

## CHAPTER 255

### THE MAGISTRATE'S CODE OF PROCEDURE ACT

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FIRST SCHEDULE.

SECOND SCHEDULE.

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## MAGISTRATE'S CODE OF PROCEDURE

*(10th February, 1892.)*

10/1891.  
 3/1892.  
 6/1897.  
 19/1897.  
 2/1903.  
 6/1909.  
 4/1910.  
 8/1918.  
 9/1920.  
 4/1921.  
 8/1922.  
 13/1924.  
 4/1925.  
 3/1931.  
 26/1932.  
 11/1939.  
 21/1939.  
 7/1942.  
 1/1944.  
 10/1945.  
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 14/1948.  
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 13/1954.  
 18/1955.  
 51/1956.  
 S.R.O. 22/1956.  
 14/1961.  
 15/1961.  
 9/1964.  
 8/1970.  
 19/1973.  
 S.R.O. 46/1981.  
 11/1982.  
 18/1982.  
 37/1982.  
 1/1984.  
 27/1986.  
 36/1986.  
 18/1987.  
 18/1989.  
 S.I. 39/1989.

**1.** This Act may be cited as the Magistrate's Code of Procedure Act. **Short title.**

**2.** In this Act— **Interpretation.**

"past Act" means any Act passed before the commencement of this Act;

"future Act" means any Act passed subsequent to the commencement of this Act;

"adult" means a person who in the opinion of the Magistrate before whom he is brought is of the age of sixteen years or upwards;

"child" for the purpose of criminal matters under this Act means a person who in the opinion of the Magistrate before whom he is brought is under the age of fourteen years and of sufficient age and capacity to commit crime, and for the purposes of quasi-criminal and civil matters under this Act means a person under the apparent age of sixteen years;

"civil proceedings" mean all civil actions triable by a Magistrate and all proceedings in relation to the making of an order for the payment of any sums of money declared to be a civil debt as hereinafter mentioned or for the doing or abstaining from doing of any act or thing not enforceable by fine or imprisonment in the first instance as hereinafter mentioned;

"Collecting Officer" means the Clerk of every Magistrate's Court or such other person as the Magistrate may with the approval of the Governor-General authorise to carry out the duties of Collecting Officer;

"complaint" means a charge made not on oath and whether or not reduced into writing;

"conviction" means any summary conviction on a complaint or an information and includes any order made by a Magistrate on any matter brought before him on complaint or information;

"fine" means and includes penalty and also includes any pecuniary forfeiture or pecuniary compensation or any sum of money or any costs payable under a conviction;

"guardian" in relation to a child includes any person who in the opinion of the Court having cognizance of any case in which a child is concerned has for

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the time being the charge of or control over such child;

"imprisonment in the first instance" means imprisonment imposed at the time of the making of a conviction or order;

"information" means a charge laid on oath and reduced to writing;

"Magistrate" means a District Magistrate and any justice or justices of the peace authorized by this or any other Act to perform the duties of a District Magistrate;

"offence" means any contravention of any law in force in Antigua and Barbuda or of the Common Law which is punishable or enforceable either on indictment or on summary conviction by fine penalty or imprisonment;

"parent" includes the mother of and any person adjudged to be the father of a child;

"peace officer" means any member of the Police Force and any local constable, and every other person lawfully authorized to discharge police duties;

"person" includes a child, young person, and adult and also includes a body corporate;

"Training School" means any reformatory, industrial or other school established under any Act for the reformation, education and training of children and young persons;

"young person" for the purposes of criminal matters under this Act, means a person who in the opinion of the Magistrate before whom he is brought is of the age of fourteen years and under the age of sixteen years.

PART I  
PERSONAL

Division of  
Antigua and  
Barbuda into  
Districts.

**3.** For the purpose of holding Magistrates' Courts, Antigua and Barbuda is divided into districts as follows—  
The island of Antigua into two districts A and B.  
The island of Barbuda into one district C.

Boundaries of  
districts defined  
by Minister.

**4.** The boundaries of the several districts in Antigua and Barbuda may be from time to time defined by order of the Minister:

Provided that the boundaries existing at the commencement of this Act shall continue to be the boundaries until otherwise defined.

Appointment of  
Magistrates.

**5.** There shall be such number of Magistrates in the public service as may be required for the purposes of this Act.

Assignment of  
Magistrates to  
districts.

**6.** (1) The Governor-General may assign one or more Magistrates to a district or 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) Every Magistrate wherever assigned shall have jurisdiction throughout Antigua and Barbuda.

Powers and  
duties of  
Magistrates.

**7.** A Magistrate shall have and possess all the powers and jurisdiction and shall perform all the duties which are now vested in or imposed upon Magistrates or Justices of the Peace either at common law or by virtue of any Act now in force, or which may hereafter be vested in or imposed upon such Magistrates by virtue of any such Act.

Justices of the  
Peace.

**8.** (1) Every District Magistrate shall be *ex officio* a Justice the Peace for Antigua and Barbuda.

(2) Except as is otherwise provided in any Act, the Governor-General may, by Warrant under his hand, appoint any fit and proper person to be a Justice of the Peace for

Antigua and Barbuda and may, in like manner, for such cause as may appear to him sufficient, remove any Justice of the Peace from his office.

(3) Every appointment or removal of a Justice of the Peace shall be notified in the *Gazette*.

(4) Any person in Antigua and Barbuda who on the first day of July, 1956, was already duly appointed or gazetted as a Justice of the Peace, shall continue to hold such appointment and be deemed to have been appointed a Justice of the Peace in accordance with the provisions of this section.

**Preservation of appointments of Justices of the Peace.**

(5) Justices of the Peace shall have and exercise full power and jurisdiction with the Magistrates to issue summonses, warrants and other process of Court, to grant bail fixing the amount thereof, to take recognizances, and to bind over parties and witnesses, and to administer oaths.

(6) No Justice of the Peace shall exercise any jurisdiction in any court for the purpose of hearing and determining any complaint except as provided in section 9.

**9.** It shall be lawful for any two Justices of the Peace to hear and determine any case in which any Magistrate is interested, and for such purpose any such Justices of the Peace shall have the same powers and jurisdiction, and be entitled to the same immunities and protections as a Magistrate has and is entitled to.

**Trials of cases in which certain Magistrates are interested.**

**10.** The salary of every Magistrate appointed under this Act shall be such as may be provided by Parliament and shall be payable out of the Public Treasury.

**Salary of Magistrates.**

**11.** The Minister may by Order appoint the places where and the time when Magistrates' Courts shall be held in the several districts.

**Sittings to be appointed by Order.**

**12.** When any Magistrate is unable to attend at any time appointed for the holding of a Magistrate's Court it shall be lawful for such Magistrate, by writing under his hand, to adjourn such Magistrate's Court for any period not exceeding one week.

**Adjournment of sittings in Magistrate's absence.**

Offices, clerks  
and bailiffs.

**13.** (1) There shall be in the public service such number of clerks and bailiffs as may be required for the purposes of this Act.

(2) Suitable offices for holding Magistrate's Courts in each district shall be provided and shall be paid for out of the Consolidated Fund.

Every action  
must allege that  
the act was done  
maliciously.

**14.** Every action hereafter to be brought against any Magistrate for any act done by him in the execution of his duty as such Magistrate, with respect to any matter within his jurisdiction as such Magistrate, shall be in the nature of an action on the case as for a tort, and in the plaint it shall be expressly alleged that such act was done maliciously and without reasonable and probable cause.

Conditions under  
which action  
may be brought.

**15.** For any act done by a Magistrate in a matter of which by law he has not jurisdiction, or in which he shall have exceeded his jurisdiction, any person injured thereby, or by any act done under any conviction or order made or warrant issued by such Magistrate in any such matter, may maintain an action against such Magistrate in the same form and in the same case as he might have done before the passing of this Act, without making any allegation in his plaint that the act complained of was done maliciously and without reasonable and probable cause:

Provided that no action shall be brought for anything done under such conviction or order until after such conviction shall have been quashed, either upon appeal or upon application to the High Court or any Judge thereof; nor shall any such action be brought for anything done under any such warrant which shall have been issued by such Magistrate to procure the appearance of such party, and which shall have been followed by a conviction or order in the same matter, until after such conviction or order shall have been so quashed as aforesaid; or if such last mentioned warrant shall not have been followed by any such conviction or order, or if it be a warrant upon an information for an alleged indictable offence, nevertheless, if a summons were issued previously to such warrant and such summons were served upon such person, either personally, or by leaving the same for him with some person at his last or most usual place of abode, and he did not appear according to the



exigency of such summons, in such case, no such action may be maintained against such Magistrate for anything done under such warrant.

**16.** Where a conviction or order shall be made by a Magistrate, and a warrant of distress or commitment shall be granted thereon by some other Magistrate *bona fide* and without collusion no action shall be brought against the Magistrate who granted such warrant by reason of any defect in such conviction or order or for any want of jurisdiction in the Magistrate who made the same, but the action (if any) shall be brought against the Magistrate who made such conviction or order.

Action to be brought against convicting Magistrate.

**17.** In all cases where a Magistrate shall refuse to do any act relating to the duties of his office as such Magistrate, it shall be lawful for the party requiring such act to be done to apply to the High Court or any Judge thereof, upon an affidavit of the facts, for a rule calling upon such Magistrate and also the party to be affected by such act, to show cause why such act should not be done; and if, after due service of such rule, good cause shall not be shown against it, the said Court or any Judge thereof may make the same absolute with or without or upon payment of costs as to them shall seem meet; and the said Magistrate, upon being served with such rule absolute, shall obey the same, and shall do the act required, and no action or proceeding whatsoever shall be commenced or prosecuted against such Magistrate for having obeyed such rule and done such act so thereby required as aforesaid.

Mandamus to Magistrate refusing to act.

**18.** In all cases where a warrant of distress or warrant of commitment shall be granted by a Magistrate upon any conviction or order, which either before or after the granting of such warrant shall have been or shall be confirmed upon appeal, no action shall be brought against such Magistrate who so granted such warrant for anything which may have been done under the same by reason of any defect in such conviction or order.

Defect in conviction must not operate against Magistrate issuing warrant of distress.

**19.** In all cases, where by this Act it is enacted that no action shall be brought under parti'cular circumstances, if any such action shall be brought, it shall be lawful for a Judge of the Court in which the same shall be brought

Judge may set aside proceedings in action.

upon application of the defendant, and upon an affidavit of facts, to set aside the proceedings in such action, with or without costs, as to him shall seem meet.

**Damages.**

**20.** In all cases where the plaintiff in any such action as aforesaid shall be entitled to recover, and he shall prove the levying or payment of any penalty or sum of money under any conviction or order as parcel of the damages he seeks to recover, or if he prove that he was imprisoned under such conviction or order, and shall seek to recover damages for any such imprisonment, he shall not be entitled to recover the amount of such penalty or sum so levied or paid, or any sum beyond the sum of four cents as damages for such imprisonment, or any costs of suit whatsoever if it shall be proved that he was actually guilty of the offence of which he was so convicted, or that he was liable by law to pay the sum he was so ordered to pay, and (with respect to such imprisonment) that he had undergone no greater punishment than that assigned by law for the offence of which he was so convicted, or for non-payment of the sum he was so ordered to pay.

**Costs.**

**21.** If the plaintiff in any such action as aforesaid shall recover a verdict or the defendant shall allow judgement to pass against him by default, such plaintiff shall be entitled to costs, in such manner as if this Act had not been passed; or if in such case it be stated in the plaint that the Act complained of was done maliciously and without reasonable and probable cause, the plaintiff, if he recover a verdict for any damages, or if the defendant allow judgement to pass against him by default, shall be entitled to his full costs of suit, to be taxed as between attorney and client.

## PART II

## PRELIMINARY PROCEEDINGS

**Jurisdiction of Magistrates.**

**22.** Every Magistrate shall have jurisdiction—

(a) To receive complaints and information of all offences and to cause to be brought before him either by summons or warrant, all persons charged with such offences;

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(b) To issue search warrants as hereinafter provided;

(c) To investigate all charges which he is not empowered to try summarily and to dismiss the accused or to commit him for trial before the High Court;

(d) (i) To try summarily and to convict and sentence all persons charged with committing offences which he is empowered to try summarily by any Act;

(ii) To make orders for the support, education, and burial of illegitimate children, and for the support of wives deserted by their husbands;

(iii) To make and give all such convictions, sentences, and orders as under any Act he is authorized to make or give and which may be carried out and enforced by fine or imprisonment in the first instance;

(e) To arbitrate in disputes relating to salvage and the title to wreck where the amount in dispute does not exceed two hundred and forty dollars;

(f) (i) To try any civil action founded on contract when the debt, demand or value of the thing claimed, or rent in arrear is not more than fifteen hundred dollars;

(ii) To try any action founded in tort where the demand or damage claimed is not more than fifteen hundred dollars:

Provided that the Magistrate shall not have any jurisdiction over any suits for malicious prosecution, false imprisonment, libel, slander, seduction or breach of promise of marriage;

(iii) To make orders for the paying of any sum of money declared by any Act to be a civil debt and to be recoverable summarily;

(iv) To make orders for the doing or the abstaining from doing of any act prescribed to be done or not to be done by any Act where such Act does not prescribe that such

order is to be enforced by fine or by imprisonment in the first instance.

(g) To bind over persons to keep the peace and be of good behaviour;

(h) To admit to bail persons charged with or committed for trial for any offence save only as hereinafter mentioned;

(i) To bind over prosecutors and witnesses by recognizances to prosecute and give evidence;

(j) To order the condemnation and sale of any vessel or thing liable to forfeiture on the committing of any offence punishable by a court of summary jurisdiction;

(k) To enforce the payment of any fine imposed by them by warrant of distress or imprisonment;

(l) To administer oaths to any person or persons for the purpose of levying penalties or making distresses directed to be levied or made by any Act thereof or for the purpose of justifying upon oath the sufficiency of any bail;

(m) To exercise such other powers and do such other acts not hereinbefore mentioned as may be prescribed by this Act or by any other past or future Act.

When Magistrate  
may issue his  
summons.

**23.** In all cases where a charge or complaint is made before a Magistrate—

(a) That any person has committed or is suspected of having committed any indictable offence within the limits of the jurisdiction of such Magistrate or that any person guilty or suspected to be guilty of having committed such offence as aforesaid out of the jurisdiction of such Magistrate is to be found or likely to be found within the limits of the same;

(b) That any person being within the jurisdiction of such Magistrate has committed or is suspected of having committed any offence punishable on summary conviction;

(c) That any person being within such jurisdiction as aforesaid, has done any act or omitted to do any act for which commission or omission as aforesaid he is liable to have an order made against him by such Magistrate for the payment of any fine or for the doing or the abstaining from doing any act;

(d) That any person within such jurisdiction as aforesaid is likely to commit a breach of the peace; the Magistrate may issue his summons directed to such person requiring him to appear before the Magistrate's Court at the time to be therein mentioned to answer the said charge or complaint and to be further dealt with according to law.

24. The charge shall (subject as hereinafter mentioned) be laid on complaint and the complaint may, in the discretion of the Magistrate, be reduced into writing. **How complaint to be laid.**

25. Every complaint shall be for one matter only and not for two or more matters. But it shall be lawful for the prosecutor to lay one or more complaints against the same person at the same time. And the Magistrate hearing the complaint may where he considers it necessary, deal with such complaints either together or separately. **To be of one matter only at a time.**

26. (1) It shall be lawful for any person to make a complaint against any person committing an offence punishable on summary conviction unless it appears from the enactment on which the complaint is founded that any complaint for such offence shall be made only by a particular person or class of persons. **Information and Complaint.**

(2) (a) It shall be lawful for any police officer, to lay any information or make any complaint in the name of the Commissioner of Police and conduct any such proceedings on his behalf.

(b) Every such information or complaint shall be signed by the police officer laying or making the same and such police officer shall be deemed for all purposes of this Act other than those specified in this subsection to be the complainant; and proceedings under such information or complaint shall not lapse or be deter-

mined by reason of any change of the police officer in charge as aforesaid.

(c) No such proceedings shall be dismissed by reason only of the failure of the Commissioner of Police, to appear in person or by counsel or solicitor, provided that he be represented by any police officer for the time being present in Court.

Magistrate has discretion to refuse summons.

**27.** Nothing hereinbefore contained shall oblige any Magistrate to issue any such summons, and if the Magistrate in his discretion refuses to issue a summons, the person applying for the same may require the Magistrate to give him a written certificate of refusal and may apply to any Judge of the High Court for an Order directing the Magistrate to issue the summons sought for on such summons as the Judge shall direct.

How summons is to be served.

**28.** Every summons shall be served by a peace officer or other person to whom the same may be delivered upon the person to whom it is directed by delivering it to him personally or if he cannot be conveniently found by leaving it with some person for him at his last or most usual place of abode.

Offences committed on vessels within the waters of Antigua and Barbuda.

**29.** Where any person has committed or is suspected of having committed any offence punishable on summary conviction in or upon any ship, vessel, or boat within any of the waters of Antigua and Barbuda, the same may be dealt with and determined by the Magistrate off the shores of whose district the ship, vessel, or boat may be at the time of the commission of the offence, or near to the shore of whose district the ship, vessel, or boat, after the commission of the offence, may anchor or touch, and any summons or warrant issued by such Magistrate in respect of the commission or supposed commission of such offence may be served or executed, as the case may be, on board of such ship, vessel, or boat while, or on any subsequent occasion when, such ship, vessel or boat is within the waters of Antigua and Barbuda.

How service is to be proved.

**30.** The person who serves the summons shall attend before the Magistrate at the time and place mentioned therein to depose if necessary to the service thereof.

