates an offence, that relates to civil or criminal procedure, that relates to the punishment for an offence, or that relates to enforcing, appealing against, questioning, varying or rescinding anything ordered or done in the proceedings.
3. (1) This paragraph applies where proceedings are commenced under this Act in relation to an offence committed before the appointed day. Offences committed before appointed day.
- (2) Nothing in this Act renders a person liable to punishment by way of fine or imprisonment for the offence that differs from the punishment to which he would have been liable if this Act had not been passed and proceedings for the offence had been commenced under the old enactment.
- (3) Nothing in this Act renders a person liable to pay compensation under a compensation order in respect of the offence that differs from the compensation he would have been liable to pay if this Act had not been passed and proceedings for the offence had been commenced under the old enactments.
- (4) The provisions of this Act corresponding to the old enactments relating to punishment and compensation are to be construed accordingly.
4. Paragraphs 5 and 6 have effect subject to paragraphs 2 and 3. Other matters: general.
5. Without prejudice to any express amendment made by this Act, a reference in an enactment or other document, whether express or implied, to an enactment repealed by this Act shall, unless the context otherwise requires, be construed as, or as including, a reference to this Act or to the corresponding provision of this Act.
6. Where a period of time specified in an enactment repealed by this Act is current at the commencement of this Act, this Act shall have effect as if the corresponding provision of it had been in force when that period began to run.