CHAPTER 91

CRIMINAL PROCEDURE CODE

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CHAPTER 91

CRIMINAL PROCEDURE CODE

An Act to make provisions for the procedure to be followed in criminal cases and for matters incidental thereto.

[Assent 31st December, 1968]
[Commencement 2nd April, 1969]

PART I
PRELIMINARY

Short title

1. This Act (hereinafter referred to as this Code) may be cited as the Criminal Procedure Code Act.

Interpretation

2. In this Code unless the context otherwise requires —

"Chief Magistrate" means the person appointed as such under the provisions of the Magistrates Act; Ch 54

"committed for trial" means committed for trial before the Supreme Court;

"committing court" means the magistrate's court which in any particular case has committed an accused person for trial;

"complaint" means an allegation that some person, known or unknown, has committed an offence;

"counsel" means any legal practitioner instructed to represent any party in proceedings before a court;

"court" means the Supreme Court or a magistrate's court, as the context may require;

"Court of Appeal" means the court established under the provisions of Article 98 of the Constitution and exercising jurisdiction in accordance with the Court of Appeal Act; Ch 52

Ch 54 "district" has the meaning given to that term in the Magistrates Act;

18 of 1994, s 2 "indictable offence" means save as is provided by section 214 any offence which is triable only on information before the Supreme Court;

Ch 54 "justice of the peace" means any person appointed as such under the Magistrates Act;

Ch 64 "legal practitioner" means any person admitted and enrolled as counsel and attorney under the provisions of the Legal Profession Act;

Ch 227 "licensed pharmacist" means a person licensed under the provisions of the Pharmacy Act;

Ch 54 "magistrate" has the meaning given to that term in the Magistrates Act and in relation to any proceedings in a magistrate's court means the magistrate for the time being presiding over such court;

Ch 54 "magistrate's court" means a court presided over by a magistrate exercising jurisdiction in accordance with the provisions of the Magistrates Act;

Ch 205 "police officer" means any member of the Royal Bahamas Police Force constituted by the Police Act;

"preliminary inquiry" or "preliminary investigation" means an inquiry or investigation into a criminal charge conducted by a magistrate, under the provisions of this Code, with a view to the committal of an accused person for trial before the Supreme Court;

"private prosecution" means a prosecution instituted and conducted by any person other than a person appearing on behalf of the Crown, the Commissioner of Police, any department of the Government of The Bahamas or any Minister or public officer instituting or conducting proceedings in his official capacity;

"Registrar" means the Registrar of the Supreme Court or any person performing the duties of Registrar, at any particular trial, in accordance with the directions of the presiding judge;

"registered medical practitioner" means a person registered under the provision of the Medical Act; Ch. 224.

"stipendiary and circuit magistrate" means any person appointed as such under the provisions of the Magistrates Act. Ch. 54.

Inquiry into and trial of offences.

3. Subject to the express provisions of any other law for the time being in force, all offences under any law shall be inquired into, tried and otherwise dealt with according to the provisions hereafter in this Code contained.

PART II
POWER OF COURTS

General power to try offences.

4. Subject to the express provisions of this Code and of any other law —

(a) the Supreme Court may try any offence; and

(b) a magistrate's court may try any offence in respect of which jurisdiction is expressly conferred upon such court, or upon such court when presided over by a particular grade of magistrate, by the Magistrates Act or any other law for the time being in force. Ch. 54.

Cases in which jurisdiction is specifically conferred by certain laws.

5. (1) Any offence under any law for the time being in force, when any court is mentioned in that behalf in such law, shall be tried by such court unless removed to any other court for trial under any provisions of this Code. For the purposes of this subsection a provision in any law for an offence to be tried summarily shall be construed as a reference to the trial of such offence by a magistrate's court.

(2) When no court is mentioned in the manner referred to in subsection (1) of this section in respect of any offence, such offence shall be tried in accordance with this Code.

Sentences which the Supreme Court may pass.

6. The Supreme Court may pass any sentence authorised by law to be inflicted in respect of the offence for which it is imposed.

Sentences which magistrates' court may pass.

7. (1) A magistrate's court may pass any sentence authorised by law to be inflicted in respect of the offence for which it is imposed when that offence is tried by a magistrate's court.

SI 75/1989, Sch ; 18 of 1994, s 3; 10 of 2000, s 2

[1](2) When a magistrate's court presided over by the Chief Magistrate or by a stipendiary and circuit magistrate is exercising the jurisdiction conferred by section 214 of this Code, to try summarily certain cases which are also triable upon information, the court shall have power, where warranted by law, to pass a sentence of imprisonment not exceeding five years and to impose a fine not exceeding ten thousand dollars upon any person convicted by the court exercising such jurisdiction and shall have and may exercise all other powers vested in the Supreme Court by sections 119 to 124 (inclusive) of the Penal Code.

Ch. 84.

Combination of sentences.

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

Sentences in cases of conviction of several offences.

9. (1) When a person is convicted at one trial of two or more distinct offences, the court may sentence him for such offences to the several punishments prescribed therefor which such court is competent to impose. Subject to the provisions hereafter in this section contained, a court imposing imprisonment on any person for an offence may order that such imprisonment shall commence on the expiration of any other term of imprisonment imposed, by that court or any other court, for any other offence.

(2) Subject to the provisions of subsection (3) of this section, the aggregate of the terms of any consecutive sentences of imprisonment so imposed by a magistrate's court —

[1] The following saving (18 of 1994, section 10) affects the substitution of this subsection —
"10. Nothing in section 3 or 4 of this Act shall thereby render a person liable, for an offence committed prior to the coming into operation of those sections, to any penalty greater than that which could have been imposed upon him had those sections not come into operation."

(a) when the court is presided over by the Chief Magistrate or a stipendiary and circuit magistrate, exercising the jurisdiction conferred by section 214 of this Code, shall not exceed[2] five years; and *18 of 1994, s 4*

(b) in any other case, shall not exceed six months.

(3) The limitations imposed by subsection (2) of this section shall not operate to reduce the aggregate of the terms of imprisonment which a magistrate's court may impose in respect of any offences below the terms which that court has power to impose in respect of any one of these offences.

(4) When a person has been sentenced by a magistrate's court to imprisonment and a fine for the same offence, a period of imprisonment for non-payment of the fine, or for want of sufficient distress to satisfy the fine, shall not be subject to the limitations imposed by subsection (2) of this section, and any such imprisonment for non-payment of a fine may be ordered by the court to commence at the end of any other term of imprisonment.

Sentencing guidelines *1 of 2000, s 2*

10. (1) A magistrate's court in passing any sentence in respect of any offence referred to in Part I of the Third Schedule or any offence referred to in the Fourth Schedule shall comply with any sentencing guidelines issued by the Chief Justice.

(2) Where a magistrate's court in passing a sentence in respect of any offence referred to in Part I of the Third Schedule or any offence referred to in the Fourth Schedule does not comply with the sentencing guidelines mentioned in subsection (1) that court shall state in writing and open court why such guidelines were not followed.