**31.** If the person served with the summons does not appear at the time and place mentioned in the summons and it be made to appear to the Magistrate on oath that the summons was duly served within a reasonable time before the time of his appearance as aforesaid the Magistrate after taking such evidence on oath to substantiate the matter of the complaint as he shall consider necessary may issue his warrant to apprehend the person so summoned as aforesaid and to bring him before a Magistrate to answer to the said complaint and be further dealt with according to law.

If the person summoned does not appear warrant may issue.

**32.** In all cases where a charge is made in respect of an offence punishable either on indictment or on summary conviction the Magistrate, if he thinks it expedient that a warrant be issued in the first instance, may take an information and require such evidence in that behalf as he considers necessary to substantiate the matter of the information and may issue his warrant in the first instance to apprehend such person as aforesaid and to cause him to be brought before him or any other Magistrate to answer the charge and to be dealt with according to law. And the Magistrate may issue such warrant as aforesaid notwithstanding that a summons in respect of the matter charged has been issued at any time before the time of appearance in such summons mentioned:

When a warrant may issue in the first instance.

Provided that where a warrant is issued in the first instance the Magistrate shall furnish a copy or copies thereof and cause a copy to be served on each party apprehended.

**33.** In all cases of indictable offences committed on the high seas or in any creek, harbour or in other place in which the Government of Antigua and Barbuda or the Admiralty of England have or claim to have jurisdiction and in all cases of offences committed on land beyond the seas for which an indictment may be preferred or the offender may be arrested in Antigua and Barbuda the Magistrate may on information laid as in the last preceding section mentioned issue his warrant to apprehend such person to be dealt with as herein and hereby directed.

As to warrant when offence is committed on the high seas and beyond sea.

**34.** Every warrant issued by a Magistrate to apprehend any person may be issued at any time or on any day and shall be under the hand and seal of the Magistrate;

As to form of warrant.

and may be directed to a member of the Police Force and to all peace officers of Antigua and Barbuda; and it shall state shortly the act charged and shall name or otherwise describe the person to be apprehended and it shall order the person or persons to whom it is directed to apprehend the person so named or described as aforesaid and bring him before the Magistrate issuing the warrant or before some other Magistrate to answer the charge and to be further dealt with according to law.

**When and where warrant may be executed.**

**35.** It shall not be necessary to make the warrant returnable at any particular time but the same may remain in force until executed. And it may be executed by any peace officer in any part of Antigua and Barbuda without being backed by any other Magistrate in any other district.

**Proceedings on arrest.**

**36.** When a person has been apprehended under a warrant he shall be brought before the Magistrate so issuing the warrant, or any Magistrate acting for him, who shall thereupon either by his warrant commit him to prison or verbally to the custody of the officer apprehending him, or to such other safe custody as he thinks fit and may order him to be brought up at a certain time and place before him, and shall give notice of such order to the person laying the information or complaint but no committal under this section shall exceed one week.

**Proceedings on arrest without warrant.**

**37.** A person taken into custody for any offence without a warrant shall be brought before a Magistrate as soon as practicable after he is so taken into custody and if it is not, or will not be practicable to bring him before a Magistrate within 24 hours after he has been so taken into custody any member of the Police Force in charge of any police station shall enquire into the case and except where the offence appears to him to be of a serious nature shall discharge the prisoner upon his entering into a recognizance with or without sureties for a reasonable amount to appear before some Magistrate at the time and place mentioned in the recognizance.

**Search warrant.**

**38.** (1) Where a Magistrate is satisfied on evidence upon oath that there is reasonable cause to believe that any property whatsoever on or with respect to which any larceny or other felony has been committed is in any place or places



he may grant a warrant to search such place or places for such property. And if the same or any part thereof be there found to bring the same before the Magistrate granting the warrant or some other Magistrate of Antigua and Barbuda.

(2) Any search warrant may be issued and executed at any time, and may be issued and executed on a Sunday.

**39.** A warrant or summons issued by a Magistrate shall not be avoided by reason of the Magistrate who signed the same dying or ceasing to hold office.

Warrant not to lapse on death or removal of Magistrates.

**40.** It shall not be necessary that the Magistrate who acts before or after the hearing of a case should be the Magistrate by whom the case is or was heard and determined.

Different Magistrates.

### PART III

#### PRELIMINARY INQUIRIES

**41.** The room or place in which a Magistrate shall hold a preliminary inquiry shall not be deemed an open Court for that purpose. It shall be lawful for the Magistrate in his discretion to order that no person shall have access to or be or remain in such room or place, the counsel or solicitor of any person then being in Court as a prisoner only excepted, without the consent of the Magistrate if it appears to him that the ends of justice will be best answered by so doing.

Court House not to be an open Court.

**42.** Whenever any charge has been brought against any person of an offence not triable summarily a preliminary inquiry shall be held as hereinafter provided.

Preliminary inquiry where case not triable summarily.

**43.** Where a child or young person is charged with an indictable offence other than homicide the Magistrate may, without consulting the parent or guardian of the child or young person, deal with him summarily and shall so deal with him unless some other person who is charged jointly with him and is not a child or young person is committed for trial, in which case the Magistrate may, if in the interests of justice he thinks it necessary so to do, also commit the child or young person for trial.

Summary trial of juvenile for indictable offences.

Power to remand  
in order to  
secure the  
presence of  
parent or  
guardian.

**44.** Where the parent or guardian of such child or young person as aforesaid is not present when the charge is being heard by the Magistrate the Magistrate may remand such child or young person as aforesaid for the purpose of causing notice to be served on such parent or guardian with a view as far as practicable of securing his attendance at the hearing of the charge, or the Magistrate may deal with the case summarily:

Offences triable  
either on  
indictment or  
summarily.

**45.** (1) Where any person is charged with an offence that is by virtue of any enactment both an indictable offence and a summary offence, the Magistrate dealing with the charge shall, if the person charged is not a child or young person, proceed as if the offence were not a summary offence, unless the Magistrate, having jurisdiction to try the charge summarily, determines on the application of the prosecutor to do so.

(2) An application under subsection (1) shall be made before any evidence is called and, if the person charged fails to appear to answer the charge, may be made in his absence.

(3) Where a Magistrate has, in pursuance of subsection (1) begun to hold a preliminary inquiry, then, if at any time during the inquiry it appears to the Magistrate, having regard to any representations made in the presence of the person charged, by the prosecutor, or made by the person charged, and to the nature of the case, that it is proper to do so, the Magistrate may proceed to try the case summarily; but if the prosecution is being carried on by the Director of Public Prosecutions, the Magistrate shall not act under this subsection without the Director's consent.

(4) A Magistrate proceeding to try a case summarily under subsection (3) shall, before asking the accused whether he pleads guilty, cause the charge to be written down, if this has not already been done, and read to him.

(5) Where, under subsection (1), a Magistrate has begun to try an information summarily, the Magistrate may, at any time before the conclusion of the evidence for the prosecution, discontinue the summary trial and proceed to hold a preliminary inquiry.

(6) Nothing in this section shall affect any enactment enabling the person charged or the prosecutor to claim that a summary offence shall be tried by a jury.

**46.** Where an adult is charged with an indictable offence set forth in the second column of the First Schedule the Magistrate at any time during the hearing of the case may having regard to all the circumstances of the case cause the charge to be reduced into writing and read to the person charged and he shall then question him to the following effect—

**Where an adult may be tried summarily.**

**First Schedule.**

"Do you desire to be tried by a jury or do you consent to the case being dealt with summarily?"

and shall add a statement if necessary of the meaning of the case being dealt with summarily and of the time at which he would probably be tried by the High Court and if he does not object to be tried summarily the Magistrate may deal summarily with the case as hereinafter provided.

**47.** Where an adult is charged with an indictable offence set forth in the first column of the First Schedule and the Magistrate at any time during the hearing of the case becomes satisfied that the evidence is sufficient to put the person so charged on his trial and also satisfied that the case, having regard to all the circumstances, is one which may be properly dealt with and adequately punished under this Act, he may cause the charge to be reduced into writing and read to the person charged and shall then explain to such person as aforesaid that he is not obliged to plead or answer and that if he pleads guilty he will be dealt with summarily and that if he pleads not guilty he will be dealt with in the usual course and shall if necessary add a statement of the meaning of the case being dealt with summarily and in the usual course and a statement as to the time at which he would probably be tried by the High Court and shall further explain to him that he is not obliged to say anything unless he desires to do so, but that whatever he says will be taken down in writing and may be given in evidence upon his trial and shall give him clearly to understand that he has nothing to hope from any promise or favour and nothing to fear from any threat which may have been held out to him to induce him to make any admission or confession of his guilt but that whatever he then

**Where an adult pleading guilty may be dealt with summarily.**  
**First Schedule.**

says may be given in evidence upon his trial notwithstanding such promise or threat and shall then ask him whether he is guilty or not of the charge and if he says that he is guilty the Magistrate shall thereupon deal with him summarily as hereinafter provided. And if he says that he is not guilty, the Magistrate shall proceed as herein provided for the procedure at a preliminary inquiry.

**Reduction of charge from indictable to summary offence.**

**48.** Where, on the holding of any preliminary inquiry on a charge of an indictable offence, the Magistrate is of opinion that the evidence establishes, or appears likely to establish, the commission of a summary offence of a like kind to the offence charged, or an abetment of, or an attempt or incitement to commit, that summary offence, the Magistrate may, if he thinks fit, inform the accused person accordingly, and all further proceedings in the matter thereafter shall be the same as if a complaint had been made against the person for the latter offence or abetment, attempt, or incitement.

**Magistrate to explain committal for sentence.**

**49.** Where the Magistrate proceeds under section 45 (3), 46 or 47 with a view to summary trial, he shall explain to the person charged that if he is tried summarily and is convicted he may be committed for sentence to the High Court under section 100 if the Magistrate, on obtaining information of his character and antecedents is of the opinion that they are such that greater punishment should be inflicted than the Magistrate has power to inflict.

**Power to remand in order to ascertain if case should be dealt with summarily.**

**50.** Where a person is charged with an indictable offence with which the Magistrate may have power to deal summarily, the Magistrate may for the purpose of ascertaining whether it is expedient to deal with the case summarily, either before or during the hearing of the case, from time to time adjourn the case and remand the person accused.

**Evidence to be taken on oath.**

**51.** When the accused appears or is brought before the Magistrate, the Magistrate except where otherwise in this Act provided, shall take the evidence upon oath of the witnesses called in support of the charge offered on the part of the prosecution.

**52.** The evidence of every witness shall be given in the presence of the accused and he or his counsel or solicitor shall be entitled to cross-examine such witness upon all facts relevant to the charge, but not, except with leave of the Court, upon matter relevant only as affecting his credit.

**Witness to be examined in presence of accused who may cross-examine.**

**53.** As each witness gives his evidence the material part of it shall be taken down in writing by the Magistrate in narrative form, or, if and so far as the Magistrate may think fit, in the form of question and answer:

**Depositions.**

Provided that if the Magistrate is from any cause unable to take down the evidence in writing, the same shall be taken down in writing by the Clerk of the Court under the Magistrate's direction.

The evidence of a witness so taken down shall be read over to the witness and shall be signed by him and by the Magistrate, and such evidence so taken down and read over and signed as aforesaid shall be deemed to be a deposition.

**54.** A Magistrate shall in all cases other than criminal cases to which section 53 applies take notes in writing of the evidence, or of so much thereof as is material, in a book to be kept for that purpose, and such book shall be signed by the Magistrate at the conclusion of each day's proceedings:

**Magistrate to take notes of evidence.**

Provided that if the Magistrate is from any cause unable to take such notes the same shall be taken by the Clerk of the Court under the Magistrate's direction.

**55.** When the examination of all the witnesses for the prosecution is completed, the Magistrate may either dismiss the charge and if the accused is in custody make an order for his release or he may call upon the accused for his defence as hereinafter provided.

**Magistrate to dismiss the charge or call on accused for his defence.**

**56.** If the Magistrate shall not dismiss the charge he shall say to the accused these words or words to the like effect:

**Mode of calling on accused for his defence.**

"Having heard the evidence do you wish to say anything in answer to the charge? You are not obliged to do so unless you desire to do so, but whatever you say will be taken down in writing and may be given in evidence upon your trial. And I give you clearly to understand that you have nothing to hope from any promise of

favour and nothing to fear from any threat that may have been held out to you to induce you to make any admission or confession of your guilt, but whatever you now say may be given in evidence on your trial notwithstanding such promise or threat"

and whatever the prisoner then says in answer thereto shall be taken down in writing and read over to him and shall be signed by the Magistrate and kept with the depositions of the witnesses and shall be transmitted with them as hereinafter mentioned:

Provided that nothing herein contained shall prevent any prosecutor from giving in evidence any admission or confession or other statement made at any time by the person accused or charged which by law would be admissible in evidence against him.

Accused may show cause and call witnesses.

**57.** The accused or his counsel or solicitor may then show cause why the Magistrate should not commit him for trial and may call witnesses in his defence and their evidence shall be taken in the same manner and form as that of the witnesses for the prosecution and if duly taken, read over, and signed, shall be deemed to be depositions.

Magistrate to dismiss the charge or to commit for trial.

**58.** When the accused has been heard and his witnesses (if any) examined, the Magistrate shall either dismiss the charge and if the accused be in custody make an order for his release, or shall commit him for trial before the Circuit Court which shall next be held after such committal as aforesaid in the Circuit in which the offence charged has been committed:

Provided that if the day of committal shall be so near the day for the holding of the Circuit Court that in the opinion of the Magistrate it would not be practicable for the case to be tried by such Circuit Court as aforesaid, it shall be lawful for him to commit the accused to the Circuit Court next following such Circuit Court as aforesaid.

Prosecutor and witnesses to be bound over to appear at trial of accused.

**59.** It shall be lawful for any Magistrate upon committing any accused person for trial to bind by recognizance as hereinafter prescribed the prosecutor and all witnesses giving evidence to appear at the High Court before which the accused person is to be tried then and there to prosecute, or to prosecute and give evidence or to give

evidence, as the case may be. And the Magistrate shall except where in this Act it is otherwise provided cause the several recognizances so taken together with the written information (if any) the depositions, the statement of the accused and the recognizances of bail (if any) to be forthwith delivered to the Registrar:

Provided that if any witness shall refuse to enter into or acknowledge such recognizance as aforesaid it shall be lawful for the Magistrate by his warrant to commit him to prison there to be safely kept until after the trial of such accused person as aforesaid unless in the meantime such witness shall duly enter into such recognizance before a Magistrate.

**60.** When the Magistrate has committed the accused person for trial he shall, unless he shall admit such person to bail, as hereinafter provided, commit him by his warrant to the prison to which he may by law be committed, to be there safely kept until delivered in due course of law.

Accused on committal to be committed to prison, unless bailed.

**61.** The peace officer or other person to whom any warrant of commitment is directed shall convey the accused person therein named or described to the prison therein mentioned and there deliver him together with the warrant to the keeper of such prison who shall thereupon give to such peace officer or other person as aforesaid a receipt for the prisoner setting forth the state and condition of the prisoner when delivered into his custody.

Peace officer to convey him to prison and deliver him to gaoler.

**62.** (1) Where the offence with which the accused person is charged is a misdemeanour punishable with a fine or with imprisonment, with or without hard labour, for any term not exceeding two years, the accused person shall be entitled to be admitted to bail as is hereinafter mentioned.

Right of accused persons to bail.

(2) Where the offence with which the accused person is charged is a misdemeanour punishable otherwise than as is hereinbefore in this section mentioned, or, subject to the exceptions hereafter in this section mentioned, is a felony, the Magistrate may, in his discretion, admit the accused person to bail as is hereinafter mentioned.

(3) A Magistrate shall not admit to bail any person charged with high treason, treason, misprison of treason, treason felony or murder;

(4) A Judge of the Supreme Court may order a Magistrate to admit a person to bail in any case.

Magistrate may admit to bail at any time.

**63.** In cases mentioned in section 62 the Magistrate at any time before the first day of the sitting of the Court at which the accused is to be tried, may admit him to bail as hereinafter provided or may certify on the back of the warrant of committal, the amount of bail to be required in which case any other Magistrate may admit the accused to bail in such amount at any time before such first sitting of the Court as aforesaid.

When Magistrate may admit to bail on adjournment of hearing.

**64.** Where any person appears or is brought before a Magistrate charged with a misdemeanour or a felony other than high treason, treason or felony punishable with death, and it becomes necessary to adjourn the inquiry and to remand the accused, or to complete the inquiry before a Magistrate in some other district then in the case of a charge of misdemeanour as aforesaid and in the case of a charge of felony as aforesaid where the Magistrate shall not consider the evidence given to be sufficient to put the accused upon his trial, or to raise a strong presumption of guilt, the Magistrate may admit the accused to bail as hereinafter prescribed until such time as the inquiry shall be resumed.

Warrant of deliverance.

**65.** In all cases where the Magistrate admits to bail any person charged with the offence for which he is so admitted to bail he shall cause to be lodged with the keeper of the prison in which such accused person is detained a warrant of deliverance under his hand and seal requiring such keeper to discharge the person so admitted to bail if he be not detained for any other offence, and upon such warrant being lodged with the keeper as aforesaid he shall forthwith obey the same.

Person bailed to enter into recognizances for his re-appearance.

**66.** Every accused person before being admitted to bail shall enter into recognizances as hereinafter prescribed either with or without a surety or sureties at the discretion of the Magistrate before whom they are taken conditioned



for his appearance at the time and place mentioned in such recognizance.

**67.** In all cases of felony or suspicion of felony and in all cases of misdemeanour when an accused person has been committed for trial as hereinbefore provided or as provided by any Act in force in Antigua and Barbuda relating to the duties of Coroners any Judge of the High Court may on application made to him for that purpose and on notice to the Director of Public Prosecutions or in his absence then to the officer if any for the time being in charge of the police in Antigua and Barbuda, order such accused person to be admitted to bail on entering into recognizances with sufficient sureties before a Magistrate in such amount as the Judge shall direct and thereupon the Magistrate shall issue a warrant of deliverance and shall attach thereto a copy of the order directing the admission of such person to bail.

Judge may order accused to be admitted to bail.

**68.** When any person has been committed for trial by any Magistrate or Coroner the prisoner, his counsel or solicitor may notify to the committing Magistrate or Coroner that he will so soon as counsel can be heard move before one of the Judges of the High Court to admit the prisoner to bail. Whereupon such committing Magistrate or Coroner if the same are in his possession shall with all convenient speed transmit to the Registrar all informations and evidence touching the offence with which the prisoner has been charged together with a copy of the warrant of commitment and inquest (if any).

Notice of application to Judge to be given to committing Magistrate or Coroner.

**69.** At any time after all the witnesses have been examined and before the first sitting of the Court to which the accused is committed for trial the accused may require and shall be entitled to have from the officer having the custody of the same, copies of the depositions on which he has been committed on payment of a reasonable sum for the same not exceeding the rate of four cents for each folio of 100 words.

Accused entitled to a copy of depositions on payment.

**70.** The Magistrate holding a preliminary inquiry on a charge of an indictable offence may, if satisfied that all the evidence before the court (whether for the prosecution or defence) consists of written statements tendered to the court

Committal for trial without consideration of evidence.

under section 71, with or without exhibits commit the defendant for trial for the offence without consideration of the contents of those statements, unless—

(a) the defendant or one of the defendants is not represented by counsel;

(b) counsel for the defendant or one of the defendants, as the case may be, has requested the court to consider a submission that the statements disclose insufficient evidence to put that defendant on trial by jury for the offence.

Written  
statements in  
committal  
proceedings.

**71.** (1) In committal proceedings a written statement by any person shall, if the conditions mentioned in subsection (2) are satisfied, be admissible as evidence to the like effect as oral evidence to the like effect by that person.

(2) The following are the conditions referred to in subsection (1)—

(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 willingly 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) 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.

(4) So much of any statement as is admitted in evidence under this section shall, unless the magistrate commits the accused for trial under section 70 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.

(5) 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.

**72.** Where a Magistrate commits any person for trial or dismisses the charge against him, the clerk of the court shall on the day on which the committal proceedings are concluded or the next day, cause to be displayed in a part of the court house to which the public have access, a notice—

**Notice of result of committal proceedings.**

(a) in either case, giving that person's name, address, and age, if known;

(b) in a case where the magistrate so commits him stating the charge or charges on which he is committed;

(c) in a case where the magistrate discharges him, describing the offence charged and stating that he has been so discharged.

## PART IV

### SUMMARY JURISDICTION (CRIMINAL)

**73.** The room or place in which the Magistrate sits shall be deemed an open Court.

**Court house to be an open Court.**

**74.** The person bringing the charge and the person charged may conduct their own case or may appear by counsel or solicitor.

**Either party may appear in person or by counsel.**

**75.** In all cases where no time is specially limited for making any charge in the Act or law relating to the particular case such charge shall be made within six months from the time when the matter of the charge arose.

**Limitation six months unless otherwise provided.**

Where accused liable to imprisonment for more than six months he may claim to be committed for trial.

**76.** When a person is charged with any offence punishable on summary conviction with imprisonment for a period exceeding two years the Magistrate shall address him to the effect following—

"You are charged with an offence in respect to the commission of which you are entitled if you desire it instead of being dealt with summarily to be tried by a jury. Do you desire to be tried by a jury?"

and he shall add a statement if necessary of the meaning of being dealt with summarily and of the probable time at which such person would be tried if tried at the High Court. And if such person shall elect to be tried by a Jury the Magistrate shall deal with the case as though such person had been charged with an indictable offence not triable summarily and the offence with which he is charged shall be deemed to be an indictable offence:

Provided that this section shall not apply to a child unless the parent or guardian of such child is present and if the parent or guardian of such child is present the Magistrate shall address the above question to such parent or guardian:

Provided also that nothing in this section or Act contained shall in any way interfere with or curtail the summary jurisdiction of Magistrates in trials of offences—

Cap. 405.

(a) Under the Small Charges Act;

Cap. 298.

(b) Under the Obeah Act;

(c) Where the Magistrate himself is given a direction to try the case summarily or commit the offender for trial for an indictable offence;

Cap. 396.

(d) Under the Sedition and Undesirable Publications Act.

If defendant does not appear Magistrate may proceed *ex parte*.

**77.** If at the time and place of hearing mentioned in a summons the defendant does not appear and it be proved on oath that the summons was duly served on him a reasonable time before the time appointed for his appearance, and if the Magistrate does not think it expedient to issue his warrant for the apprehension of such person the Magistrate may proceed *ex parte* to adjudicate on the case as fully as if the defendant had duly appeared.

**78.** If at the time and place appointed the defendant appears, or is brought before the Magistrate, and the person making the charge, having had due notice does not appear, the Magistrate shall dismiss the charge unless he thinks it proper to adjourn the hearing till some other day.

If prosecutor does not appear Magistrate may dismiss or adjourn.

**79.** If at any time and place appointed neither party appears the Magistrate may dismiss or adjourn the case as to him shall seem fit.

If neither party appears Magistrate may dismiss or adjourn.

**80.** If at the time and place appointed for any adjourned hearing either or both parties do not appear the Magistrate may then and there proceed with the further hearing of the case as if the party or parties were present.

If on adjourned hearing either party does not appear Magistrate may proceed.

**81.** If both parties appear the Magistrate shall cause the substance of the charge to be stated to the defendant and shall ask him if he has any cause to show why he should not be convicted.

If both parties appear case to proceed.

**82.** If the defendant admits the truth of the charge and if he shows no cause as aforesaid, the Magistrate shall convict him.

If defendant pleads guilty Magistrate to convict him.

**83.** If he does not admit the truth of the charge the Magistrate shall hear the prosecutor, and such evidence as he may adduce and shall also hear the defendant and such evidence as he shall adduce in his defence and also such evidence as shall be tendered in reply if the defendant has given any evidence other than as to his character.

If defendant pleads not guilty Magistrate to hear evidence of both parties.

**84.** Where a complaint is laid by one or more parties against another party or parties, and there is a cross complaint by the defendant or defendants in such first named case either by himself or themselves or together with another person or other persons against the complainant or complainants in the first named case either by himself or themselves or together with another person or other persons, and such cross complaints are with reference to the same matter, the Magistrate may, if he thinks fit, hear and determine such complaints at one and the same time.

Cross complaints.

Neither party to have right of reply on the other.

**85.** The prosecutor shall not be entitled to make any observations in reply upon the evidence given by the defendant nor the defendant upon the evidence given in reply by the prosecutor, but this shall not preclude counsel on either side from addressing the Court on the whole case.

Magistrate then to determine the case.

**86.** The Magistrate shall then consider the whole matter and determine the same, and shall either dismiss the charge or convict the defendant

Offence charged- attempt proved. Attempt charged- full offence proved.

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

Provided that, after conviction for such attempt, the defendant shall not be liable to be prosecuted again for the same offence which he was charged with committing.

(2) Where an attempt to commit an offence is charged, but the evidence establishes the commission of the ~~full~~ offence, the defendant shall not be entitled to have the complaint dismissed, but he may be convicted of the attempt and punished accordingly:

Provided that, after conviction for such attempt, the defendant shall not be liable to be prosecuted again for the offence which he was charged with attempting to commit.

If he dismisses the case defendant entitled to certificate of dismissal.

**88.** If he shall dismiss the case upon the merits he may when required to do so make an order of dismissal and give the defendant a certificate thereof which shall without further proof be a bar to any subsequent charge for the same matter against the same party.

If he convicts conviction to be drawn up.

**89.** If he shall convict the defendant a minute or memorandum therefor shall be then made for which no fee shall be paid and the conviction shall subject to any rules made in pursuance of this Act, afterwards be drawn up by the Magistrate in proper form under his hand and seal.

Magistrate may award costs to prosecutor.

**90.** In all cases of summary conviction the Magistrate may in his discretion award and order that the defendant shall pay to the prosecutor such costs as to the Magistrate shall seem reasonable not exceeding one hundred dollars.

**91.** In all cases where the Magistrate dismisses the charge he may in his discretion award and order that the prosecutor shall pay to the defendant such costs as to the Magistrate may seem reasonable not exceeding one hundred dollars.

**Magistrate may award costs to the defendant.**

**92.** The sums so allowed for costs shall in all cases be specified in the conviction or order of dismissal and the same shall be recoverable in the same manner and by the same warrants as any fine adjudged to be paid by the conviction is to be recovered, and where there is no fine to be recovered such costs shall be recoverable by distress as hereinafter provided, and in default of distress by imprisonment with or without hard labour for any time not exceeding one month which may be made to commence at the termination of the imprisonment the defendant shall be then undergoing, unless such costs and all costs and charges of the distress and also the costs and charges of the commitment and conveying of the defendant to prison, if the Magistrate shall think fit so to order, are sooner paid.

**Costs recoverable with the fine.**

**93.** Where any charge is dismissed with costs the sum awarded for costs in the order of dismissal may be recovered by distress in the same manner as costs may be recovered under the last preceding section.

**Defendant's costs recoverable by distress.**

**94.** Where a fine adjudged by a conviction to be paid does not exceed one dollar and twenty cents then except so far as the Magistrate may think fit expressly to order otherwise an order shall not be made for payment by the defendant to the prosecutor of any costs: and the Magistrate shall except so far as he thinks fit expressly to order otherwise direct all fees payable or paid by the prosecutor to be remitted or re-paid to him and he may also order the fine or any part thereof to be paid to the prosecutor in or towards the payment of his costs.

**No costs if fine does not exceed \$1.20.**

**95.** (1) The Magistrate, if he thinks fit, upon the application of any person aggrieved, and immediately after the conviction of any person, may award any sum not exceeding fifteen hundred dollars in addition to any fine, as compensation for any personal injury or damage to property caused by the offence.

**Award of compensation.**

(2) The sum awarded as compensation under subsection (1) is deemed a judgement debt due to the person entitled to receive it from the person convicted; and an order for payment of such sum may be enforced in the same manner as costs may be recoverable under section 92.

**Powers re  
imprisonment  
and fine.**

**96.** In all cases where a Magistrate has jurisdiction to inflict imprisonment he may order the imprisonment to be without hard labour, and reduce the prescribed period thereof or do either of such acts.

Where he has jurisdiction to impose a fine, if it be in respect of a first offence, he may reduce the prescribed amount thereof.

Where he is authorized to inflict imprisonment and has not the option of imposing a fine he may impose a fine not exceeding five hundred dollars:

Provided that the amount of the fine so inflicted will not subject the offender in default of payment to any greater term of imprisonment than that to which he would have been otherwise liable.

Where in case either of fine or imprisonment there is prescribed a requirement for the offender to enter into his recognizances and to find sureties for keeping the peace and observing some other condition or to do any of such things the Magistrate may dispense with any such requirement or any part thereof:

Provided that this section shall not apply to any proceedings taken under any Act relating to Her Majesty's regular or auxiliary forces:

Provided also that this section shall not authorize a Magistrate to reduce the amount of a fine where the Act prescribing such amount carries into effect a treaty, convention, or agreement with a foreign state and such treaty, convention, or agreement stipulates for a fine of a minimum amount.

**Imprisonment  
without option of  
a fine.**

**97.** Where a Magistrate shall convict a person and order him to be imprisoned without the option of a fine he shall by his warrant commit him to prison there to be imprisoned for the period mentioned in the warrant.



**98.** (1) Where a sentence of imprisonment for a summary offence is passed on any person the Magistrate may order that the sentence shall commence at the expiration of any other term of imprisonment to which that person has been previously sentenced, so, however, that where two or more sentences of a Magistrate are ordered to run consecutively the aggregate term of imprisonment shall not exceed eighteen months, unless such sentences include at least—

Consecutive sentences of imprisonment.

(a) two sentences for indictable offences dealt with summarily by consent; or

(b) a sentence for an offence for which the Magistrate was empowered to order a term of imprisonment of more than six months,

in which case the aggregate terms of imprisonment shall not exceed two years.

(2) In subsection (1) "sentence of imprisonment" includes cases where imprisonment is imposed on any person either with or without the option of a fine, or in respect of non-payment of any sum of money, or for failing to do or abstaining from doing any act or thing required to be done or left undone.

(3) Where a person has been sentenced to imprisonment in default of payment of a fine, the Magistrate may, notwithstanding the provisions of subsection (1), order that the sentence shall begin at the expiration of any term of imprisonment imposed for that offence on that person in addition to the fine.

**99.** Where a Magistrate adjudges the defendant to be imprisoned and the defendant is then undergoing imprisonment upon conviction for any other offence the warrant of commitment for the subsequent offence shall be forthwith delivered to the officer to whom it is directed.

Where convict is already undergoing imprisonment.

**100.** (1) When on the summary trial under sections 45 (3), 46 or 47 of an indictable offence an adult is convicted of the offence, then, if on obtaining information about his character and antecedents the Magistrate is of the opinion that they are such that greater punishment should be inflicted

Committal for sentence for indictable offence tried summarily.

for the offence than the Magistrate has power to inflict, the Magistrate may commit him in custody to the High Court for sentence in accordance with the provisions of section 8 of the Criminal Procedure (Committal for Sentence) Act.

Cap. 118.

(2) Where a Magistrate commits an offender to the High Court under subsection (1) after convicting him of an offence, the Magistrate shall send to the Registrar of the High Court—

(a) a copy signed by the Magistrate of the Minute or Memorandum of the conviction entered in the register;

(b) a copy of any note of evidence given at the trial of the offender, any written statement tendered in evidence and any deposition;

(c) such documents and articles produced in evidence before the Magistrate as have been retained by the Magistrate; and

(d) any report relating to the offender considered by the Magistrate.

Punishment of children.

Cap. 229.

**101.** No child convicted under the provisions of this Act or the Juvenile Act shall be liable to be imprisoned or to pay a fine exceeding fifty dollars.

Fine etc., to be paid by parent or guardian.

**102.** (1) Where a child is charged with an offence for the commission of which a fine, damages or costs may be imposed and the Magistrate or a Juvenile Court is of the opinion that the case would be best met by the imposition of a fine, damages or costs, whether with or without any other punishment, the Magistrate or a Juvenile Court shall order that the fine, damages or costs awarded be paid by the parent or guardian of the child instead of by the child, unless the Magistrate or a Juvenile Court is satisfied that the parent or guardian cannot be found or that he has not concurred to the commission of the offence by neglecting to exercise due care of the child.

(2) An order under this section may be made against a parent or guardian who, having been required to attend, has failed to do so, but, save as aforesaid, no such order shall be made without giving the parent or guardian an opportunity of being heard.

(3) Any sums imposed and ordered to be paid by a parent or guardian under this section may be recovered from him by distress or imprisonment in like manner as if the order had been made on the conviction of the parent or guardian of the offence with which the child was charged.

**103.** (1) A young person convicted under this Act shall be liable to be imprisoned without hard labour for a period not exceeding three months or to pay a fine not exceeding two hundred dollars.

**Punishment of young persons and adults.**

(2) An adult convicted under this Act shall be liable to be imprisoned with or without hard labour for a period not exceeding six months or to pay a fine not exceeding five hundred dollars.

**104.** Where a child or young person is convicted under the provisions of this or any other Act the Magistrate or a Juvenile Court may send such child or young person to a Training School.

**Sentence to Training School.**

**105.** (1) Where a child or young person is convicted as in the preceding sections mentioned the Magistrate if he thinks it inexpedient to inflict any punishment may discharge the accused.

**Magistrate may discharge child or young person or order whipping.**

(2) In any case where any child or young person, being a male, is convicted before a Magistrate's Court or a Juvenile Court either Court may, in addition to or in lieu of any other punishment which it is empowered to inflict, order him to be whipped.

**106.** Where a conviction adjudges a fine to be paid and the amount so adjudged is not paid forthwith the Magistrate may issue his warrant of distress for the levying of the same and such warrant shall be in writing under the hand and seal of the Magistrate.

**Warrant of distress.**

**107.** In all cases where a warrant of distress has issued against any person and such person pays or tenders to the officer having the execution of the same the sum or sums in the warrant mentioned together with the amount of the expenses of the distress up to the time of payment or tender the officer shall cease to execute the same.

**Execution to cease on payment of amount leviable.**

When distress  
warrant issued  
Magistrate may  
suffer defendant  
to go at large or  
detain him in  
prison.

**108.** In all cases where a Magistrate issues a warrant of distress he may suffer the defendant to go at large or verbally or by a written warrant in that behalf may order him to be kept in safe custody until return has been made to the warrant of distress unless the defendant gives sufficient security by recognizance or otherwise to the satisfaction of the Magistrate for his appearance before him at the time and place appointed for the return of the warrant of distress.

Where return is  
*nulla bona*  
Magistrate may  
commit the  
defendant.