(3) The Governor-General may by Order amend the Fourth Schedule.

[2] The following saving (18 of 1994, section 10) affects the amendment of this paragraph —
"10 Nothing in section 3 or 4 of this Act shall thereby render a person liable, for an offence committed prior to the coming into operation of those sections, to any penalty greater than that which could have been imposed upon him had those sections not come into operation "

PART III
GENERAL PROVISIONS RELATING TO ARREST, RECOGNISANCES AND SURETIES

Arrest

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

(2) If the person to be arrested forcibly resists the endeavour to arrest him or attempts to evade the arrest, the peace officer or other person concerned may use all means necessary to effect the arrest:

Provided that nothing in this section contained shall be deemed to justify the use of greater force than was reasonable in the particular circumstances in which it was employed or was necessary for the apprehension of the offender.

Search of place entered by person sought to be arrested

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

(2) If ingress to such place cannot be obtained under the provisions of subsection (1) of this section, it shall be lawful in any case for a person acting under a warrant and, in any other case in which a warrant may issue but cannot be obtained without affording the person to be arrested an opportunity to escape, for a peace officer to enter such place and search therein and, in order to effect an entrance into such place, to break open any outer or inner door or window in any house or place, whether that of the person to be arrested or of any other person, or otherwise effect entry into such house or place, if, after notification of his authority and purpose and demand of admittance duly made, or there is no person present to whom he can make such demand, he cannot otherwise obtain admittance.

Power to break out of house or other place for purpose of liberation

13. Any peace officer or other person authorised to make an arrest may break out of any house or other place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

No unnecessary restraint

14. A person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

Search of arrested persons

15. (1) Subject to the provisions of section 16 of this Code, whenever a person is arrested by a peace officer or a private person, the peace officer making the arrest or to whom the private person makes over the person arrested may search such person and place in safe custody all articles other than necessary wearing apparel found upon him:

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

(a) stolen article; or

(b) instrument of violence or offensive weapon; or

(c) tool connected with the kind of offence which he is alleged to have committed; or

(d) other article which may furnish evidence against him in regard to the offence which he is alleged to have committed.

(2) The right to search an arrested person shall be exercised with strict regard to decency.

(3) Where any property has been taken from a person under this section and such person is not charged before any court but is released on the grounds that there is not sufficient reason to believe that he has committed any offence, any property taken from him under the provisions of this section shall forthwith be restored to him.

(4) An arrested person shall be furnished with a receipt for any property which has been taken from him under this section, and the receipt shall specify that property.

Mode of searching women.

16. Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman, who need not be a police officer, and with strict regard to decency.

Power to seize offensive weapons.

17. Notwithstanding the provisions of section 15 of this Code, the peace officer or other person making an arrest may take from the person arrested any offensive weapon or instrument of violence which he has about his person, and shall deliver all articles so taken to the court or officer before which or whom the peace officer or person making the arrest is required by law to produce the person arrested.

Disposal of persons arrested without warrant by peace officer.

Ch. 84.
Ch. 205.

18. A peace officer making an arrest without a warrant, in exercise of any powers conferred upon him by the Penal Code, the Police Act or any other law for the time being in force, shall, without unnecessary delay and not later than forty-eight hours after such arrest, take or send the person arrested before a magistrate appointed to preside in a magistrate's court having jurisdiction in the case, unless the person arrested be earlier released on bail by a police officer having power in that behalf under the provisions of section 32 of the Police Act.

Ch. 205.

Detention of accused persons during investigations.

1 of 2000, s 3

Ch. 103.

19. (1) Notwithstanding section 18 or any other law, a police officer of at least the rank of inspector may make an *ex parte* application to a magistrate, to have any person arrested for any offence specified under the First Schedule to the Bail Act detained for a further period not exceeding forty-eight hours where the inquiry into that offence is incomplete and where the police officer —

(a) has to secure or preserve evidence relating to the offence;

(b) has reasonable grounds for believing that the person arrested will interfere with or harm the evidence connected with the offence or interfere with or cause physical injury to other persons;

(c) has reasonable grounds for believing that the persons arrested will alert other persons suspected of also having committed the offence who have yet to be arrested; or

(d) has reasonable grounds for believing that the person arrested will hinder the recovery of any property obtained as a result of the offence.

(2) Subject to subsection (1), where further detention is authorised the person arrested —

(a) shall be told the reason for such further detention; and

(b) the reason shall be noted on his custody record.

Arrest by person other than peace officer.

20. (1) Any person may arrest without a warrant a person who in his view commits a felony, or whom he reasonably suspects of having committed a felony provided that a felony has been committed. Any peace officer and any other person whom he may call to his assistance may also arrest without a warrant any person in the circumstances provided for in paragraphs (a) to (e) of subsection (1) of section 104 of the Penal Code. Ch. 84.

(2) The owner of any property, or his servants or other persons authorised by him, may arrest without a warrant any person found in the act of committing an offence involving injury to such property.

(3) Any person arresting a person under the powers conferred by subsection (1) or (2) of this section, or under any powers under any law conferring powers of arrest upon persons other than a peace officer, shall without unnecessary delay make over the person so arrested to a peace officer or bring him before a magistrate.

(4) If any arrested person referred to in this section is brought before a peace officer and the peace officer is satisfied that there are grounds to suppose that he has committed an offence for which he may be arrested without a warrant, he shall re-arrest him, or if there is reason to believe that he has committed another offence, he shall be dealt with as if he had committed such other offence in the view of the peace officer concerned. Any person re-arrested by a peace officer under the provisions of this section shall thereafter be dealt with in accordance with the provisions of section 18 of this Code.

Offence committed in presence of magistrate.

21. When any offence for which a person may be arrested, whether with or without a warrant, is committed in the presence of a magistrate, he may himself arrest or order any person to arrest the offender and may thereupon commit the offender, unless released on bail, to custody. Any order of a magistrate given under the provisions of this section, whether or not in writing, shall have the same force and effect as a warrant of arrest directed to the person required to carry out such order.

Recapture of person escaping.

22. If a person in lawful custody escapes or is rescued, the person from whose custody he escapes or is rescued may immediately pursue and arrest him in any place in The Bahamas and may require any peace officer to assist him in so doing, and the provisions of sections 12 and 13 of this Code shall apply to action taken under the provisions of this section although such action is not taken under the authority of a warrant.

Particulars to be contained in recognisances.

23. (1) Every recognisance shall specify the profession or calling of the person entering into or acknowledging the same together with his Christian name and surname and the name of his place of residence, and, when duly acknowledged, shall be subscribed by the magistrate or other authorised person before whom it is acknowledged, and it shall be conditioned —

(a) in the case of 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) in the case of 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, at the trial of the person accused;

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

(2) The provisions of this section shall be in addition to and not in derogation of the provisions of sections 32 and 33 of the Police Act with respect to recognisances taken by police officers in certain cases.