**109.** If at the time and place appointed for the return of any warrant of distress the officer who has execution of the same returns that he could find no goods or chattels whereon to levy the Magistrate may issue his warrant of commitment directed to the same or any other peace officer reciting shortly the conviction the issuing of the distress warrant and the return thereto, and requiring the officer to convey the defendant to prison and there to deliver him to the keeper thereof requiring the keeper to receive the prisoner into such prison and there to imprison him or to imprison him and keep him to hard labour (as the case may be) in the manner and for the time prescribed by section 116, unless and until the sum or sums adjudged to be paid and all costs and charges of the distress and also all costs and charges of the commitment if the Magistrate thinks fit so to order (the amount thereof being ascertained and stated in such commitment) be paid.

Defendant who  
pays after  
commitment to  
be discharged on  
payment.

**110.** In all cases in which any person is imprisoned for non-payment of any fine he may pay or cause to be paid to the keeper of the prison in which he is confined the sum or sums in the warrant of commitment mentioned together with the amount of the costs, charges, and expenses therein mentioned and the keeper shall receive the same and shall thereupon discharge the prisoner if he be in his custody for no other matter.

Powers of  
Magistrate when  
imposing a fine.

**111.** A Magistrate by whose conviction any sum is adjudged to be paid may do all or any of the following things, namely—

(a) Order imprisonment in the first instance, unless such sum be paid forthwith;

(b) Allow time for the payment of the said sum;

(c) Direct payment to be made of the said sum by instalments;

(d) Direct that the person liable to pay the said sum shall be at liberty to give to the satisfaction of that Magistrate, or such person as may be specified by him, security with or without surety or sureties for the payment of the said sum or of any instalment thereof and such security may be given and enforced in manner provided by this Act;

(e) Issue a warrant of distress for the levying of the said sums;

(f) Order imprisonment in default of sufficient distress or of the payment of any instalment.

**112.** Where a sum is directed to be paid by instalments and default is made in the payment of any one instalment, the same proceedings may be taken as if default had been made in payment forthwith of the full amount of the fine or of such amount as remains unpaid.

On default of payment of any instalment  
Process to issue for the whole.

**113.** A Magistrate directing the payment of a sum or of an instalment of a sum may direct such payment to be made at such time or times, and in such place or places and to such person or persons as may be specified by the Magistrate; and every person to whom any such sum or instalment is paid when not the clerk of the Magistrate, shall as soon as may be account for such sum or instalment to the Magistrate or to his clerk, if he has a clerk, and pay over the same into the Public Treasury or, if the Magistrate shall so direct, to the Magistrate or to his clerk.

Mode of payment by instalments.

**114.** A Magistrate to whom application is made either to issue a warrant of distress or for any endorsement thereon for any sum adjudged to be paid by a conviction or order or to issue a warrant for committing a person to prison for non-payment of a sum of money adjudged to be paid by a conviction, or for default of sufficient distress to satisfy any such sum, may, if he deem it expedient so to do, postpone the issue of such warrant until such time and on such conditions, if any, as to him shall seem just.

Postponement of issue of warrant of distress or commitment.

Obligation to allow time for payment of fines, etc.

**115.** (1) (a) A warrant committing a person to prison in respect of the non-payment of a sum adjudged to be paid by a conviction of a Magistrate shall not be issued forthwith unless the Magistrate is satisfied that such person is possessed of sufficient means to enable him to pay the sum forthwith, or unless, upon being asked by the Magistrate whether he desires that time should be allowed for payment, he does not express any such desire, or fails to satisfy the Magistrate that he has a fixed abode within the Magistrate's district, or unless the Magistrate for any other special reason expressly directs that no time shall be allowed.

(b) Where any such person desires to be allowed time for payment the Magistrate in deciding what time shall be allowed shall consider any representation made by him, but the time allowed shall not be less than seven clear days:

Provided that if before the expiration of the time allowed the person convicted informs the Magistrate that he prefers immediate committal to awaiting the expiration of the time allowed, the Magistrate may if he thinks fit forthwith issue a warrant committing him to prison.

(c) In all cases where time is not allowed for payment, the reasons of the Magistrate for the immediate committal shall be stated in the warrant of commitment.

(2) Where time has been allowed for the payment of a sum adjudged to be paid by a conviction or order of a Magistrate, the Magistrate may allow further time or he may direct payment by instalments of the sum so adjudged to be paid.

(3) The expression "sum adjudged to be paid by a conviction" includes any costs adjudged to be paid by the conviction of which the amount is ascertained by such conviction.

**116.** The period of imprisonment imposed by a Magistrate under this or any other Act in respect of the non-payment of any sum of money adjudged to be paid by a conviction or in respect of the default of a sufficient distress to satisfy any such sum or in respect of the default of payment of any instalment of such sum shall notwithstanding any enactment to the contrary in any past Act be such period as in his opinion will satisfy the justice of the case, but shall not in any case exceed the maximum fixed by the following scale—

Scale of imprisonment in default of payment of fine or of sufficient distress.

Where the amount of the sum or sums of money adjudged to be paid—	The said period shall not exceed—
Does not exceed \$50 .....	14 days.
Exceeds \$50 but does not exceed \$100	30 days.
Exceeds \$100 but does not exceed \$200	2 months.
Exceeds \$200 but does not exceed \$500	4 months.
Exceeds \$500 .....	6 months.

and may be either with or without hard labour in the discretion of the Magistrate.

**117.** Where it has become necessary to issue a warrant for committing a person to prison for non-payment of a sum adjudged to be paid by a conviction, or for default of sufficient distress to satisfy any such sum, and it appears to the Magistrate that, either by payment of part of the said sum, whether in the shape of instalments or otherwise, or by the net proceeds of the distress, the amount of the sum so adjudged has been reduced, the Magistrate shall, by his warrant of commitment, revoke the term of imprisonment to which the defendant is liable under such conviction, and order the defendant to be imprisoned for such less period as in his opinion will satisfy the justice of the case.

On part payment term of imprisonment to be reduced.

**118.** Where any person has been summarily convicted and has been sentenced to pay a fine and it shall be shown to the Magistrate that there is any sum of money in the hands of a third person which is due and payable by such third person to the person so convicted as aforesaid it

Power of Magistrate to order attachment of debts due to person sentenced to pay a fine.

shall be lawful for the Magistrate to order such third person as aforesaid to pay such sum of money or such part thereof as will be sufficient to satisfy such fine as aforesaid to such person or persons as would be by law entitled to receive payment of such fine as aforesaid in such manner and form as a garnishee may be compelled to pay over money in his hands for the satisfaction of a judgement debt under any Act for the time being in force in Antigua and Barbuda in that behalf and such Magistrate shall have the same powers in that behalf as are given to the Court under such Act as aforesaid.

Where more than one person is ordered to pay a sum equal to the damage done.

**119.** When several persons join in the commission of the same offence and upon conviction thereof each is adjudged to forfeit a sum equivalent to the value of the property or to the amount of the injury done no further sum shall be paid to the party aggrieved than the amount forfeited by one of such offenders only and the corresponding sum forfeited by the other offender shall be applied in the same manner as other penalties imposed by a Magistrate are directed to be applied.

All convictions to be transmitted to the Supreme Court.

**120.** Every Magistrate before whom any person is summarily convicted shall transmit the conviction to the Supreme Court before the time when an appeal from the conviction could be heard, there to be kept by the proper officer among the records of the Court and if such conviction has been appealed against and a deposit of money made shall return the deposit into the said Court and upon any indictment, information or complaint against any person for a subsequent offence a copy of such conviction certified by the proper officer of the Court or proved to be a true copy shall be sufficient evidence to prove a conviction for the former offence and the conviction shall be presumed to have been unappealed against until the contrary be shown.

## PART V

### SUMMARY JURISDICTION (QUASI-CRIMINAL) PROTECTION AND MAINTENANCE OF MARRIED WOMEN, AND SINGLE WOMEN

Order relating to separation and maintenance.

**121.** (1) Any married person (in this section hereinafter called "the applicant") whose husband or wife,



as the case may be, (in this section hereinafter called "the defendant")—

- (a) has been guilty of adultery; or
- (b) has deserted the applicant; or
- (c) has been convicted summarily of an aggravated assault on the applicant within the meaning of section 44 of the Offences against the Person Act; or Cap. 300.
- (d) has been convicted on indictment of an assault upon the applicant; or
- (e) has been guilty of persistent cruelty to the applicant or to the children of the applicant; or
- (f) being under a duty to provide reasonable maintenance for the applicant and the children of the applicant, has wilfully neglected or refused to do so; or
- (g) is an habitual drunkard,

may apply to a Magistrate for an order under this Part.

(2) Any married woman whose husband—

- (a) has compelled her to submit to prostitution; or
- (b) while suffering from venereal disease and knowing that he was so suffering, has insisted on having sexual intercourse with her,

may also apply to a Magistrate for an Order under this Part.

(3) For the purposes of this section—

(a) where the husband has, in the opinion of the Magistrate, been guilty of such conduct as was likely to result and has resulted in his wife submitting herself to prostitution he shall be deemed to have compelled her so to submit herself;

(b) an habitual drunkard shall be deemed to be a person who by reason of habitual intemperate drinking of intoxicating liquors or habitual taking or using, except on medical advice, of any controlled drug within the meaning of that expression in the misuse of Drugs Act, is at times dangerous to himself or herself or to others or incapable of managing himself or herself or his or her affairs; and Cap. 283.

(c) where the applicant is entitled to apply for an order or orders under this section on the ground of the conviction of the defendant upon indictment, the applicant may apply to the Court before which the defendant has been convicted, and that Court shall for the purposes of this section become a Magistrate's Court and have the power without a jury to hear an application and make the order or orders applied for.

(4) The Magistrate to whom any application under this section is made may make an order or orders containing all or any of the provisions following, namely—

(a) that the applicant be no longer bound to cohabit with the defendant (which provision while in force shall have the effect of a decree of judicial separation on the ground of cruelty);

(b) that the legal custody of any children of the marriage while under the age of sixteen years be committed to the applicant;

(c) that the defendant shall pay to the applicant personally, or for the use of the applicant to any officer of the Court or third person on behalf of the applicant, such weekly sum, not exceeding twenty-five dollars, as the Magistrate having regard to the means both of the applicant and the defendant, considers reasonable:

Provided that where the defendant is the wife of the applicant the Magistrate shall not make an order containing the provisions of this paragraph unless he is satisfied that the applicant is not possessed of sufficient means to provide reasonable maintenance for himself or that the applicant is by reason of old age, illness or physical or mental disability unable to provide for his own maintenance;

(d) that the defendant shall pay to the applicant, or to an officer of the Court or third person on behalf of the applicant, a weekly sum not exceeding fifteen dollars for the maintenance of each of the children of the marriage until each such child attains the age of sixteen years;

(e) where the applicant is the wife and has children not being children of the marriage and—

- 
- (i) the husband, or husband and wife, have legal custody of such children, or the children have been accepted by the husband as part of the family; and
- (ii) such children are not the subject matter of an order for either maintenance or affiliation against some other person under other provisions of this Part,

that the defendant husband shall pay to the applicant wife, or to an officer of the Court or third party on behalf of the applicant wife, a weekly sum not exceeding fifteen dollars for the maintenance of each such child until such child attains the age of sixteen years;

(f) for payment by the applicant or defendant, as the case may be, or both of them, of the costs of the application and any reasonable costs of either of the parties as the Magistrate may think fit.

(5) No order shall be made under paragraph (c) of subsection (4) where it is proved that the applicant has committed an act of adultery:

Provided that the defendant has not condoned, or connived at, or by his or her wilful neglect condoned to such act of adultery.

(6) A Magistrate, acting within the district in which any order under this section has been made, may on the application of the wife or husband, and upon cause being shown upon fresh evidence to the satisfaction of the Magistrate, at any time, alter, vary or discharge any such order and may upon such application from time to time increase or diminish the amount of weekly payment ordered to be made:

Provided that the amount payable by any such order shall not be increased beyond the limits set forth in subsection (4).

(7) If any person on whose application an order has been made under this section, shall voluntarily resume cohabitation with her husband or his wife, as the case may

be, or shall commit an act of adultery, such order shall on proof thereof be discharged:

Provided that the Magistrate may, if he thinks fit—

- (i) refuse to discharge such order in the case of a wife who has committed adultery if in his opinion such act of adultery as aforesaid was conducted to by the failure of the husband to make such payments as in his opinion he was able to make under the order;
- (ii) in the event of the order being discharged, make a new order that the defendant shall pay to the applicant, or to an officer of the Court or third person on behalf of the applicant, a weekly sum not exceeding two dollars and forty cents for the maintenance of each of the children of the marriage until each such child attains the age of sixteen years.

(8) No order made under this section shall be enforceable and no liability shall accrue under any such order while the applicant with respect to whom the order was made resides with the defendant and any such order shall cease to have effect if for a period of three months after it is made such applicant continues to reside with the defendant.

(9) In this section the term "children of the marriage" shall include every child (whether legitimate or illegitimate) whom the applicant or defendant is liable under any law to maintain and who has been living with them as part of the husband's family.

**Procedure and enforcement of orders.**

**122.** (1) All applications under section 121 shall be made in like manner as a complaint.

(2) If in the opinion of the Magistrate the matters in question between the parties or any of them may be more conveniently dealt with by the High Court, he may refuse to make an order under section 121 and in that case no appeal shall lie from his decision:

Provided that the High Court or a Judge thereof may, by order in any proceeding in that Court relating to or comprising the same subject matter as the application so

refused, or any part thereof, direct the Magistrate to re-hear and determine that matter.

(3) The payment of any sum of money directed to be paid by any order made under section 121 may be enforced in the like manner as though such order was a conviction and the provisions of this Act shall apply in all respects as fully as though such order as aforesaid were a conviction:

Provided that a warrant committing a person to prison for non-payment of any sum ordered to be paid shall not be issued by a Magistrate if (having regard to all the circumstances of the case) he is satisfied that the person who has failed to pay is not in gainful employment and has made reasonable efforts to obtain employment but has failed to do so and has no other means out of which the sums due might reasonably be paid.

**123.** Where an order under section 121 contains a provision committing to the applicant the legal custody of any children of the marriage, a copy of the order may be served on any person in whose actual custody the children may for the time being be, and thereupon if within seven days of such service the person makes default in handing over to the applicant the custody of such children, the Court may, in its discretion order the person so making default to pay to the applicant a sum (to be enforced as a civil debt recoverable summarily under this Act) not exceeding five dollars for every day during which he is in default, or to be imprisoned until he has remedied his default:

**Enforcement of orders as to custody of children.**

Provided that a person shall not for such default, whether it be made in respect of one or more orders, be liable under this section to be imprisoned for a period or periods amounting in the aggregate to more than two months, or to payment of any sums exceeding in the aggregate one hundred dollars.

**124.** Where on the hearing of any application for a maintenance order the application is adjourned for any period exceeding fourteen days, the Magistrate may order that the defendant do pay to the person in respect of whom the order is sought to be made, or to an officer of the Court or third person on behalf of such person, a weekly sum, not exceeding the sum which might be ordered to be paid under a final

**Interim orders.**

order, which interim order shall be enforced in like manner as if it were a final order of the Court:

Provided that the order directing such payment shall not remain in operation for more than three months after the order was made.

Father to be summoned on application of mother of child.

**125.** Any single woman who may be with child, or who may be delivered of a child, may either before the birth or at any time within twelve months from the birth of such child, or at any time thereafter upon proof that the man alleged to be the father of such child has within the twelve months next after the birth of such child paid money for its maintenance or otherwise assisted to provide for its support, or at any time within the twelve months next after the return to Antigua and Barbuda of the man alleged to be the father of such child, upon proof that he ceased to reside in Antigua and Barbuda within twelve months next after the birth of such child, make application to a Magistrate for a summons to be served on the man alleged by her to be the father of the child; and if such application be made before the birth of the child, the woman shall make a deposition upon oath stating who is the father of such child, and such Magistrate shall upon such application being made issue his summons to the person alleged to be the father of such child to appear before a Magistrate and to show cause why he should not be compelled to maintain such child.

Order on father for maintenance education, etc. of child.

**126.** On the appearance of the person so summoned or on proof that the summons was duly served, the Magistrate shall hear the evidence of such woman and such other evidence as she may produce, and shall also hear any evidence tendered by or on behalf of the person alleged to be the father, and if the evidence of the mother be corroborated in some material particular by other evidence to the satisfaction of the Magistrate, he may adjudge the man to be the father of such child; and make an order on him for the payment to the mother of the child or to any person having custody of the child of a sum of money weekly not exceeding fifteen dollars a week for the maintenance and education of the child, and further of a sum of money for the expenses incidental to the birth of such child, and of the funeral expenses of the child, provided it has died before the making of such order, and of such costs as may have been incurred in the

obtaining of such order, and the said Magistrate by whom any such order for payment shall be made or any other Magistrate sitting in his stead shall have power from time to time to discharge or vary the same on the application of either the father or the mother of such child upon proof that the means of the father have been altered in amount since the original order or any subsequent order varying it shall have been made.

**127.** (1) If the application be made before the birth of the child or within two calendar months after the birth of the child, the Magistrate may order the payment of the weekly sum to be made from the birth of the child; and if at any time after the making of such order as aforesaid it be made to appear to a Magistrate upon oath that any sum payable in pursuance of such order is one month in arrear the Magistrate may proceed to enforce such order in like manner as if such order were a conviction, and the provisions of this Act shall apply in all respects as fully as though such order as aforesaid were a conviction:

**Enforcement of order on father.**

Provided that a warrant committing a person to prison for non-payment of any sum ordered to be paid shall not be issued by a Magistrate if (having regard to all the circumstances of the case) he is satisfied that the person who has failed to pay is not in gainful employment and has made reasonable efforts to obtain employment but has failed to do so and has no other means out of which the sums due might reasonably be paid.

(2) Where in any proceedings for the enforcement of such order the defendant is committed to prison then, unless the Magistrate otherwise directs, no arrears shall accrue under the order during the time that the defendant is in prison.

**128.** No order for the maintenance and education of a child made in pursuance of this Act, shall except for the purpose of recovering money previously due under such order, be of any force or validity after the child in respect of whom it was made has attained the age of sixteen years, or after the death of such child.

**Time for which order on father to remain in force.**

**Forms and procedure.**

**129.** The forms to be used and the proceedings to be had under this Part shall, as nearly as may be, be those used and had in the case of a person charged with having committed an offence punishable summarily by a Magistrate by fine or imprisonment.

**Service of summonses and notices and orders.**

**130.** Every summons, notice or order to be served on any person under this Part may either be served personally or may be served by leaving the same at the last known place of abode of the person to be served; and such service shall be effected not less than six clear days before the day on which such person is required to appear before the Magistrate.

**Payment of money under an order for the maintenance and education of a child.**

**131.** (1) Except as is otherwise provided by any law and subject to the provisions of this section, all money payable under any order made under section 126 shall be due and payable to the mother of the child in respect of such time and so long as she lives and is of sound mind and is not in prison.

(2) After the death of the mother of such child, or while such mother is of unsound mind or confined in any prison any Magistrate may make an order from time to time appointing some person who with his own consent shall have the custody of such child; and the Magistrate may revoke the appointment of such person and may appoint another person in his stead. Every person so appointed to have the custody of a child may make application for the benefit of such child in the same manner as the mother of the child could have done.

(3) It shall be lawful for the Magistrate to order any money payable under any such order to be paid to the person appointed by the Governor-General under the provisions of section 133, and to be applied in such manner as shall be directed by the Magistrate.

**Summons to father to show cause why order should not issue where a charge of neglect is being heard.**

**132.** On the hearing of any charge of wilfully neglecting to provide adequate food, clothing, medical aid or lodging for any child under the age of fourteen years, the Magistrate may direct that any person may be summoned to appear before him to show cause why an order should



not be made upon him as father for the support of such child, and may after hearing any person so summoned, or if such person do not appear, on proof of the service of the summons make such order as he may think fit in the matter, and may enforce the same in like manner as if the order were a conviction and the provisions of this Act shall apply in all respects as fully as though such order were a conviction.

**133.** It shall be lawful for any person whom the Governor-General may appoint in that behalf to take all steps in and about the compelling of the father of any child to contribute to its support which the mother of such child would be entitled to take under this Act.

Father of child  
compellable to  
support it.

**134.** (1) Where a Magistrate makes an Order under this Part, he shall, unless upon representation expressly made in that behalf by the applicant for the Order he is satisfied that it is undesirable so to do, provide in the Order that all payments thereunder shall be made to the Collecting Officer of the Court and, if the Order so provides, all payment under the Order shall be made to the Collecting Officer and not otherwise.

Order for  
payment to  
Collecting Officer  
and duties of  
Collecting  
Officer.

(2) It shall be the duty of the Collecting Officer to receive all such payments as may be directed to be made to him and to pay forthwith to the mother of the child, or to such other person as is named in the Order, the sum directed to be paid under the Order or such part thereof as he receives without making deduction therefrom.

(3) Nothing in this section shall affect the right of the mother or other person entitled to recover payment under an Order made under this Part to proceed against the father of the child to enforce payment of any sum due to such person, but on request in writing of the person entitled to receive payment under the Order, it shall be lawful for the Collecting Officer to proceed in his own name as such officer on behalf of such person against the father for the recovery of payment under the Order and in any such case the liability of the person on whose behalf the proceedings are taken for all costs properly incurred in or about the proceedings shall be the same as if the proceedings had been taken by that person.

(4) Where an Order has been made under this Part before the first day of January, 1965, the Magistrate may, if he thinks fit, direct that all payments becoming due under such an Order shall be made to the Collecting Officer and where the Magistrate directs the payments to be so made, the provisions of this section shall apply as if the Order had been made after the said first day of January, 1965.

Power to vary order.

**135.** Where an Order has been made by a Magistrate under this Part, the person in whose favour or against whom the Order has been made may apply to the court which made the Order for variation of the original Order and such application for variation of the Order shall be made and heard in the same manner as the original application for such an Order with such variations as may be necessary.

## PART VI

### JURISDICTION IN RELATION TO SALVAGE AND WRECK

Salvage in respect of services rendered in Antigua and Barbuda.

**136.** Whenever any ship or boat is stranded or otherwise in distress on the shore of any sea or tidal water situate within the limits of Antigua and Barbuda and services are rendered by any person,

- (a) in assisting such ship or boat;
- (b) in saving the lives of the persons belonging to such ship or boat;
- (c) in saving the cargo or apparel of such ship or boat or any portion thereof;

and whenever any wreck is saved by any person other than a Receiver of wreck within Antigua and Barbuda, there shall be payable by the owners of such ship, or boat, cargo, apparel, or wreck, to the person by whom such services or any of them are rendered, or by whom such wreck is saved, a reasonable amount of salvage together with all expenses properly incurred by him in the performance of such services or the saving of such wreck, the amount of such salvage and expenses (which expenses are hereinafter included under the term salvage) to be determined in case of dispute in manner hereinafter mentioned.

**137.** Whenever any dispute arises in Antigua and Barbuda between the owners of any such ship, boat, cargo, apparel, or wreck as aforesaid and the salvors as to the amount of salvage, and the parties to the dispute cannot agree as to the settlement thereof by arbitration or otherwise then if the sum claimed does not exceed two hundred and forty dollars such dispute may be referred to the arbitration of any Magistrate resident as follows: (that is to say)—

**Disputes as to salvage how to be settled.**

(a) in case of wreck, resident at or near the place where such wreck is found;

(b) in case of services rendered to any ship or boat, or to the persons, cargo, or apparel belonging thereto, resident at or near the place where such ship or boat is lying, or at or near the first port or place in Antigua and Barbuda into which such ship or boat is brought after the occurrence of the accident by reason whereof the claim to salvage arises;

and every dispute with respect to salvage may be heard and adjudicated upon on the application either of the salvor or of the owner of the property salvaged, or of their respective agents.

**138.** Whenever in pursuance of this Act any dispute as to the salvage is referred to the arbitration of a Magistrate he may determine the same with power to call to his assistance any person conversant with maritime affairs as assessor, and such Magistrate shall make an award as to the amount of salvage payable within forty-eight hours after such dispute has been referred to him, with power nevertheless for such Magistrate by writing under his hand to extend the time within which he is hereby directed to make his award.

**Manner in which Magistrate may decide disputes.**

**139.** Subject to any agreement of the parties to any arbitration, the costs of any arbitration under this Act shall be in the discretion of the Magistrate.

**Costs of arbitration.**

**140.** There shall be paid to every assessor who may be so appointed as aforesaid in respect of his services such sum not exceeding fourteen dollars and forty cents, as the Governor-General may from time to time direct; and all the costs of such arbitration including any such payments as aforesaid, shall be paid by the parties to the dispute in such

**Payment of costs of arbitration.**

manner and in such shares and proportions as the Magistrate may direct by his award.

Magistrate may call for documents and administer oaths.

**141.** The said Magistrate may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath and administer the oaths necessary for that purpose.

Appeal.

**142.** If any person is aggrieved by the award made by such Magistrate as aforesaid, he may appeal to the Court of Appeal in the manner and form hereinafter provided.

Magistrate to transmit copy of proceedings and certificate of value to Registrar of Court of Appeal.

**143.** Whenever any appeal is made in manner hereinbefore provided, the Magistrate shall transmit to the Registrar of the Court of Appeal a copy on unstamped paper, certified under his hand to be a true copy of the proceedings had before such Magistrate, and of the award so made by him, accompanied with his certificate in writing of the gross value of the article respecting which salvage is claimed, and such copy and certificate shall be admitted in the Court as evidence in the cause.

Disputed title to wreck, how to be decided.

**144.** If any dispute arises between a Receiver of wreck and any Admiral, Vice-Admiral, or other person as to the validity of his title to wreck, or if divers persons claim to be entitled to wreck found at the same place, the matter in dispute may be decided by a Magistrate in the same manner in which disputes as to salvage coming within the jurisdiction of a Magistrate are hereinbefore directed to be determined.

Appeal from decision of Magistrate.

**145.** If any party to such dispute is unwilling to refer the same to a Magistrate, or having so referred the same, is dissatisfied with his decision, he may within three months from the expiration of a year from the date at which the wreck came into the possession of a Receiver of wreck or from the date of such decision as aforesaid, as the case may be, take such proceedings as he may be advised in any Court of law, equity, or Admiralty having jurisdiction in the matter for establishing his title.

## PART VII

## CIVIL JURISDICTION

**146.** In all civil proceedings the party making the claim is called the plaintiff and the party against whom the claim is made, is called the defendant and both the plaintiff and defendant may give evidence on oath. **Plaintiff and defendant may give evidence.**

**147.** All civil proceedings shall be commenced, proceeded with and determined in the magisterial district in which the parties or either of them reside and by leave of a Magistrate in any other district. **Venue.**

**148.** For the purpose of instituting any civil proceedings the plaintiff may apply to the Magistrate for a summons and the particulars of claim and of the order claimed shall be endorsed on the back thereof and the summons so endorsed shall be filed by the Magistrate and a certified copy thereof issued by him which shall be served on the defendant in the manner prescribed by the Summary Jurisdiction Act or rules of court for the time being in force relating to the recovery of claims under the said Act, and all the provisions of the said Act or the said rules except where they are repugnant to the provisions of this Act shall apply *mutatis mutandis* to all actions or proceedings brought and taken under this Part so far as the same can be made applicable thereto and are not inconsistent with any of the provisions of this Act. **Magistrate may issue a summons to be served on defendant. Procedure.**

**149.** No claim in respect of any civil proceedings shall be heard where the grounds of the claim arose more than six years before the date of the writ issued in the action unless there has been an acknowledgement, undertaking or promise to pay or to be bound in respect thereof by the party to be charged within such period of six years. **Limitation six years.**

**150.** (1) Subject to the provisions of this section and to any rules to be made under this Act the Court fees and bailiff's fees specified in the Second Schedule shall be paid in all civil proceedings. **Fees to be taken. Second Schedule.**

(2) In cases where—

(a) any person seeks to recover compensation for services which by any law in force in Antigua and Barbuda he is compelled to render without payment;

(b) any public officer seeks as such to recover any debt or compensation due to the Government or to any public institution of Antigua and Barbuda;

(c) the Magistrate is satisfied of the inability of any plaintiff to pay the prescribed fees and that the plaintiff has, prima facie, a good ground of claim, no fees shall be demanded from the plaintiff.

(3) The Magistrate shall, on giving judgement for the plaintiff,

(a) in cases of the nature referred to in paragraph (a) of the preceding subsection,

(b) in cases of the nature referred to in paragraph (c) of the preceding subsection,

order the defendant to pay to the plaintiff such fees as would in other cases be chargeable, and such fees, if and when recovered by the plaintiff, shall be paid by the plaintiff into the Treasury for the public uses of Antigua and Barbuda, and if any plaintiff after recovery of such fees shall fail to pay the same into the Treasury as hereinbefore provided within fourteen days of the receipt thereof he shall be liable to be imprisoned for any period not exceeding six months.

Claims may not be split.

**151.** No cause of action arising out of a simple contract which shall exist at any one time amounting in the whole to a sum exceeding fifteen hundred dollars shall be split so as to be made the ground of two or more different summonses, in order to bring such cases within the jurisdiction of the Magistrate and if the Magistrate shall find that the plaintiff in any case has split his cause of action as aforesaid he shall dismiss such summons or summonses but without prejudice to the plaintiff's right to sue on the cause of action in such other manner as he shall think fit:

Provided that if the plaintiff is content to recover a sum not exceeding fifteen hundred dollars the Magistrate shall entertain the summons and in case any judgement shall be given in favour of the plaintiff the same shall be a full

discharge and satisfaction of the whole cause of action and it shall be so expressed in the body of the judgement.

**152.** In an action arising out of a simple contract or where an order is claimed for the payment of money as a civil debt, the defendant may plead and prove a set-off or may counter-claim against the plaintiff provided such counter-claim is based upon the same contract on which the plaintiff is suing and that the amount claimed whether by way of set-off or counter-claim or the balance thereof does not exceed fifteen hundred dollars. **Set-off or counter-claim.**

**153.** The Magistrate may, in any civil matter, upon such grounds as he in his discretion thinks sufficient, review any judgement or decision given by him within eight days from the date thereof (unless either party has appealed and the parties do not agree to the withdrawal of the appeal); and upon the review he may re-open and re-hear the case wholly or in part, and take fresh evidence, and reverse, vary or affirm his previous judgement or decision; **Review.**

**154.** The costs of all civil proceedings which shall be in the discretion of the Magistrate shall be limited to fees of Court and bailiffs fees; **Costs.**

Provided that the Magistrate may in addition to such fees of court and bailiffs fees aforesaid allow any reasonable sum or sums not exceeding seventy-five dollars in the aggregate by way of compensation for the attendance, loss of time and legal or other expenses of parties and witnesses and all sums so allowed in any civil proceedings shall be recovered as costs therein.

**155.** Every judgement or order may be enforced by sale of the goods and chattels of the defendant or by attachment of monies due to him by any third party. **Execution.**

**156.** No judgement or order or order for payment of any costs awarded shall be enforced by imprisonment except as hereinafter prescribed. **Judgements and orders not to be enforced by imprisonment.**

**157.** (1) Where any defendant shall make default in the payment of any judgement debt or of any sum ordered to be paid or any instalment or any costs and he either has **Judgement summons.**

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or has had since the date of the order the means to pay the same, and has refused or neglected or refuses or neglects to pay the same, the Magistrate may commit him to prison without hard labour for any period not exceeding six weeks or until payment of the sum due, and may issue all necessary warrants in that behalf:

Provided that the order be made in open Court and:

Provided also that no imprisonment under this section shall operate as an extinguishment of the debts or grounds of claim or deprive any person of the right to obtain a writ of execution for the satisfaction of the debt.

Proof of the means of the person making default may be given in such manner as the Magistrate may think just, and such person as aforesaid and any witness may be summoned and examined on oath as other witnesses may be summoned and examined under this Act.

(2) Where a warrant of commitment is issued under sub-section (1) it shall be executed by the bailiff.

(3) In any case where, owing to the time and place of arrest of the judgement debtor, it is not practicable or convenient to convey him to the prison to which he is by such warrant committed, the bailiff effecting the arrest shall convey him to the nearest police station in the locality where such arrest was made; and it shall be lawful for the police officer in charge of such station to detain such judgement debtor in some secure place of confinement at such station until such hour, not later than twelve noon of the day following that on which he is arrested, and as soon as may be convenient thereafter the judgement debtor shall be conveyed to prison as directed by the warrant of commitment.

(4) When any person who has been detained at a police station as provided in subsection (3) is thereafter conveyed to the prison to be imprisoned by virtue of such warrant of commitment the bailiff shall endorse on such warrant the day on, and the hour at, which such person was arrested by virtue thereof; and the imprisonment shall be computed from such day and inclusive thereof.

(5) Where a Magistrate either before or after the commencement of this Act makes an order for the payment



either in one sum or by instalments of any judgment debt or costs, such order may, on the application either of the judgment debtor or judgment creditor and upon cause being shown upon fresh evidence to the satisfaction of the Magistrate, be varied or altered by him by ordering the amount due and unpaid (if payable in one sum) to be paid by instalments, or if the said amount is already payable in instalments, he may increase or decrease the amount of such instalments.

**158.** Where power is given by any Act to a Magistrate or requiring any person to do or abstain from doing any act or thing other than the payment of money or of requiring any act or thing to be done or left undone other than the payment of money and no mode is prescribed for the enforcing of such requisition the Magistrate may exercise such power by an order and may annex thereto any conditions as to time or mode of action as to him may seem just and may suspend or rescind such order on such undertaking being given or condition being performed as to him may seem just and may make such arrangements for carrying such power into effect as may to him seem expedient.

Where the doing or abstaining from the doing of any act is ordered.

**159.** A person making default in complying with the order of a Magistrate other than for the payment of money for the space of ten days, may if it be not otherwise provided in the Act on which such order is based upon application to a Magistrate and on proof of such default, be ordered to pay a sum not exceeding twenty-five dollars for every day during which he is in default, or to be imprisoned until he has remedied his default, and any sum ordered to be paid as last hereinbefore mentioned shall be recoverable summarily as a civil debt.

Magistrate may order a penalty *per diem* or imprisonment.

**160.** No person shall for non-compliance with the requisition of the Magistrate whether made by one or more orders to do or to abstain from doing any particular act or thing be liable to be imprisoned for a period or periods amounting in the aggregate to more than two months or to the payment of any sums exceeding in the aggregate five hundred dollars.

Maximum imprisonment and penalty.

**161.** It shall be lawful for the Governor-General from time to time to appoint such bailiffs of the Magistrate's Courts

Bailiffs.

as may be necessary for the carrying out of the provisions of this Part, and all bailiffs so appointed shall receive such remuneration as may from time to time be voted by Parliament and every such bailiff shall give such security for the due performance of the duties of his office as the Governor-General may direct.

**Bailiffs to pay all fees to Magistrate or clerk.**

**162.** Every bailiff shall forthwith pay over to the Magistrate or the Magistrate's clerk all fees received by him to be paid into the Treasury.