Ch. 205.

Notice of recognisances.

24. A written notice of any recognisance signed by a magistrate, a police officer acting under any powers conferred by the Police Act, or any other person authorised in that behalf under the provisions of section 34 of this Code shall at the time of signature be given to the person bound thereby.

Proof of sufficiency.

25. A magistrate may, in his discretion, require any person entering into recognisances, whether as a surety or otherwise, to justify as to his sufficiency upon oath or by such evidence as the magistrate may require.

Estreating recognisances conditioned for appearance.

26. Where a recognisance is conditioned for the appearance of a person before a court or for his doing some other matter or thing to be done before a court, the court, if such recognisance is shown to be liable 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 conviction by such court:

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

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

27. Where a recognisance 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 court, such court, or any other court having jurisdiction in the matter, upon proof of the conviction of the person bound as principal by such recognisance of any offence which is in law a breach of such condition of the same, may adjudge such recognisance to be forfeited and adjudge any person bound thereby, whether as principal or surety, to pay the sum for which he is so bound.

Payment of sums forfeited.

28. All sums payable in respect of a recognisance declared or adjudged by a court to be forfeited shall be paid to the clerk of such court or to such other officer as the court may direct, and shall be paid and applied in the manner in which fines imposed by a court are payable and applicable.

Rules as to securities.

29. A person shall give security under this Code whether as principal or surety, either by the deposit of money with the clerk or other proper officer of the court, 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 for the time being may be directed by any rule made under this Code, and evidence of such security may be provided by entry thereof in the record of proceedings of such court or otherwise as may be directed by any such rule.

How forfeited security is to be realised in the case of a surety.

30. Any sum which may become due from a surety in pursuance of a security in respect of a breach of a recognisance, shall be recoverable summarily as a civil debt on summons by a peace officer or by some other person authorised for the purpose by a court.

How forfeited security given by a principal on conviction to be recovered.

31. A court may enforce the payment of any sum due from a principal in pursuance of a security in respect of a recognisance which appears to such court to be forfeited in the same manner as the payment of a fine may be enforced which has been imposed on conviction by such court if the security was given for a sum adjudged upon conviction, and in any other case in like manner as if it were a sum adjudged 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 in such manner as may be directed for the time being by rules under this Code and subject thereto by the court authorising security or by any magistrate's court to which application is made for the issue of the warrant.

Surety may recover as civil debt from principal any sum paid under security.

32. Any sum paid by a surety on behalf of his principal in respect of a security under this Code, 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's court in manner applicable to the recovery of a civil debt which is recoverable summarily.

Securities to be realised before other steps are taken.

33. Where security is given in respect of a recognisance for payment of a sum of money, the payment of such sum shall be enforced by means of such security before resort is had to other means of enforcing such payment.

Recognisance taken out of court.

34. When a court has fixed, as respects any recognisance, the amount in which the principal and the sureties (if any) are to be bound, the recognisance, notwithstanding anything in this or any other law, need not be entered into before such court but may, subject to any rules made in pursuance of this Code, be entered into by the parties before any magistrate, clerk or registrar of any court or before the Commissioner of Police in New Providence or any peace officer in charge of any police station in any Out Island, or, where any of the parties is in prison, before the keeper of such prison. Where a recognisance has been

entered into for the due appearance of the principal at any court, and such person duly appears in accordance with the conditions in such recognisance, the bail may be renewed by any peace officer in the said court, if the judge or registrar or magistrate be not present, and thereupon all the consequences of law shall ensue, and the provisions of this Code with respect to recognisances taken before a court shall apply as if the recognisances had been entered into before a magistrate or a judge.

PART IV
GENERAL PROVISIONS RELATING TO CRIMINAL INVESTIGATIONS AND PROCEEDINGS

Authority of Supreme Court and magistrates' court and general validity of judicial processes.

35. (1) The Supreme Court and every magistrates' court shall have authority to cause to be brought before it any person who is within The Bahamas and who is charged with an offence —

(a) committed within the limits of its jurisdiction; or

(b) which according to law may be inquired into or tried as if it had been committed within its jurisdiction,

and to deal with the accused person according to law and subject to the jurisdiction of the court concerned.

(2) Any summons, warrant of arrest, search warrant or other judicial process issued in due form under the provisions of this Code by any court, judge or magistrate shall be of full force and effect in any part of The Bahamas without any requirement for further authentication, backing or endorsement by any person before execution in any district of The Bahamas other than that in which the same is issued.

(3) In addition to the powers conferred upon a judge by this Code or any other law, every judge shall be deemed to have all the powers conferred by this Code upon any magistrate to issue any summons, warrant of arrest, search or other judicial process.

Powers of Supreme Court in certain cases.

36. The Supreme Court may inquire into and try any offence subject to its jurisdiction at any place where it has power to hold sittings:

Provided that no criminal case shall be brought under the cognisance of the Supreme Court exercising its original criminal jurisdiction unless the same shall have been previously investigated by a magistrate's court and the accused person shall have been committed for trial before the Supreme Court.

Place and dates of sessions of the Supreme Court. *15 of 1996*, s. 78 and *Second Sch*

37. The Registrar of the Supreme Court shall give notice of the date and place of trial of any criminal offence by the Supreme Court to all persons required to attend thereat in such manner as the Chief Justice may direct.

Ordinary place of inquiry or trial by magistrate's court.

38. Subject to the provisions of this Code, every offence shall be inquired into or tried by a magistrate's court having jurisdiction within the district in which the offence was committed or within the jurisdiction of which the accused was apprehended or is in custody in respect of a charge for that offence or has appeared in answer to a summons lawfully issued charging that offence.

Accused person may be sent to the district in which offence alleged to have been committed.

39. When a person accused of having committed an offence within The Bahamas has been removed from the district within which the offence was committed and is found within another district, the magistrate's court within the jurisdiction of which he is found may cause him to be brought before it and shall, unless authorised to proceed with the case, send him in custody to the magistrate's court having jurisdiction in the district in which the offence is alleged to have been committed, or may require him to give security for his surrender to that court there to answer the charge and to be dealt with according to law.

Removal of accused persons under warrant.

40. Where any person is to be sent in custody in pursuance of the last preceding section, a warrant shall be issued by the magistrate's court within the jurisdiction of which he is found and that warrant shall be sufficient authority to any person to whom it is directed to receive and detain the person therein named and to carry him and to deliver him up to the magistrate's court having jurisdiction in the district in which the offence is alleged to have been committed or may be inquired into or tried. The person to whom such warrant is directed shall execute it according to its tenor without delay.

Trial or inquiry at place where act done or where consequences of offence ensue.

41. When a person is accused of the commission of any offence by reason of anything which has been done or of any consequence which has ensued, such offence may be inquired into or tried by a magistrate's court having jurisdiction in the district in which such thing was done or in which any such consequence ensued.

Trial or inquiry where offence is connected with another offence.