**Bailiffs to pay all monies collected by them to Magistrate or clerk.**

**163.** Every bailiff who is directed by any Magistrate to collect the amount of any judgement debt or order for the payment of money shall, on receiving the amount of such debt or sum or any part thereof or of any costs or other sums of such money collected by him, forthwith pay over the same to the Magistrate or the clerk of the Magistrate and the Magistrate or the clerk of the Magistrate shall pay the same to the party who is entitled to receive the same.

**Interpleader summons.**

**164.** When any property of any kind shall be seized or taken in execution under any judgement or order in any suit or proceeding under this Part, which is claimed by any person not a party to the suit, such claim shall be determined by the Magistrate in a summary way upon a summons to be taken out by such claimant against the party prosecuting the judgement or order.

**Exception in cases of salvage, single women and desertion.**

**165.** Nothing in this or any other Act shall be held to render this Part applicable to any proceedings in respect of salvage, single women or the maintenance of married women, or to any proceedings in relation to the binding over of persons by recognizance to keep the peace or to be of good behaviour.

## PART VIII

### APPEALS FROM MAGISTRATE TO COURT OF APPEAL

**Court of Appeal.**

**166.** In this Part of this Act the expression "Court of Appeal" means the Court of Appeal of the Eastern Caribbean Supreme Court.

**167.** (1) Where a Magistrate refuses to make a **Appeal.** conviction the complainant may appeal to the Court of Appeal against such decision.

(2) Where a Magistrate makes a conviction the party against whom the conviction is made may appeal to the Court of Appeal against such decision.

(3) There shall be a right of appeal to the Court of Appeal from any judgment or order of a Magistrate in any civil proceedings where the sum claimed and the costs, if any, exceed three dollars and sixty cents, and in a matter relating to salvage or the title to wreck where the sum in dispute exceeds ninety-six dollars.

**168.** Every appeal shall be either by way of motion or special case as hereinafter provided. **Appeal by motion or special case.**

**169.** An appeal, whether by way of motion or special case, shall have the effect of suspending the execution of the decision, judgement or order appealed from until the final determination of such appeal. **Appeal operates as a stay.**

**170.** (1) Where an appeal is by way of motion the appellant within fourteen days after the day on which the Magistrate has given his decision shall serve a notice on the other party and on the Magistrate of his intention to appeal, and the said notice shall also contain the reasons for appeal. **Notice of appeal.**

(2) The notice required by subsection (1) may set forth all or any of the following reasons, and no other, that is to say—

(a) that the Court had no jurisdiction in the case:

Provided that it shall not be competent for the Court of Appeal to entertain such reason for appeal, unless objection to the jurisdiction of the Court has been formally taken at some time during the progress of the case and before the pronouncing of the decision; or

(b) that the Court exceeded its 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 decision was obtained by fraud; or

(f) that the case has been already heard or tried and decided by, or forms the subject of a hearing or trial pending before, some competent tribunal; or

(g) that legal evidence substantially affecting the merits of the case was rejected by the Court; or

(h) that illegal evidence was admitted by the Court and that there is not sufficient legal evidence to sustain the decision after rejecting such illegal evidence; or

(i) that the decision is unreasonable or cannot be supported having regard to the evidence; or

(j) that the decision was erroneous in point of law; or

(k) that some other specific illegality, not hereinbefore mentioned, and substantially affecting the merits of the case was committed in the course of the proceedings in the case; or

(l) that the judgment or sentence passed was based on a wrong principle or was such that a Magistrate viewing the circumstances reasonably could not properly have so decided; or

(m) that the sentence imposed was unduly severe.

(3) An applicant shall, subject as hereinafter in this subsection appears, set forth in the said notice the particular matter on which he relies or of which he complains, in such manner as to inform the respondent thereof, as, for example, if he relies upon the reason for appeal stated in paragraph (f) of subsection (2), the name of the tribunal shall be stated, and, if a decision is alleged, the approximate date of such decision shall be stated; if he relies upon the reason for appeal stated in paragraph (j) of subsection (2), the nature of the error shall be stated; and if he relies upon the reason for appeal stated in paragraph (k) of subsection (2), the illegality complained of shall be clearly specified.

(4) Where the reason for appeal given is that the applicant is not guilty, no particulars need to be stated.

**7** Every notice of appeal shall be in writing signed **Service of notice.** by the appellant or his counsel or solicitor and may be transmitted as a registered letter through the post in the ordinary way and shall be deemed to have been served at the time when it would be delivered in the ordinary course of the post.

**172.** (1) The appellant shall within three days after the day on which he served notice of his intention to appeal enter into a recognizance before a Magistrate with or without sureties as the Magistrate may direct conditioned to appear before the Court of Appeal and to try the appeal and to abide the judgment thereon of the Court of Appeal and to pay such costs as may be awarded by the said Court, or if the Magistrate thinks it expedient he may instead of entering into recognizances give such other security by payment of money into Court or otherwise as the Magistrate deems sufficient. **Recognizance or security to be taken.**

(2) The Magistrate shall also transmit to the Deputy Registrar of the Court of Appeal with the papers relating to such appeal a memorandum of the reasons for the decision.

**173.** Where the appellant is in custody the Magistrate before whom he appears to enter into a recognizance shall on his so doing or on giving such other security as aforesaid, release him from custody. **Appellant to go at large.**

**174.** (1) After the hearing and determination of any complaint, the Magistrate may, in his discretion, on the application of either party to such complaint or their solicitor, or of 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. The statement of facts in such case so stated shall, for the purpose of the determination thereof, be conclusive. **Special Case.**

(2) Where such party (hereinafter called "the appellant") makes application to a Magistrate to state a case the appellant shall within fourteen days after the day on which the Magistrate has given his decision, in the manner and

form prescribed by sections 170 and 171, serve a notice of appeal on the other party and on the Magistrate.

(3) The provisions of sections 172 and 173 shall apply in respect of any such appeal.

(4) Nothing herein contained shall be construed to prevent either party in such a case appealing within the time specified in section 170 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 even independent of the case stated.

(5) The Attorney-General 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.

(6) The Court of Appeal may remit any case stated under the provisions of this section to the Magistrate stating the same for further information from such Magistrate.

(7) If on application being duly made to a Magistrate to state a case such Magistrate declines so to do, the appellant may apply to the High Court or to any Judge thereof for an order requiring the case to be stated.

**Duty of  
Magistrate as to  
special case.**

**175.** The Magistrate upon receiving an application, notice or order under the provisions of section 174 or when of his own motion he decides to state a case for the opinion of the Court of Appeal shall draw up the special case, concisely setting forth such facts and documents (if any) as may be necessary to enable the Court of Appeal to decide the questions raised in the case, and shall forthwith transmit the same together with a certified copy of the conviction order or judgment appealed from and all documents alluded to in the special case to the Deputy Registrar of the Court of Appeal.

**Deputy Registrar  
of Court of  
Appeal to file  
special case and  
set it down for  
argument.**

**176.** The Deputy Registrar of the Court of Appeal shall thereupon set the appeal down for argument on the date fixed by the Court of Appeal for hearing the same and shall cause notice of the filing of such special case to be served on the appellant and respondent respectively and

on the application of either party shall supply such applicant with a copy of the special case on payment for the same at the rate of one dollar per page.

**177.** At the hearing of an appeal on motion it shall not be competent for the appellant to go into, or to give evidence of, any other reasons for appeal than those set forth in his notice of appeal: Appeal limited to reasons given in notice.

Provided that where, in the opinion of the Court of Appeal, other reasons for appeal than those set forth in the notice of appeal should have been given, or the statement of reasons is defective, the Court of Appeal may in its discretion allow such amendments of the notice of appeal upon such conditions as to service upon the respondent and as to costs as the Court may think fit.

**178.** On an appeal by motion the Court of Appeal may draw inferences of fact from the evidence given before the Magistrate and may decide the appeal with reference both to matters of fact and to matters of law. Court of Appeal on hearing of appeal on motion to decide on facts well as law.

**179.** The Court of Appeal may, in any case where it may consider it necessary that evidence should be adduced, either— Power to the Court of Appeal to take evidence.

(a) order such evidence to be adduced before the said Court on some day to be fixed in that behalf; or

(b) order such evidence to be given by affidavit; or

(c) refer the case back to the Magistrate to take such evidence, and may in such case either direct the Magistrate to adjudicate afresh after taking such 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 such evidence, to report specific findings of fact for the information of the Court of Appeal; 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.

**180.** (1) On the hearing of an appeal in any civil cause or matter the Court of Appeal shall, if it appears to the said Court that a new trial should be held, have power Power of Court of Appeal as to new trials.

to set aside the order appealed against and order that a new trial be held.

(2) On the hearing of an appeal in any civil cause or matter the following provisions shall apply—

(a) A new trial shall not be ordered on the ground of misdirection, or of the improper admission or rejection of evidence unless in the opinion of the Court of Appeal some substantial wrong or miscarriage has been thereby occasioned.

(b) A new trial may be ordered on any question without interfering with the finding or decision upon any other question; and if it appears to the Court of Appeal that any such wrong or miscarriage as is mentioned in paragraph (a) above affects part only of the matter in controversy, or one or some only of the parties, the court may order a new trial as to that part only, or as to that party or those parties only, and give final judgement as to the remainder.

(c) A new trial shall not be granted or any judgment reversed by reason of the ruling of any court that the stamp upon any document is insufficient or that the document does not require a stamp.

(3) The Court of Appeal shall, if it allows an appeal against conviction, quash the conviction and direct a judgment and verdict of acquittal to be entered, or if the interests of justice so require, order a new trial.

On appeal by special case Court of Appeal confined to facts and evidence stated therein.

**181.** On an appeal by special case the Court of Appeal shall only entertain such appeal on the ground that the decision of the Magistrate was erroneous in point of law or in excess of jurisdiction and only upon the facts stated and the evidence mentioned in the special case.

Powers of Court of Appeal on hearing appeals.

**182.** The Court of Appeal may adjourn the hearing of the appeal and may upon the hearing thereof confirm, reverse or modify the decision of the Magistrate or remit the matter with the opinion of the Court of Appeal thereon to the Magistrate or may make such other order in the matter as the said Court may think just and may by such order exercise any power which the Magistrate might have exercised



and such order shall have the same effect and may be enforced in the same manner as if it had been made by the Magistrate:

Provided that the Court of Appeal may, if of opinion that a different sentence should have been passed quash the sentence passed by the Magistrate and pass such other sentence warranted by law (whether more or less severe) in substitution therefor as the Court of Appeal thinks should have been passed.

**183.** The Court of Appeal may make such order as **Costs.** to the costs to be paid by either party as the said Court may think just, and in the event of costs being allowed the Court of Appeal shall fix the amount at a sum not exceeding one hundred dollars according to the importance of the appeal, or the length of the time occupied by the hearing thereof, and the sum so fixed shall cover all fees of office and all fees of counsel or solicitor:

Provided that no Magistrate shall be liable to any costs in respect of any appeal against his decision:

Provided further that if on the hearing of a special case the Court of Appeal adjudges such appeal to have been frivolous and vexatious the appellant or the solicitor who made application for the special case shall be liable, if the Court of Appeal shall so think fit, to pay a sum not exceeding one hundred and fifty dollars as costs of the appeal and such costs shall be recoverable as hereinafter provided.

**184.** Where an appeal is abandoned or withdrawn **Where appeal abandoned Court of Appeal may give respondent costs.** the Court of Appeal on proof of notice of appeal having been given to the respondent may make an order that the respondent shall receive such costs as the Court of Appeal may allow and such costs shall be recoverable as hereinafter provided.

**185.** When an order is made upon either party for **How costs are payable.** costs, such costs shall be payable to the proper officer of the Court to be by him paid over to the party entitled to the same and in the absence of any special direction shall be payable forthwith.

**186.** If the costs on the appeal are not paid within **How costs are recoverable.** the time ordered by the Court of Appeal the proper officer shall on the application of the party entitled to the same or

any person duly authorized on his behalf and on payment of the prescribed fee (if any) grant to such party a certificate that such costs have not been paid and on production thereof to any Magistrate within Antigua and Barbuda such Magistrate shall enforce the payment of such costs in the manner prescribed by this Act for the enforcing of the payment of costs awarded on a summary conviction and where a recognizance with sureties has been entered into shall enforce the payment due thereunder in the manner prescribed by this Act.

**Objection to form of information or conviction.**

**187.** If, on the hearing of the appeal, any objection is made on account of any defect in a complaint or information, or on account of any omission or mistake in the drawing up of a conviction or order, and if it is shown to the satisfaction of the Court of Appeal, that sufficient grounds were in proof before the Magistrate who made the conviction or order to have authorized the drawing up thereof free from that omission or mistake, the Court may amend the complaint or information, or the conviction or order, and proceed thereafter as if the defect, omission or mistake had not existed.

**Defects in proceedings under appeal.**

**188.** On an appeal no objection shall be taken or allowed to any proceeding in a Magistrate's Court for any defect or error which might have been amended by that Court, or to any complaint, summons, warrant, or other process to or of that Court, for any alleged defect therein in substance or in form, or for any variance between any complaint or summons and the evidence adduced in support thereof in that Court, or by reason only of the absence of the seal of the Magistrate on any such process:

Provided that if any error, defect, or variance mentioned in this section appears to the Court of Appeal at the hearing of an appeal to be such that the appellant has been thereby deceived or misled, the Court of Appeal may either refer the cause back to the Magistrate with directions to re-hear and determine it, or reverse the decision under appeal, or may make any other order for disposal of the cause which justice requires.

**Error or defect in recognizance.**

**189.** Where any recognizance or recognizances which shall have been entered into within the time by law required

before any Magistrate for the purpose of complying with any such condition of appeal shall appear to the Court of Appeal to have been sufficiently entered into, or to be otherwise defective or invalid, it shall be lawful for such Court, if it shall so think fit, to permit the substitution of a new and sufficient recognizance or new and sufficient recognizances to be entered into before such Court in the place of such insufficient, defective, or invalid recognizance or recognizances, and for that purpose to allow such time, and make such examination, and impose such terms as to payment of costs to the respondent or respondents, as to such Court shall appear just and reasonable; and such substituted recognizance or recognizances shall be as valid and effectual to all intents and purposes as if the same had been duly entered into at any earlier time as required by section 172.

**190.** (1) Where the decision of a Magistrate is varied or reversed on appeal, the judgement of the Court of Appeal shall be reduced into writing and shall set forth the reasons therefor.

**Transmission and  
publication of  
judgement.**

(2) Within five days after the pronouncement of the judgement the Deputy Registrar of the Court of Appeal shall transmit a certified copy thereof to the Magistrate of the Court from which the appeal came.

(3) Any person may, on paying the fee for an office copy of documents, obtain from the Deputy Registrar of the Court of Appeal a copy of the judgement.

(4) The Deputy Registrar of the Court of Appeal shall without delay cause the judgement to be published in the *Gazette*.

**191.** (1) After the pronouncement of the judgement of the Court of Appeal and subject to the provisions hereafter in this section contained, the Magistrate of the Court from which the appeal came shall have the same jurisdiction and power to enforce, and shall enforce, any decision which has been affirmed, modified or amended by the Court of Appeal or any judgement pronounced by the said Court, in the same manner in all respects as if that decision or judgement had been pronounced by himself:

**Enforcing  
judgement.**

Provided that in any case where an order for the imprisonment of a person is affirmed on appeal, whether with or without modification or amendment, the Court of Appeal may, if it considers it expedient to do so, forthwith commit the person to prison in pursuance and in execution of the order.

(2) The imprisonment of the person (if it has not previously commenced) shall be reckoned to begin from the day on which he is arrested to be taken to the prison wherein he has been ordered to be imprisoned; and if the person has been released from custody on giving the security hereinbefore mentioned, he shall be imprisoned for such further period as, with the time during which he has been already imprisoned, is equal to the period for which he was ordered to be imprisoned as aforesaid.

## PART IX WITNESSES

Summoning witnesses.

**192.** If it shall be made to appear to any Magistrate by the oath of any credible person that any person is likely to give material evidence in any matter where an information or complaint is laid or made to be inquired into by, tried or heard before such Magistrate and will not voluntarily appear for the purpose of being examined as a witness at the time and place appointed in that behalf such Magistrate shall issue his summons to such person requiring him to be and appear at a time and place therein mentioned to testify to what he knows concerning such matter as aforesaid.

Warrant may issue on non-appearance.

**193.** If any person so summoned as aforesaid shall fail to appear at the time and place appointed in the summons the Magistrate on proof upon oath that such summons has been served personally on such person or left with some person at his last or usual place of abode may unless satisfied that there is some lawful excuse for such failure to appear issue his warrant to bring such person at a time and place therein mentioned before such Magistrate or such other Magistrate as may then be there to testify as aforesaid and such warrant may be executed in any part of Antigua and Barbuda.

**194.** If the Magistrate be satisfied by evidence upon oath that it is probable that such person will not attend to give evidence unless compelled to do so then instead of issuing such summons as aforesaid the Magistrate may issue his warrant in the first instance.

When warrant may issue in first instance.

**195.** If any person attending as a witness or so summoned or brought upon a warrant as aforesaid refuses to be examined on oath concerning the premises or refuses to take such oath, or having taken such oath refuses to answer any lawful question put to him without giving just excuse for so doing the Magistrate may by warrant commit such person to prison there to remain and be imprisoned for any period not exceeding ten days unless he in the meantime consents to be examined and to answer concerning the premises.

Witness refusing to be sworn or to answer.

**196.** The prosecutor or complainant in any charge or complaint whether having any pecuniary interest in the result or not shall be a competent witness to support such charge or complaint.

Prosecutor a competent witness.

**197.** If upon the trial of the person accused it be proved on the oath of any reliable witness that any person whose deposition has been taken is dead, or so ill as to be unable to travel, or is absent from Antigua and Barbuda, and if it be also proved that such deposition was taken in the presence of the accused and that he or his counsel or solicitor had a full opportunity of cross-examining the witness then if the deposition purports to be signed by the Magistrate by or before whom the same purports to have been taken it shall be read as evidence in the prosecution without further proof thereof unless it is proved that such deposition was not in fact signed by the Magistrate purporting to have signed the same.

When depositions may be read at the trial.

**198.** If it is proved upon oath before any Magistrate that any person is dangerously ill and unable to travel, or is about to leave Antigua and Barbuda for a period extending beyond the time when the accused if committed for trial would be tried and that such person is able and willing to give material information as to any offence which such Magistrate is not empowered to try summarily and with which any

Taking deposition of a witness who is ill or about to leave Antigua and Barbuda.

person has been charged before a Magistrate (whether the preliminary enquiry has or has not been held or is in progress, but not after the accused has been discharged) unless by order of a Judge, the Magistrate may take the deposition of such person at the place where such person is lying sick or if such person is about to leave Antigua and Barbuda as aforesaid at the Magistrate's Court House, in the manner prescribed by this Act, and shall, after taking it, sign it, adding to it by way of heading, a statement of the reason for taking it, and of the day and place on and at which it was taken, and of the names of the persons, if any, present at the taking thereof.

Notice to the prisoner to be present.

**199.** Whenever it is intended to take any such deposition as aforesaid, reasonable notice that it is intended so to be taken shall, if the accused is in prison, be served upon him in prison, or if he is on bail, shall be either served upon him or left at his last or most usual place of abode. If the accused is in prison, any Magistrate shall by an order in writing direct the gaoler having the custody of the accused to convey him, or cause him to be conveyed to the place where the deposition is to be taken, for the purpose of being present when the same is taken, and to take him back to prison when it has been taken, but no accused person shall be taken to any such place (other than the Magistrate's Court House) for such a purpose without his consent. The expenses of such conveyance shall be paid out of the funds applicable to the expenses of the prison from which the accused is taken.

Magistrate to deal with the deposition like any other deposition.

**200.** If such deposition relates to an offence, the preliminary enquiry into which has ended, the Magistrate taking it shall send it to the Registrar to be placed with the other depositions taken in the case and if it relates to an offence with which some person has been charged, and as to which a preliminary inquiry is in progress, the Magistrate shall deal with it like any other deposition taken in the matter under preliminary inquiry; but such person as aforesaid so making a deposition as aforesaid shall not be called upon to enter into a recognizance to give evidence at the trial of the accused.

**201.** Every deposition so taken shall be a deposition taken in the case to which it relates, and shall be admissible in evidence on the same conditions as other depositions:

**Such deposition to be admissible in evidence.**

Provided that it shall be admissible against the accused; although it may have been taken in his absence, and may not have been read over to the witness in his presence, and although neither he nor his counsel or solicitor had an opportunity of cross-examining the witness, if it is proved that the accused having received such notice as aforesaid that such deposition was about to be taken, refused or neglected to be present, or to cause his counsel or solicitor to be present when it was taken, or that it was taken at the Magistrate's Court House:

Provided also that if it is proved that the person whose evidence has been taken as aforesaid has so recovered from his sickness or returned to Antigua and Barbuda as to be able to be present at the High Court before which the accused is tried such deposition so taken as aforesaid shall not be read.

**202.** Any person charged with having committed an offence not punishable summarily may on notice to the complainant require that the evidence of any such person as in section 198 mentioned may be taken in like manner, and any deposition so taken shall be dealt with and be admissible in evidence on the same conditions as other depositions and on conditions corresponding to those mentioned in the last preceding section.

**Defendant to have the same privilege as the prosecutor under last section.**

## PART X

### RECOGNIZANCES AND SECURITY

**203.** Any person may by complaint call upon any other person to show cause why he should not be bound over in recognizances to keep the peace or be of good behaviour towards such complainant and the Magistrate may make an order adjudging the person complained against to enter into recognizances and find sureties in that behalf and the complainant and defendant and witnesses may be called and examined and cross-examined and the complainant and defendant shall be subject to all the provisions of this Act relating to summary convictions except so far as is by this Act otherwise provided.

**Binding over to keep the peace.**

**Defendant in default may be committed.**

**204.** The Magistrate may order the defendant in default of complying with such order as in the last preceding section mentioned to be imprisoned for a period not exceeding six months.

**Magistrate may vary the order on cause shown.**

**205.** Where a person has been committed to prison by a Magistrate as in the last preceding section mentioned any other Magistrate may on application made to him inquire into the case of the person so committed and if upon new evidence being produced on proof of a change of circumstances the Magistrate thinks it just to do so he may reduce the amount mentioned in the recognizance or dispense with the sureties or otherwise deal with the case as he shall think just.

**Form of recognizance.**

**206.** Every recognizance shall specify the profession or calling of the person entering into or acknowledging the same together with his Christian and surname and the name of his place of residence and when duly acknowledged shall be subscribed by the Magistrate before whom it is acknowledged and it shall be conditioned in the case of—

(a) an accused person that he will duly appear at the time and place of trial or of adjourned hearing, and not depart the Court without leave;

(b) a prosecutor or witness that he will duly appear at the time and place of the trial of the accused and then and there prosecute or give evidence or prosecute and give evidence as the case may be against the person accused; and

(c) in the case of recognizances to keep the peace or to be of good behaviour and in any other case in such manner as the Magistrate shall direct.

**Notice of recognizance.**

**207.** A written notice of such recognizance signed by the Magistrate shall at the same time be given to the person bound thereby.

**Proof of sufficiency.**

**208.** The Magistrate may in his discretion require any person entering into recognizances whether as a surety or otherwise to justify upon oath as to their sufficiency.



**209.** Where a recognizance is conditioned for the appearance of a person before a Magistrate or for his doing some other matter or thing to be done before a Magistrate or in a prosecution in a Magistrate's Court, the Magistrate if such recognizance appears to him to be forfeited may declare the same to be forfeited and enforce payment of the sum due thereunder in the same manner as the payment of a fine may be enforced which has been imposed on summary conviction:

**Estreating recognizances conditioned for appearance.**

Provided that at any time before the sale of goods under a warrant of distress for the said sum the said Magistrate or any other Magistrate may cancel or mitigate the forfeiture upon the person liable applying and giving security to the satisfaction of the Magistrate for the future performance of the conditions of his recognizance and paying or giving security for the payment of the costs incurred in respect of the forfeiture or upon such other conditions as the Magistrate may think just.

**210.** Where a recognizance conditioned to keep the peace or be of good behaviour or not to do or commit some act or thing has been entered into by any person as principal or surety before a Magistrate, such Magistrate or any other Magistrate upon proof of the conviction of the person bound as principal by such recognizance of any offence which is in law a breach of the condition of the same may by conviction adjudge such recognizance to be forfeited and adjudge the person bound thereby whether as principal or surety to pay the sums for which they are respectively bound.

**Estreating recognizance conditioned for keeping the peace or doing some act or thing.**

**211.** All sums payable in respect of a recognizance declared or adjudged by a Magistrate to be forfeited shall be paid into the Public Treasury or if the Magistrate shall so direct, to the clerk of such Magistrate or if he has no clerk to the Magistrate himself and shall be paid and applied in the manner in which fines imposed by a Magistrate in respect of which no special appropriation is made, are payable and applicable.

**Payment of sums forfeited.**

**212.** A person seeking to put in force a recognizance to keep the peace or to be of good behaviour may by notice in writing require such recognizance to be transmitted to the Registrar to be dealt with as the law provides.

**Recognizances may be transmitted to Registrar for Estreat.**

Securities.

**213.** A person shall give security under this Act, whether as principal or surety, either by the deposit of money with the Magistrate or his clerk, if any, or by an oral or written acknowledgement of the undertaking, or condition by which and of the sum for which he is bound, in such manner and form as may be for the time being directed by any rule made in pursuance of this Act, and evidence of such security may be provided by entry thereof in the register under this Act of proceedings of a Magistrate or otherwise as may be directed by such rule.

How forfeited security is to be realized.

**214.** Any sum which may become due in pursuance of a security under this Act from a surety shall be recoverable summarily, in manner directed by this Act with respect to a civil debt or summons by a constable or by the clerk of the Magistrate directing such security to be given, or by some other person authorized for the purpose by that Magistrate or any other Magistrate.

Security given by a principal on conviction to be recovered like a fine.

**215.** A Magistrate may refuse payment of any sum due by a principal in pursuance of a security under this Act which appears to such Magistrate to be forfeited, in the same manner as the payment of the fine may be enforced which has been imposed on summary conviction, if the security was given for a sum adjudged by conviction, and in any other case in like manner as if it were a sum adjudged by a Magistrate to be paid as a civil debt:

Provided that before a warrant of distress for the sum is issued, such notice of the forfeiture shall be served on the said principal, and in such manner as may be directed for the time being by rules under this Act, and subject thereto by the Magistrate authorizing security, or by any Magistrate to whom application is made for the issue of the warrant.

Surety paying under a security may recover the amount from the principal.

**216.** Any sum paid by a surety on behalf of his principal in respect of a security under this Act, together with all costs, charges and expenses incurred by such surety in respect of such security, shall be deemed a civil debt due to him from the principal, and may be recovered before a Magistrate in manner directed by this Act, with respect to the recovery of a civil debt which is recoverable summarily.

**217.** Where a security is given under this Act for payment of a sum of money, the payment of such sum shall be enforced by means of such security in substitution for other means of enforcing such payment. Security to be realized before other steps are taken.

**218.** When a Magistrate has fixed as respects any recognizance, the amount in which the principal and the sureties (if any) are to be bound, the recognizance notwithstanding anything in this or any other statute need not be entered into before such Magistrate but may, subject to any rules made in pursuance of this Act, be entered into by the parties before any other Magistrate or before any clerk of a Magistrate, or before any officer of police or constable in charge of any police station or where any of the parties is in prison before the keeper of such prison, and where a recognizance has been entered into for the due appearance of the principal at any Magistrate's Court and such person duly appears in accordance with the condition in such recognizance, the bail may be renewed by any constable in the said Court, if the Magistrate be not present, and thereupon all the consequences of law shall ensue, and the provisions of this Act with respect to recognizances taken before a Magistrate shall apply as if the recognizances had been entered into before the said Magistrate as heretofore by law required. Recognizance taken out of Court.

## PART XI

### DISTRESS

**219.** The wearing apparel and bedding of a person and his family, and, to the value of three hundred dollars the tools and implements of his trade, shall not be taken under a distress issued by a Magistrate. What may not be taken.

**220.** A warrant of distress shall be executed by or under the direction of a constable. Warrant how executed.

**221.** Save so far as the person against whom the distress is levied otherwise consents in writing, the distress shall be sold by public auction, and five clear days at the least shall intervene between the making of the distress and the sale, and where written consent is so given as aforesaid the sale may be made in accordance with such consent. Public auction after five days.

Period during  
which distress to  
be sold.

**222.** Subject as aforesaid the distress shall be sold within the period fixed by the warrant, and if no period is so fixed, then within the period of fourteen days from the date of making of the distress, unless the sum for which the warrant was issued, and also the charges of taking and keeping the said distress, are sooner paid.

Impounding  
goods levied on.

**223.** Subject to any directions to the contrary given by the warrant of distress, where the distress is levied on household goods, the goods shall not, except with the consent in writing of the person against whom the distress is levied, be removed from the house until the day of sale, but so much of the goods shall be impounded as are in the opinion of the person executing the warrant sufficient to satisfy the distress, by affixing to the articles impounded a conspicuous mark, and any person removing any goods so marked, or defacing or removing the said mark, shall on summary conviction be liable to a fine not exceeding two hundred and fifty dollars.

Penalty for  
extortion &c.

**224.** Where a person charged with the execution of a warrant of distress, wilfully retains from the produce of any goods sold to satisfy the distress, or otherwise exacts, any greater costs and charges than those to which he is for the time being entitled by law, or makes any improper charge, he shall be liable on summary conviction to a fine not exceeding five hundred dollars.

Account of costs  
to be sent to  
Magistrate.

**225.** A written account of the costs and charges incurred in respect of the execution of any warrant of distress shall be sent by the constable charged with the execution of the warrant so soon as practicable to the Magistrate issuing the warrant, and it shall be lawful for the person upon whose goods the distress was levied within one month after the levy of the distress to inspect such account without fee or reward at any reasonable time to be appointed by the Magistrate, and to take a copy of such account.

Costs of sale to  
be deducted from  
proceeds.

**226.** A constable charged with the execution of a warrant of distress shall cause the distress to be sold, and may deduct out of the amount realized by such sale all costs and charges actually incurred in effecting such sale, and shall render to the owner the overplus, if any, after retaining the

amount of the sum for which the warrant was issued and the proper costs and charges of the execution of the warrant.

**227.** Where a person pays or tenders to the constable charged with the execution of a warrant of distress the sum mentioned in such warrant, or produces the receipt for the same of the Magistrate or the clerk of the Magistrate issuing the warrant, and also pays the amount of the costs and charges of such distress up to the time of such payment or tender, the constable shall not execute the warrant.

Warrant not to be executed if amount due and all costs are paid or tendered.

**228.** It shall be lawful for any person, other than the person mentioned in the warrant claiming to be the owner of property levied on within the five clear days in section 221 mentioned, to replevy the same in the manner and form in which goods are replevied which have been distrained upon for non-payment of rent. If within such five days as aforesaid the property levied on is not replevied no person other than the person mentioned in the warrant as aforesaid shall have any right of action against any other person in respect of such property.

Replevy.

## PART XII

### MISCELLANEOUS

**229.** For the purposes of the trial of any offence punishable on summary conviction under this Act or under any other Act whether past or future, the following provisions shall have effect—

General provisions as to local jurisdiction of Magistrates.

(a) Where the offence is committed in any harbour, river, arm of the sea, or other water, tidal or otherwise, which runs between or forms the boundary of the district of two or more Magistrates, such offence may be tried by any one of such Magistrates;

(b) Where the offence is committed on the boundary of the districts of two or more Magistrates or within the distance of five hundred yards of any such boundary, or is begun within the district of one Magistrate and completed within the district of another Magistrate, such offence may be tried by any one of such Magistrates;

(c) Where the offence is committed on any person or in respect of any property in or upon any **carriage**, cart, or vehicle whatsoever employed in a journey, or on board any vessel whatsoever employed in inland navigation, the person accused of such offence may be tried by any Magistrate through whose district such carriage, cart, vehicle, or vessel passed in the course of the journey or voyage during which the offence was committed; and where the side, bank, centre or other part of the highway, road or inland navigation, along which the carriage, cart, vehicle or vessel passed in the course of such journey or voyage is the boundary of the district of two or more Magistrates, a person may be tried for such offence by any one of such Magistrates;

(d) An offence which is authorized by this section to be tried by any Magistrate may be dealt **with**, heard, tried, determined, adjudged and punished as if the offence had been wholly committed within the district of such Magistrate;

(e) All offences against the laws relating to the revenue, the post office, shipping, ports and quarantine that may by any Act be tried, determined and adjudged by any Magistrate shall, at the option of the prosecutor, complainant or informer, be so heard, tried, determined and adjudged at the chief town in Antigua and Barbuda, instead of in the district in which the offence charged is alleged to have been committed.

No objection to be allowed on point of form or variance.

**230.** No objection shall be allowed to any information, complaint, summons or warrant for any alleged defect therein in substance or in form or for any variance between such information, complaint, summons or warrant and the evidence adduced on the part of the informant or complainant at the hearing of such information or complaint.

No objection to be allowed as to variance as to time or place.

**231.** In all cases of information or complaint for offences or acts punishable upon summary conviction any variance between the information or complaint and the evidence adduced in support thereof, as to the time at which such offence or act is alleged to have been committed shall not be deemed material, if it be proved that such information or complaint was in fact laid within the time limited by law

for laying the same, and any variance between the information or complaint and the evidence adduced in support thereto, as to the place in which the offence or act is alleged to have been committed, shall not be deemed material if the offence or act be proved to have been committed within the jurisdiction of Antigua and Barbuda.

**232.** If any such variance or any other variance between the information or complaint and the evidence adduced in support thereof, appears to the Magistrate present and acting at the hearing to be such that the party charged by the information or complaint has been thereby deceived or misled, the Magistrate upon such terms as he may think fit, may adjourn the hearing of the case to some future day, and in the meantime commit the defendant to prison, or to such other custody as the Magistrate thinks fit, or may discharge him upon his entering into a recognizance, with or without surety or sureties at the discretion of the Magistrate, conditioned for his appearance at the time and place to which the hearing is adjourned.

If party charged is deceived by variance, Magistrate may adjourn hearing.

**233.** In any information or complaint or proceeding thereon in which it is necessary to state the ownership of any property belonging to or in possession of partners, joint-tenants, parceners, or tenants in common, it shall be sufficient to name one of such persons and to state the property to belong to the person so named, and another, or others as the case may be; and whenever in any information or complaint or the proceedings thereon it is necessary to mention for any purpose whatsoever any partners, joint-tenants, parceners, or tenants in common, it shall be sufficient to describe them in the manner aforesaid; and whenever in any information or complaint or the proceedings thereon, it is necessary to describe the ownership of any work or building made, maintained, or repaired at the expense of the corporation or inhabitants of any place, or of any materials for the making or repairing of the same, they may be therein described as the property of the inhabitants of such place.

Description of the property of partners, etc.

**234.** The description of any offence in the words of the Act, order, by-law, regulation, or other document creating the offence or in similar words shall be sufficient in law.

Description of the offence.

Exception or proviso may be proved by defendant.