42. When an act is an offence by reason of its relation to any other act which is also an offence or which would be an offence if the doer were capable of committing an offence, a charge in respect of the first-mentioned offence may be inquired into or tried by a magistrate's court having jurisdiction in the district within which either act was done.

Trial or inquiry where place of offence is uncertain.

43. When it is uncertain in which of several districts an offence was committed, or —

(a) when an offence is committed partly in one district and partly in another; or

(b) when an offence is a continuing one and continues to be committed in more than one district; or

(c) when it consists of several acts done in different districts,

it may be inquired into or tried by a magistrate's court having jurisdiction in any of such districts.

Offence committed on a journey.

44. An offence committed whilst the offender is in the course of performing a journey may be inquired into or tried by a magistrate's court having jurisdiction in any district through which the offender, or the person or thing in respect of which the offence was committed, passed in the course of that journey or voyage.

Supreme Court to decide in cases of doubt.

45. Whenever any doubt arises as to the court by which any offence should be inquired into or tried, any court entertaining such doubt may, in its discretion, report the circumstances to the Supreme Court and the Supreme Court shall decide by which court such offence shall be inquired into or tried.

Court to be open.

46. The place in which any court sits for the purpose of trying any offence shall be deemed to be an open court to which the public generally may have access, so far as the same can conveniently contain them:

Provided that the presiding judge or magistrate may, at any stage of the trial of any offence before the court, order that the public generally or any particular person shall not have access to or remain in the room or building when the trial is being conducted if it appears to him to be necessary for the due administration of justice or in the interests of defence, public safety, public order or public morality or for the welfare of persons under eighteen years of age.

Hearing *in camera*.

9 of 1991, s 38 and Sch

47. (1) Notwithstanding the provisions of any other law, at a preliminary inquiry into or trial of an offence under sections 6 to 15 of the Sexual Offences and Domestic Violence Act, 1991 the evidence of the person upon whom the offence is alleged to have been committed shall not be given in any court, except with the leave of the court, in the presence of members of the public other than *bona fide* representatives of the news media:

Provided that any person upon whom any such offence is alleged to have been committed and the person charged with the offence may each request the attendance at court of any two persons during all stages of the proceedings and thereupon the persons so requested to attend shall be entitled to attend at the court at any stage of the proceedings.

(2) The court shall not give leave in pursuance of subsection (1) for any evidence except on an application made to the court, in the absence of the jury (if any), by or on behalf of the person charged with the offence; and on such an application the court shall give leave if the court is satisfied that neither public morality nor the due administration of justice would be prejudiced thereby.

Transfer of complaint to another magistrate's court.

48. (1) If upon the hearing of any complaint it appears that the cause of the complaint arose outside the limits of the jurisdiction of the magistrate's court before which such complaint has been brought, that court, upon being satisfied that the case is one which under the provisions of this Code ought to be inquired into or tried by another court, may direct that the case be transferred to the court before which such complaint ought to be inquired into or tried.

(2) If, in a case to which the provisions of subsection (1) of this section applies, the accused person is in custody and the court directing such transfer considers it expedient that such custody should be continued, or, if he is not in custody, that he should be placed in custody, the court shall direct the offender to be taken by a peace officer before the court to which such complaint is transferred, and shall give a warrant for that purpose to such officer and shall deliver to him the complaint and the recognisances (if any) taken by such court to be delivered to the court before which the accused person is to be taken; and such complaint and recognisances (if any) shall be treated to all intents and purposes as if they had been made to and taken by such last-mentioned court.

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

Procedure when a magistrate considers that he ought not to hear a case brought before him

49. If, in the course of any inquiry or trial which has commenced before a magistrate's court, the evidence appears to warrant a presumption that, although the court has jurisdiction in the matter, the case is one which for any sufficient particular reason should be tried or committed for trial by some other magistrate, the presiding magistrate shall stay the proceedings and submit the case with a brief report thereon to the Chief Justice.

Transfer of complaint
9 of 1992, s 2
25 of 1996, s 2

50. The Chief Magistrate may transfer any complaint listed in a court in New Providence or Grand Bahama presided over by a stipendiary and circuit magistrate to any other court in New Providence or Grand Bahama, as the case may be, presided over by a stipendiary and circuit magistrate:

Provided that no such transfer shall be made where the hearing of evidence on the complaint has already begun.

Power of a judge to order transfer of proceedings

51. (1) Whenever it is made to appear to a judge of the Supreme Court that —

(a) a fair and impartial inquiry or trial cannot be had, or might not appear to be had, in any particular magistrate's court or before some particular magistrate; or

(b) some question of law of unusual difficulty is likely to arise; or

(c) a view of the place in or near which any offence has been committed may be required for the satisfactory inquiry into or trial of the same; or

(d) an order under this section will tend to the general convenience of the parties or witnesses; or

(e) such an order is expedient for the ends of justice or is required by any provisions of this Code,

he may order that any particular case or class of case be transferred from a magistrate's court to any other magistrate's court.

(2) A judge may act under the provisions of this section on the report of the lower court made to the Chief Justice under section 49 of this Code or on the application of any party interested or on his own initiative.

(3) Any application by an interested party for the exercise of the power conferred by this section shall be made by motion, which shall be supported by affidavit.

(4) Any accused person making any such application shall give to the Attorney-General notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of such application unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application unless the Attorney-General has informed the Supreme Court in writing either that he supports the application or that he does not desire to oppose it.

Power of Attorney-General to enter *nolle prosequi*

52. In any proceedings against any person, and at any stage thereof before verdict or judgment, as the case may be, the Attorney-General may enter a *nolle prosequi*, either by stating in court or by informing the court in writing that

the Crown intends that the proceedings, whether undertaken by himself or by any other person or authority, shall not continue, and thereupon the accused person shall be at once discharged in respect of the charge for which the *nolle prosequi* is entered, and, if he has been committed to prison, shall be released, or, if on bail, his recognisances shall be discharged; but such discharge of an accused person shall not operate as a bar to any subsequent proceedings against him on account of the same facts.

Notice of *nolle prosequi* to be given by Registrar

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

Delegation of powers by Attorney-General
E L A O , 1974

54. The Attorney-General may, subject to any special or general instructions which the Attorney-General may give in any case or class of cases, authorise any legal officer subordinate to him —

(a) to institute and undertake criminal proceedings against any person in any court in The Bahamas in respect of any offence; and

(b) to exercise any powers conferred upon the Attorney-General by any provision of this Code:

Provided that the Attorney-General may himself, at any time, and at any stage in any proceedings, exercise any power conferred upon him by any provisions of this Code, notwithstanding any authority given by him to any other officer under the provisions of this section, and may at any time revoke any such authority.

Authority to conduct prosecutions on behalf of the Crown, etc.
18 of 1994, s 5

55. (1) The Attorney-General and any legal practitioner instructed for the purpose by the Attorney-General, may appear to prosecute on behalf of the Crown or the Commissioner of Police or any public officer, public authority or department of Government in any criminal proceedings before any court.

(2) Subject to such directions as may be given by the Attorney-General from time to time, any police officer may conduct proceedings in a magistrate's court on behalf of the Crown or the Commissioner of Police, and any such police officer may appear and conduct the prosecution notwithstanding that he is not the officer who made the complaint or charge in respect of which such proceedings arose.

(3) The Attorney-General may by writing authorise any public officer to conduct prosecutions in a magistrate's court in respect of particular matters or categories of offences or matters or offences relating to the activities or functions of a particular Ministry or department of the Government.

Ultimate control of conduct of all prosecutions vested in Attorney-General.

56. Notwithstanding any power conferred upon any person by or under the provisions of section 54 or 55 of this Code, to institute or conduct any criminal proceedings, any such person shall at all times in respect thereof be subject to the directions of the Attorney-General who may in any case himself institute or conduct any criminal proceedings or may take over and continue, or direct any legal officer subordinate to him to take over and continue in accordance with his instructions, any criminal proceedings instituted or undertaken by any such person as aforesaid or by any other person acting as or on behalf of a private prosecutor.

Conduct of private prosecutions.

57. Any person conducting a private prosecution may do so in person or may be represented by a legal practitioner instructed by him in that behalf.

Complaint and charge.

58. (1) Criminal proceedings may be instituted either by the making of a complaint or by the bringing before a magistrate of a person who has been arrested without a warrant.

(2) Any person, who believes from a reasonable and probable cause that an offence has been committed by any person, may make a complaint thereof to a magistrate appointed to preside over a magistrate's court having jurisdiction in the matter.

(3) A complaint may be made orally or in writing, but if made orally shall be reduced to writing by the magistrate, and in either case shall be signed by the complainant and the magistrate:

Provided that where proceedings are instituted by a peace officer or other public officer acting in the course of his duty, a formal charge duly signed by such officer may be presented to the magistrate and shall for the purposes of this Code be deemed to be a complaint.

(4) A magistrate, upon receiving any such complaint, shall, unless such complaint has been laid in the form of a formal charge in accordance with the preceding section, draw up or cause to be drawn up and shall sign a formal charge containing a statement of the offence with which the accused is charged.

(5) When an accused person who has been arrested without a warrant is brought before a magistrate, a formal charge containing a statement of the offence with which the accused is charged shall be signed and presented by the peace officer preferring the charge.

(6) Every complaint shall be for one matter only, but the complainant may lay one or more complaints against the same person at the same time and the court hearing any one of such complaints may deal with one or more of the complaints together or separately as the interests of justice appear to require.

2 of 1987, s 2

[3](7) A complaint laid by or in the name of the Commissioner of Police and signed by the Commissioner of Police or any peace officer shall be deemed to be in conformity with the foregoing provisions of this section.

Issue of summons or warrant

59. (1) Upon receiving a complaint and the charge having been signed in accordance with the provisions of section 58 of this Code, a magistrate may, in his discretion, issue either a summons or a warrant to compel the

[3] In terms of section 1(2) of the Criminal Procedure Code (Amendment) Act, 1987, this subsection is deemed to have come into operation on 2nd April, 1969

attendance of the accused person before a magistrate's court having jurisdiction to inquire into or try the offence alleged to have been committed:

Provided that a warrant shall not be issued in the first instance unless the complaint has been supported by an oath, either by the complainant or by a witness.

(2) A magistrate shall not refuse to issue a summons under the provisions of this section unless he shall be of the opinion that the application for a summons is frivolous or vexatious or an abuse of the process of the court and if, in his discretion, he 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 the Supreme Court for an order directing such magistrate to issue the summons sought or such other summons as the Supreme Court may direct.

9 of 1992, s 3

(3) No warrant or summons shall be held to be invalid by reason only that the magistrate who issued the same has died or ceased to hold office or has otherwise ceased to act in the matter and any other magistrate assigned to the court may take such proceedings as may be necessary to enforce the said warrant or to hear and determine the complaint in respect of which the summons was issued.

Form, validity and execution of warrants of arrest

60. (1) Every warrant of arrest may be issued at any time on any day, and shall be under the hand and seal of the magistrate by whom it is issued and directed to the peace officer in charge of the place in which the act complained of has been committed or in which the person to be apprehended is believed to be and to all other peace officers of The Bahamas.

(2) Every warrant shall state shortly the offence with which the person against whom it is issued is charged, or other reason for the arrest, and shall name or otherwise describe such person and shall order the peace officers to whom it is directed to bring such person before the court issuing the warrant, or before some other court having jurisdiction in the case, to answer to the charge therein mentioned or to be further or otherwise dealt with according to law. Any such warrant may be executed by any one or more peace officers, and shall not be made returnable at any particular time but shall remain in force

until executed or cancelled by the magistrate issuing the same or by order of a court having jurisdiction in the matter.

(3) Upon being satisfied that it is necessary so to do in order that the person in respect of whom a warrant of arrest is issued may be conveniently and speedily apprehended, the magistrate issuing the warrant may, at the same time or subsequently, issue one or more duplicate warrants and any such duplicate warrant shall be of the same force and effect as the original.

Court may direct security to be taken

61. (1) When a warrant is issued for the arrest of any person for any offence other than a charge in respect of an offence of murder or treason, it may, in the discretion of the magistrate issuing the same, be directed by endorsement on the warrant that, if such person executes a bond with sufficient sureties for his attendance before the court at a specified time and thereafter until otherwise directed by the court, the officer to whom the warrant is directed shall take such security and shall release such person from custody.

(2) The endorsement shall state —

(a) the number of sureties;

(b) the amount in which they and the person for whose arrest the warrant is issued are to be respectively bound; and

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

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

Procedure when arrest is made out of district

62. When a person has been arrested under a warrant the person apprehending him shall take him before a magistrate in the district in which he is arrested and, if he is arrested under a warrant issued in some other district, such magistrate shall act in the case in accordance with the provisions of section 40 of this Code.

Service of summons

6 of 1990, s 3

63. Subject to the provisions of section 64 of this Code every summons shall be served upon the person to whom it is directed by a peace officer by delivering it to him personally, or, if he cannot be found, by leaving it with some adult inmate at his last or most usual place of abode, or with his employer.

Service on company

64. Service of a summons on a body corporate may be effected by serving it on the secretary, local manager or other principal officer of the corporation, or by leaving it addressed to the body corporate at its registered office in The Bahamas.

Proof of service of summons

65. The person who serves a summons shall ordinarily attend before the court at the time and place mentioned in the summons to depose, if necessary, to the service thereof. If the person who serves a summons is for any reason unable to attend the court as aforesaid, and in any case in which such summons has been served outside the local limits of the jurisdiction of the court issuing the same, an affidavit purporting to be made before a magistrate, justice of the peace or notary public that such summons has been served shall be admissible in evidence, and the statements made therein shall be deemed *prima facie* to be correct and sufficient evidence of the facts alleged unless and until the contrary is proved.