**235.** Any exception, exemption, proviso, excuse or qualification whether it does or does not accompany in the same section the description of the offence in the Act, order, by-law, regulation or other document creating the offence may be proved by the defendant but need not be specified or negated in the information or complaint and if so specified or negated no proof in relation to the matter so specified or negated shall be required on the part of the informant or complainant.

Warrant of distress not to be impeached for want of form.

**236.** A warrant of distress shall not be deemed void by reason only of any defect therein, if it be therein alleged that a conviction or order has been made and there is a good and valid conviction or order to sustain the same, and a person acting under a warrant of distress shall not be deemed a trespasser from the beginning by reason of any defect in the warrant, or of any irregularity in the execution of the warrant, but this enactment shall not prejudice the right of any person to satisfaction for any special damage caused by any defect in or irregularity in the execution of a warrant of distress, so however that if amends are tendered before action brought and if the action is brought and any monies are paid into Court in the action and if the plaintiff does not recover more than the sum so tendered and paid into Court, the plaintiff shall not be entitled to any costs incurred after such tender, and the defendant shall be entitled to costs to be taxed as between solicitor and client.

Power to sell forfeitures.

**237.** All forfeitures not pecuniary which are in respect of an offence triable by a Magistrate or which may be enforced by a Magistrate may be sold or disposed of in such manner as the Magistrate having cognizance of the case may direct and the proceeds of such sale shall unless otherwise provided be applied in the like manner as if the proceeds were a fine imposed under the Act on which the proceedings for the forfeiture are founded.

Procedure where a person charged with an indictable offence is dealt with summarily.

**238.** Where an indictable offence is under the circumstances in this Act mentioned authorized to be dealt with summarily—

(a) The procedure shall until the Magistrate assumes the power to deal with such offence summarily be the same in all respects as if the offence were to be



dealt with throughout as an indictable offence but when and so soon as the Magistrate assumes the power to deal with such offence summarily the procedure shall be the same from and after that moment as if the offence were an offence punishable summarily and not on indictment and the provisions of this Act shall apply accordingly;

(b) The evidence of any witness taken before the Magistrate assumed such power as aforesaid need not be taken again, but every such witness shall if the defendant so require it be recalled for purposes of cross-examination;

(c) The conviction for any such offence shall be of the same effect as for the conviction for the offence on indictment and the Magistrate may make the like order for the restitution of property as might have been made by the Court before which the person convicted would have been tried if he had been tried on indictment;

(d) Where the Magistrate has assumed the power to deal with the case summarily and shall dismiss the charge, he shall, if so required, deliver to the person charged a copy certified under his hand of the order of dismissal, and such dismissal shall be of the same effect as an acquittal on a trial of an indictment for the offence;

(e) The conviction shall contain a statement as to the plea of guilty of the person charged and of his consent to be tried by the Magistrate.

239. If at any time during any proceedings before a Magistrate it shall become necessary to adjourn the hearing of the same the Magistrate may from time to time adjourn the case to a certain time and place to be then appointed in the hearing of the parties, or their counsel or solicitors, and if the defendant is in custody he may admit him to bail as in this Act provided, or by his warrant remand him to prison for any time not exceeding eight clear days, and if such remand shall not be for longer than three clear days the Magistrate may verbally order the peace officer in whose custody the defendant may be to keep him in custody and to bring him up for further examination on the day appointed for the adjourned hearing:

**Power of Magistrate to adjourn and remand.**

Provided that the Magistrate may order the defendant to be brought up to attend such further hearing as aforesaid at any time prior to the expiration of the time for which he was remanded and the officer in whose custody he shall be, shall duly obey such order.

**Fees in summary proceedings on information and complaint.**

**240.** The following sums shall be charged and payable upon proceedings taken and had before a Magistrate—

For entering an information or a complaint .....	\$3.00
For every summons to a defendant .....	\$1.00
For every summons to a witness .....	\$1.00
For every warrant of arrest .....	\$2.00
For every search warrant .....	\$3.00
For every warrant of distress .....	\$3.00
For every declaration of proof under section 241 .....	\$1.00

And it shall be lawful for the Magistrate to order any information or complaint to be entered or any summons or warrant to be issued free of charge if he shall consider it expedient in the interests of justice to do so. And he shall return all fees paid in case any information or complaint for larceny or malicious injury to property shall be proved:

Provided that any preliminary inquiry upon information or complaint of any indictable offence shall be conducted without charge and an information or complaint by any peace officer in the discharge of his public duty shall be conducted without charge:

Provided further that it shall be lawful for the Governor-General to order that any proceedings taken and had before a Magistrate by any board or public body or by any public official acting in the performance of his duty, shall be so taken and had without the payment of any sums, and upon such order being made all such proceedings shall be taken and had without the payment of any sums.

**Proof by declaration of service of process, of handwriting, &c.**

**241.** In a proceeding within the jurisdiction of a Magistrate without prejudice to any other mode of proof, service on a person of any summons, notice, process or document required or authorized to be served, and the hand-

writing and seal of any Magistrate or other officer or person on any warrant, summons, notice, process or document may be proved by a solemn declaration taken before a Magistrate or before a commissioner to administer oaths in the Supreme Court or before the Registrar of the Supreme Court; and any declaration purporting to be so taken shall until the contrary is shown be sufficient proof of the statements contained therein, and shall be received in evidence in any Court or legal proceeding without proof of the signature or of the official character of the person or persons taking or signing the same. The declaration may be in the form provided by a rule under this Act, and if any declaration made under this section is untrue in any material particular, the person wilfully making such false declaration shall be guilty of wilful and corrupt perjury.

**242.** If any person—

Power to preserve order.

(a) wilfully obstructs by act or threat an officer of the Magistrate's Court in the performance of his duty in Court; or

(b) within or close to the room or place where the Magistrate is sitting, wilfully misbehaves in a violent, threatening or disrespectful manner, to the disturbance of the Magistrate, or to the intimidation of suitors or others resorting to the Court; or

(c) wilfully insults the Magistrate, or any assessor, or any officer of the Court, during his sitting or attendance in Court;

the person so acting shall be liable to be immediately apprehended by order of the Magistrate, and if the Court is then sitting or about to sit to be detained until the rising of the Court, and on inquiry and consideration then and there, and without further trial, to be punished with a fine not exceeding five hundred dollars and with imprisonment for not more than six months.

**243.** If any person resists or obstructs the execution of any summons, warrant or other process issued by a Magistrate, any Magistrate may issue his warrant for the arrest of such person and shall cause such person to be brought before him and may order such person to pay a fine not exceeding five hundred dollars or to be imprisoned

Power to enforce execution of process.

for a period not exceeding one month, with or without hard labour.

Minute to be recorded.

**244.** Where any person is punished under either of the last two preceding sections the Magistrate shall make and keep a minute recording the facts of the case and the extent of the punishment and shall forthwith send a copy of such minute to the Governor-General.

No person to be punished twice for the same offence.

**245.** A person punished under section 242 or section 243 shall not be liable to a prosecution or action in respect of the same matter.

Enforcement of orders made under sections 242 and 243.

**246.** An order for imprisonment or an order for the payment of any money penalty made by a Magistrate under section 242 or section 243 may be enforced in the same manner as an order for imprisonment or an order for payment of a fine upon a conviction and every such order may be reviewed on appeal in the manner provided by this Act for appealing from a conviction as fully as though such order were a conviction.

Disposal of fees, fines, &c.

**247.** All fees, fines, penalties, proceeds of forfeitures and other moneys coming into the hands of a Magistrate or a clerk to a Magistrate shall be forthwith paid by him into the Treasury of Antigua and Barbuda for the public use of Antigua and Barbuda except where otherwise provided by any other Act.

Return of property taken from prisoner.

**248.** Where any property has been taken from a person charged before a Magistrate with any offence punishable either on indictment or on summary conviction, a report shall be made by the police to such Magistrate of the fact of such property having been taken from the person charged and of the particulars of such property, and the Magistrate shall, if of opinion that the property or any portion thereof can be returned consistently with the interests of justice and with the safe custody of the person charged, direct such property or any portion thereof to be returned to the person charged or to such other person as he may direct.

Register of Court of Magistrate.

**249.** (1) Every Magistrate or his clerk (if any) shall keep a register of the minutes or memoranda of all the convictions and orders of such Magistrate, and of such other

proceedings as are directed by a rule under this Act to be registered and shall keep the same with such particulars and in such form as may be from time to time directed by a rule under this Act.

(2) Such register, and also any extract from such register certified by the clerk or the Magistrate keeping the same to be a true extract, shall be *prima facie* evidence of the matters entered therein for the purpose of informing a Magistrate acting for the same district as the Magistrate whose convictions, orders, and proceedings are entered in the register; but nothing in this section shall dispense with the legal proof of a previous conviction for an offence when required to be proved against a person charged with another offence.

(3) The register kept by any particular clerk or Magistrate in pursuance of this section may be distinguished by the name of his district or by such name or description as may be directed by a rule under this Act.

(4) The entries relating to each minute, memorandum or proceeding shall be either entered or signed by the Magistrate by or before whom the conviction or order or proceeding referred to in the minute or memorandum was made or had.

(5) Every sum paid to the clerk or Magistrate in accordance with this Act or any Act amending this Act and the appropriation of such sum, shall be entered and authenticated in such manner as may be from time to time directed by a rule under this Act.

(6) Every such register shall be open for inspection, without fee or reward, by any Magistrate or by any person authorized in that behalf by a Magistrate or by the Governor-General.

**250.** (1) The Minister may make rules in relation to the following matters— **Power to make rules.**

- (a) The giving security under this Act;
- (b) The forms to be used under this Act;

(c) The regulating the form of the account to be rendered by Magistrates or clerks of Magistrates of fines, fees and other sums received by them, and providing for the discontinuance of any existing account rendered unnecessary by the aforesaid account;

(d) The regulating of the procedure on appeals by special case or otherwise under this Act; and

(e) Any other matter in relation to which rules are authorized or required to be made under or for the purpose of carrying into effect this Act.

(2) Any rule purporting to be made in pursuance of this section shall be laid before Parliament for consideration and approval as soon as may be after it is made and shall be judicially noticed:

Provided that such rules until so considered and approved shall have the force and effect of law.

As to offences relating to post office and revenue.

**251.** All offences against any provisions in any law relating to the post office where the penalty prescribed does not exceed one thousand dollars and all offences against any law relating to the revenue may be punished summarily by a Magistrate under this Act and this Act shall apply to all such offences.

Application of this Act.

**252.** Where by any past or future Act of Antigua and Barbuda—

(a) Any offence is directed or authorized to be prosecuted summarily or "under the Magistrate's Summary Jurisdiction Acts" or any words are used implying that such offence is to be prosecuted summarily; or

(b) Where any sum of money is directed or authorized to be recovered as aforesaid; or

(c) Where a Magistrate is authorized to order or require a person to do or abstain from doing any act or thing other than the payment of money as aforesaid; or

(d) Where any thing is declared capable of being enforced summarily or by summary order; or

(e) Where any amount is declared to be recoverable summarily as a civil debt;

then this Act shall apply accordingly and where in such past or future Acts as aforesaid the expression "Magistrate's Summary Jurisdiction Acts" is used, such expression as aforesaid shall mean this Act and any Act amending the same.

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3/1892.

FIRST SCHEDULE

Ss. 46 and 47

INDICTABLE OFFENCES WHICH CAN BE DEALT WITH  
SUMMARILY UNDER THIS ACT

<p><b>FIRST COLUMN</b> Adults pleading guilty</p>	<p><b>SECOND COLUMN</b> Adults consenting</p>
<ol style="list-style-type: none"> <li>1. Simple larceny where the money or personal property stolen in the opinion of the Magistrate exceeds the amount or value of five hundred dollars.</li> <li>2. Offences declared by any Act for the time being in force to be punishable as simple larceny.</li> <li>3. Larceny from or stealing from the person.</li> <li>4. Larceny as a clerk or servant.</li> <li>5. The obtaining by false pretences with intent to cheat or defraud money or personal property exceeding in the opinion of the Magistrate the amount of five hundred dollars.</li> <li>6. Embezzlement by clerk or servant.</li> <li>7. Receiving money or personal property stolen or obtained by false pretences with intent to cheat or defraud knowing the same to have been so stolen or obtained where such money or personal property in the opinion of the Magistrate exceeds the amount or value of five hundred dollars, or receiving money or personal property stolen from the person or by a clerk or servant or embezzled, knowing the same to have been so stolen or embezzled.</li> </ol>	<ol style="list-style-type: none"> <li>1. Offences declared by any Act for the time being in force to be punishable as simple larceny, where the value of the whole of the property alleged to have been stolen, destroyed, injured or otherwise dealt with by the offender does not in the opinion of the Magistrate exceed five hundred dollars.</li> <li>2. Larceny from or stealing from the person where the value of the whole of the property alleged to have been stolen does not in the opinion of the Magistrate exceed five hundred dollars.</li> <li>3. Larceny as a clerk or servant where the value of the whole of the property alleged to have been stolen does not in the opinion of the Magistrate exceed five hundred dollars.</li> <li>4. Embezzlement by a clerk or servant where the value of the whole of the property alleged to have been embezzled does not in the opinion of the Magistrate exceed five hundred dollars.</li> </ol>



INDICTABLE OFFENCES WHICH CAN BE DEALT WITH  
SUMMARILY UNDER THIS ACT — CONT'D

<p><b>FIRST COLUMN</b> <i>Adults pleading guilty</i></p>	<p><b>SECOND COLUMN</b> <i>Adults consenting</i></p>
<p>8. <i>Aiding, abetting, counselling or procuring the commission of simple larceny where the money or personal property stolen in the opinion of the Magistrate exceeds the amount or value of five hundred dollars, or an offence declared by any Act for the time being in force to be punishable as simple larceny or of larceny or stealing from the person, or of larceny as a clerk or servant or the obtaining by false pretences with intent to cheat or defraud money or personal property exceeding in the opinion of the Magistrate the amount or value of five hundred dollars.</i></p> <p>9. <i>Attempt to commit simple larceny where the money or personal property stolen in the opinion of the Magistrate exceeds the amount or value of five hundred dollars, or an offence declared by any Act for the time being in force to be punishable as simple larceny or to commit larceny from or steal from the person or to commit larceny as a clerk or servant, or to obtain by false pretences with intent to cheat or defraud money or personal property exceeding in the opinion of the Magistrate the amount or value of five hundred dollars.</i></p>	<p>5. <i>Receiving money or personal property embezzled, knowing the same to have been so embezzled, where such money or personal property does not in the opinion of the Magistrate exceed the amount or value of five hundred dollars.</i></p> <p>6. <i>Aiding, abetting, counselling or procuring the commission of an offence declared by any Act for the time being in force to be punishable as simple larceny or of larceny or stealing from the person or of larceny as a clerk or servant money or personal property where the value of the whole of the property which is the subject of the alleged offence does not in the opinion of the Magistrate exceed five hundred dollars.</i></p> <p>7. <i>Attempt to commit simple larceny or an offence declared by any Act for the time being in force to be punishable as simple larceny or to commit larceny from or steal from the person or to commit larceny as a clerk or servant, or to obtain by false pretences with intent to cheat or defraud money or personal property where the value of the whole of the property which is the subject of the alleged offence does not in the opinion of the Magistrate exceed five hundred dollars.</i></p>

LAWS OF ANTIGUA AND BARBUDA

S.R.O. (L.I.)  
2811932.  
S.R.O. (L.I.)  
3411934.

SECOND SCHEDULE

S 150

	\$	c
1. COURT FEES		
(a) Entering a Suit including Summons and Copy for Service and Judgment .....	1	44
(b) Hearing Fee .....	48	
(c) Court Interpreter's Fee .....	48	
(d) Order for leave to sue in another district ...	1	20
(e) Summons to witness and copy for service ..	72	
(f) Execution (Fi, fa) .....	1	44
(g) Warrant of distress under Small Trespass Act or of possession or execution under the Small Tenements Act .....	1	44
(h) Warrant of Committal under Small Trespass Act .....	1	44
(i) Order of Attachment of moneys or Garnishee Summons .....	1	44
(j) Any other Summons, including Copy for Service and Order thereon .....	1	44
(k) Order for a New Trial .....	1	20
(l) Affidavit, each oath .....	72	
(m) Appointment of Estimators, under Small Tenements Act .....	96	
2. BAILIFFS FEES		
(a) Service of Summons, Notice or other documents required to be served .....	48	
(b) Arrest under order of Committal on Judgement Summons, and taking person arrested to prison	1	44
(c) Seizure of Property under Attachment, Possession or Execution .....	1	44
(d) Taking Security or Bail and enquiring into sufficiency thereof .....	1	20
(e) Levy Fee-5 per cent, on net proceeds of sale.		
3. Provided that the above mentioned scale shall be varied according to the amount endorsed upon the Statement of Claim as follows—		
(a) Where the amount claimed does not exceed \$24.00 all fees shall be reduced by 50%		
(b) Where the amount claimed exceeds \$48.00 all fees shall be increased by 50%.		

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- (c) Where no specific amount of claim is endorsed upon the writ of summons, then the scale of fees contained in paragraphs 1 and 2 of this Schedule shall be payable without variation, provided that the Magistrate shall—unless in exceptional circumstances—order special additional Court fees to be paid by the party against whom judgment is given in all cases where the amount adjudged recoverable exceeds \$48.00 in accordance with the scale of fees contained in paragraph 3(b) of this Schedule.
- (d) Where counter claims are set off against each other, whether for liquidated amounts or not, each claim shall be calculated separately in deciding which scale of Court Fees shall be chargeable therefor.
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