Special procedure in respect of certain offences
11 of 1990, s 2

66. (1) Notwithstanding anything to the contrary in this or any other Act where a peace officer finds any person or has reason to believe that any person (hereinafter in this section referred to as the "alleged offender") is committing or has committed in any place an offence specified in Part I of the First Schedule, he may then and there serve upon the alleged offender the prescribed notice in writing charging him with the commission of the offence.

(2) Without prejudice to subsection (3) the peace officer shall at the time of such service notify the alleged offender of his requirement to appear before a magistrate on the date specified in connection with the charge and also that he has the opportunity of having his appearance before a magistrate waived and of having no conviction recorded against him should he, the alleged offender, sign the notice in the appropriate place in acknowledgement of his guilt and return it to the magistrate's clerk specified in the notice together with the sum mentioned in the notice in payment of the fixed penalty.

(3) Where under subsection (1) the peace officer finds that the offence is being or has been committed and it is an offence —

(a) committed by reason of a vehicle obstructing the road or waiting or being left or parked or being unloaded or loaded in a road; or

(b) disclosed upon examination of such vehicle,

the officer may in lieu of serving personally the alleged offender then and there with the prescribed notice effect in the absence of the offender the service of the notice by affixing it to the vehicle.

(4) Notwithstanding anything to the contrary in any law the registered owner of such vehicle shall, for the purposes of any criminal proceedings to be taken against the alleged offender in a court of summary jurisdiction in respect of an offence mentioned in the First Schedule (hereinafter in this section referred to as "proceedings") be deemed to be the alleged offender served and liable for the offence in respect of which service is effected in accordance with subsection (3):

Provided that if at the hearing of those proceedings the registered owner alleges that he was not the driver or the person in charge of the vehicle at the time when the alleged offence was committed, the court may cause a summons to be issued to the person who is alleged by the registered owner to have been the driver or the person in charge making him a co-defendant in the proceedings and the court may after hearing the evidence and witnesses, if any, of all parties make such order as to the payment of any fine and costs as to the court may seem just.

(5) A notice, if affixed to a vehicle under subsection (3), shall not be removed or interfered with except by or under the authority of the driver or person in charge of the vehicle or the person liable for the offence in question; and any person contravening this subsection is guilty of an offence and liable to a fine of not less than five hundred dollars and not exceeding one thousand five hundred dollars.

(6) Notwithstanding anything to the contrary in any law the alleged offender who signs the notice and pays the fixed penalty before the expiration of seven days following the date of the notice shall be treated for all purposes in law as a person who has not committed or been charged with or prosecuted for or convicted of or sentenced for the offence in respect of which payment was made.

(7) Subject to subsection (10) where a person is served a notice under subsection (1) or (3) in respect of an offence no proceedings shall be taken against the alleged offender for that offence until the end of seven days following the date of the notice.

(8) Payment of the fixed penalty shall be made to the clerk of the Magistrate's Court specified in the notice and the admission of guilt and the sum paid shall, subject to subsection (6) be dealt with by the magistrate of that court in the same manner as an adjudication by him in court upon the admission of an offence punishable on summary conviction and for which no conviction is recorded.

(9) In any proceedings a certificate that payment of the fixed penalty was or was not paid to the relevant magistrate's clerk by the date specified in the certificate shall, if the certificate purports to be signed by the magistrate's clerk, be sufficient evidence of the facts stated therein, unless the contrary is proved.

(10) For the purposes of this section "fixed penalty" means the sum of seventy-five dollars or the minimum amount sanctioned by the law constituting the respective offence as a penalty for its commission, whichever is the greater.

(11) In any proceedings for an offence to which subsection (1) or (3) applies no reference shall be made after the conviction of the alleged offender to the giving of any notice under this section or to the payment or non-payment of the fixed penalty unless in the course of the proceedings or in some document which is before the Court in connection with the proceedings reference has been made by or on behalf of the alleged offender to the giving of such a notice or as the case may be to such a payment or non-payment.

(12) A notice issued to a person under subsection (1) or (3) shall for the purposes of this Act or any other law be deemed to be a summons issued to that person by the magistrate or the magistrate's court specified in the notice for the appearance of that person in the event where he does not sign the notice in acknowledgement of his guilt and make payment of the fixed penalty.

(13) Where pursuant to subsection (4) the registered owner liable for the offence is a body corporate, the latter in any proceedings may appear in court through a counsel and attorney or a secretary or director or through a person authorised in writing to do so by that body corporate.

(14) For the purposes of this section the prescribed notice shall be in the form specified in Part II of the First Schedule.

If summons disobeyed, warrant may issue

67. If a person served with a summons does not appear at the time and place mentioned in the summons and it is proved to the satisfaction of the court, either by the evidence on oath of the person who served the summons or by affidavit in accordance with the provisions of section 65 of this Code, that the summons was duly served within a reasonable time before the date appointed for the appearance of the person before the court, the court, after taking such evidence on oath to substantiate the matter of the complaint as it may in any particular case consider necessary, may issue a warrant to apprehend the person so summoned as aforesaid and to bring him before the court to be dealt with according to law:

Provided that no warrant may be issued in a case in which the summons is one in which the provisions of section 66 of this Code apply and in which a written plea of guilty has been entered and the penalty paid in accordance with the provisions of that section:

And provided further that when the summons was not served personally upon the person summoned, the court shall not issue a warrant unless it is satisfied that the summons has come to the attention of such person.

Power to take bond for appearance

68. (1) Where any person for whose appearance or arrest a court is empowered to issue a summons or warrant is present in such court, the court may require such person to execute a bond, with or without sureties, or make a deposit of money in lieu thereof, for his appearance in such court on such date as may be appointed.

(2) When any person who is bound by any bond taken under the provision of this section, or under any other provisions of this Code, to appear before a court, or who has made a deposit of money in lieu of executing such bond, does not so appear, the court may issue a warrant directing that such person be arrested and brought before the court.

Court may order prisoner to be brought before it

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

(2) The officer to whom an order issued under the provisions of subsection (1) of this section is directed, on receipt of such order, shall act in accordance therewith, and shall provide for the safe custody of the prisoner during his absence from the prison for the purposes aforesaid and shall thereafter return him to the prison unless otherwise ordered by a court of competent jurisdiction, and such prisoner shall for all purposes be deemed to be in lawful custody during such absence.

Search warrants

70. (1) Where a magistrate is satisfied by evidence on oath that there is reasonable cause to believe that any property whatsoever on or with respect to which any offence has been committed is in any place or places, he may grant a warrant directed to any peace officer to enter and search any such place or places in any part of The Bahamas, by force if necessary, at any time of day or night. If such property or any part thereof be found, such peace officer shall bring the same and the person or persons in whose possession such place or places then may be, or any person in any such place reasonably suspected of being privy to such property being therein, before the magistrate appointed to preside over the court having jurisdiction in the district in which such warrant was executed.

(2) For the purposes of this section "place" shall include any building, ship, vehicle, aircraft, box, receptacle or locality whatsoever in any part of The Bahamas as may be specified in any search warrant.

(3) Every search warrant shall be issued under the hand and seal of the magistrate issuing the same and may be issued at any time and on any day and shall remain in force until executed or cancelled by such magistrate or by order of a court having jurisdiction in the matter.

Execution of search warrants.

71. (1) Whenever any building or other place liable to search in accordance with the terms of a search warrant, issued under the provision of section 70 of this Code, is closed, any person residing in or being in charge of such building or place shall, on demand of the peace officer executing such warrant and on production to him of the warrant, allow such peace officer free ingress thereto and egress therefrom and afford all reasonable facilities for a search therein.

(2) If ingress thereto or egress from such building or other place cannot be obtained, the peace officer executing the search warrant may proceed in the manner provided by section 12 or 13 of this Code.

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

Retention and disposal of property seized under search warrant.

72. (1) When any thing is seized and brought before a court in pursuance of power conferred by any search warrant, it may be retained until the conclusion of the case or investigation in respect of which its seizure was authorised, reasonable care being taken for its preservation.

(2) If any appeal is made in such case or if any person is committed for trial, any court concerned may order any such thing to be retained further for the purpose of such appeal or trial.

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

Offence to be specified in charge or information.

73. Every charge or information shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the offence alleged.

Joinder of counts in charge or information.

74. (1) Any offences, whether felonies or misdemeanours, may be charged together in the same charge or information if the offences charged are founded on the

same facts or form or are part of a series of offences of the same or a similar character.

(2) Where more than one offence is alleged in a charge or information, a description of each offence so charged shall be set out in a separate paragraph of the charge or information called a count.

(3) Where, before trial or at any stage of a trial, the court is of opinion that a person accused may be embarrassed in his defence by reason of being charged with more than one offence in the same charge or information or that for any other reason it is desirable to direct that the accused person be tried separately for any one or more offences alleged in a charge or information, the court may order a separate trial of any count or counts of such charge or information.

Joinder of two or more accused in one charge or information

75. (1) The following persons may be joined in one charge or information and may be tried together —

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

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

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

(d) persons accused of different offences all of which are founded on the same facts or form, or are part of a series of offences of the same or a similar character:

Provided that where before trial, or at any stage of a trial, the court is of opinion that a person accused may be embarrassed in his defence by reason of his being tried together with another person or other persons or that for any other reason it is desirable to direct that the accused person be tried separately, the court may order a separate trial of such accused person.

6 of 1990, s 3

[4](2) Any number of charges involving one or more accused persons may, if the charges consist of offences which are founded on the same facts or which form or are part of a series of offences of the same or a similar

[4] The insertion of subsection (2) deemed to have come into operation on 2nd April, 1969 in terms of section 1 of Act 6 of 1990

character, be heard and determined together unless the court, having regard to any representations made by or on behalf of the prosecution or the accused person, or the court on its own motion, otherwise determines in the interests of justice.

Rules for the framing of charges and information Second Schedule

76. (1) The provisions of the rules set out in the Second Schedule to this Code apply with respect to all charges and informations, and notwithstanding any rule of law or practice to the contrary, a charge or information shall not be open to objection in respect of its form or contents if it is framed in accordance with those rules:

Provided that rules 1, 2 and 12 of the said rules shall not apply to charges tried by magistrate's courts and the formal matters and commencement in case of charges tried summarily shall be in conformity with the practice in use at the date of commencement of this Code until any other provision is made under any other law:

Provided further that the said rules, in relation to their application to informations in the Supreme Court, may be added to, varied or revoked by the Rules Committee appointed under the Supreme Court Act. Ch 53

(2) Without prejudice to the provisions of subsection (1) of this section, no count shall be deemed objectionable or insufficient on any of the following grounds, namely that —

(a) it contains only one name of the accused;

(b) one name only or no name of the injured person is stated;

(c) the name or identity of the owner of any property is not stated;

(d) it charges an intent to defraud without naming or describing the persons whom it was intended to defraud;

(e) it does not set out any document which may be the subject of the charge;

(f) it does not set out the words used where words used are the subject of the charge;

(g) the means by which the offence was committed is not stated;

(h) the district in which the offence was committed is not stated; or

(i) any person or thing is not described with precision:

Provided that, if it appears to the court that the interests of justice and the avoidance of prejudice to the accused person so require, the court shall order that the complainant or the prosecutor shall furnish particulars further describing or specifying any of the foregoing matters.

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

77. A person who has been once tried by a court of competent jurisdiction for an offence and acquitted or convicted of such offence, while such acquittal or conviction has not been reversed or set aside, shall not be liable to be tried again on the same facts for the same offence.

A person may be tried again for separate offence.

78. A person acquitted or convicted of any offence may afterwards be tried for any other offence with which he might have been charged on the same facts and upon which he could not have been convicted at the previous trial.

Consequences supervening or not known at time of former trial.

79. A person convicted of an offence involving any act causing consequences which together with such act constitute a different offence from that for which such person was convicted, may be afterwards tried for such last-mentioned offence if such consequences had not happened or were not known to the court to have happened at the time when he was convicted.

Where original court was not competent to try subsequent charge.

80. Subject to the provisions of any other law for the time being in force, a person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with and tried for any other offence constituted by the same acts which he may have committed, if the court by which he was first tried was not competent to try the offence with which he is subsequently charged.

Proof of previous conviction.

81. (1) In any inquiry or other proceeding under this Code in which it becomes necessary to prove the previous conviction of an accused person, a copy of the record of the conviction for the offence on summary trial, or a

certificate containing the substance and effect only (omitting the formal part) of the information and conviction upon trial upon information, purporting to be signed by the officer having custody of the records of the court where the offender was convicted, shall, upon proof of the identity of the person, be sufficient *prima facie* evidence of the said conviction without proof of the signature or official character of the person appearing to have signed such copy or certificate.

(2) Without prejudice to the provisions of subsection (1) of this section, *prima facie* proof may be given of a previous conviction in any place within or without The Bahamas by the production of a certificate purporting to be issued under the hand of a police officer in the place where the conviction was had, containing a copy of the sentence or order and the fingerprints, or photographs of the fingerprints, of the person so convicted, together with evidence that the fingerprints of the person so convicted are those of the accused person.

Summons for witness.

82. If it is made to appear on the statement of the complainant or of the defendant or otherwise, that material evidence can be given by or is in the possession of any person, a court having cognisance of any criminal cause or matter concerned may issue a summons to such person requiring his attendance before such court or requiring him to bring and produce to such court for the purpose of evidence all documents and writings in his possession or power which may be specified or otherwise sufficiently described in the summons.

Warrant for witness who disobeys summons.

83. If, without sufficient excuse, a witness does not appear in obedience to a summons issued under the provisions of section 82 of this Code, the court, on proof of the proper service of the summons within a reasonable time beforehand, may issue a warrant to bring him before the court at such time and place as shall be therein specified.

Warrant for witness in first instance.

84. If the court is satisfied by evidence on oath that a person summoned as a witness will not attend unless compelled to do so, such court may at once issue a warrant for the arrest and production of the witness before the court at a time and place to be therein specified.

Mode of dealing with witness arrested under warrant.

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

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

86. In any case in which a court requires to examine as a witness in any proceedings before such court, a person confined in any prison the procedure provided by section 69 of this Act shall be followed.

Penalty for non-attendance of witness.

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

(2) Such fine, if not previously paid, may be levied by attachment and sale of any movable property belonging to such witness within the local limits of the jurisdiction of such court.

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

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

Power to summon material witness or examine person present.

88. Any court may, at any stage of any inquiry, trial or other proceedings under this Code, summon or call any person as a witness, or recall and re-examine any person already examined, and the court shall summon and examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case:

Provided that the prosecutor or the counsel for the prosecution and the defendant or his counsel shall have the right to cross-examine any such person, and the court shall

adjourn the case for such time (if any) as it thinks necessary to enable such cross-examination to be adequately prepared, if, in its opinion, either party may be prejudiced by the calling of any such person as a witness.

Evidence to be given on oath

89. Every witness in any criminal cause or matter shall be examined upon oath or affirmation and the court before which any witness shall appear shall have full power and authority to administer the appropriate oath or affirmation in accordance with the provisions of the Evidence Act: Ch 65

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

Refractory witness

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

(a) refuses to be sworn; or

(b) having been sworn, refuses to answer any questions put to him; or

(c) refuses or neglects to produce any document or thing which he is required to produce and which is in his possession or under his control; or

(d) refuses to sign his deposition,

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

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

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

Calling of husband or wife as witness.
4 of 1996, s 180 and Sch Ch. 65.

91. In any proceedings the wife or husband of the accused person shall not be called as a witness without the consent of the accused person except in the cases provided in section 175 of the Evidence Act.

Issue of commission for examination of witness.

92. (1) Whenever in the course of any proceedings under this Code, a court is satisfied that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, the court may with the consent of the parties issue a commission to any magistrate's court within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.

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

Parties may examine witnesses.

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

(2) Any such party may appear before such magistrate by counsel or in person, and may examine, cross-examine, and re-examine (as the case may be) the said witness. If any such party is in custody the magistrate shall give directions for such party to be present at the examination of the witness and the provisions of section 69 of this Code shall apply as if such party were required to be brought before the court.

Return of commission.

94. (1) After any commission issued under section 92 of this Code has been duly executed it shall be returned, together with the deposition of the witness examined thereunder, to the Supreme Court or to the magistrate's court (as the case may be), and the commission, the return thereto, and the deposition shall be open at all reasonable times to inspection by the parties, and may, subject to all just exceptions, be read in evidence in the case by either party, and shall form part of the record.

(2) Any deposition so taken may also be received in evidence at any subsequent stage of the case before another court.

Adjournment of trial or inquiry.

95. In every case in which a commission is issued under section 90 of this Code the proceedings may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

Competency of witnesses in criminal cases.
4 of 1996, s 180 and Sch Ch. 65.

96. Subject to the provisions of section 171 of the Evidence Act and section 91 of this Code, in any criminal proceedings, every person charged with an offence and the husband or wife of the person charged, as the case may be, shall be a competent witness for the defence at any stage of the proceedings.

Procedure where person charged is the only witness called.

97. Where the only witness of the facts of the case called by the defence is the person charged, he shall be called as a witness immediately after the close of the evidence for the prosecution.

Right of reply.

98. In cases where the right of reply depends upon the question whether evidence has been called for the defence, the fact that the person charged has been called as a witness shall not of itself confer on the prosecution the right of reply.

Court to inquire into suspected incapacity of accused.

99. Without prejudice to the provisions of sections 155 and 191 of this Code (relating to cases in which an accused person on trial on information may be found to be insane at the time of arraignment or to have been insane at the date of the offence with which he is charged), when in the course of any trial or preliminary inquiry the court has reason to suspect that the accused person is of unsound mind so that he is incapable of making his defence, the court shall inquire into the fact of such unsoundness and

for this purpose may receive evidence and may postpone the proceedings and remand the accused person for a medical report.

Procedure when accused found insane during proceedings.

100. (1) If, in a case referred to in the preceding section, the court finds that the accused person is of unsound mind and incapable of making his defence, it shall postpone further proceedings in this case.

(2) If the case is one in which bail may be taken, the court may release the accused person on sufficient surety being given that he will be properly taken care of and prevented from doing injury to himself or to any other person, and for his appearance, if called upon, before the court or any officer of the court appointed in that behalf.

(3) If the case is one in which bail may not be taken or if sufficient surety cannot be given or the court, for any sufficient reason, considers that bail ought not to be granted, the court shall report the matter to the Governor-General who may order the accused person to be detained in any hospital or other place appointed by any law for the reception or custody of lunatics; and the Governor-General may from time to time make such further order in the case for the detention, treatment or otherwise of the accused as the circumstances may require. Pending the order of the Governor-General in any such case the court shall direct that the accused person be remanded in custody.

Defence of lunacy at preliminary investigation.

101. When an accused person appears to be of sound mind at the time of a preliminary investigation, notwithstanding that it is alleged that, at the time when the act was committed in respect of which the accused person is charged, he was insane within the meaning of section 91 of the Penal Code, the court shall proceed with the case and, if the accused person ought, in the opinion of the court, to be committed for trial on information, the court shall so commit him.

Ch. 84.

Resumption of proceedings if accused ceases to be incapable.

102. Whenever any preliminary investigation or trial is postponed under the provisions of section 99 or 100 of this Code, the court may at any time resume the preliminary investigation or trial, unless the accused person is detained in pursuance of an order by the Governor-General given under the provisions of subsection (3) of section 100, and require the accused to appear

or be brought before such court, when, if the court finds him capable of making his defence, the preliminary investigation or trial shall proceed, but if the court considers the accused person still to be incapable of making his defence, it shall act as if the accused were brought before it for the first time.

Prima facie evidence of accused may be given by certificate

103. If an accused person is confined in a hospital or other place appointed by law for the reception or custody of lunatics, under the provisions of this Code or any order made in exercise of any power conferred by this Code, and the registered medical practitioner in charge of such hospital or place certifies that the accused person is capable of making his defence, the Governor-General may order that such accused person shall be taken before the court having jurisdiction in the case to be dealt with according to law, and the certificate of such medical officer shall be receivable by the court as *prima facie* evidence of the capacity of the accused person.

Provisions relating to the taking of evidence

104. (1) Except as may be otherwise provided by any law, all evidence taken in any inquiry or trial under this Code shall be taken in the presence of the accused, unless with his consent his absence has been dispensed with in accordance with the provisions of this Code.

(2) All evidence shall be recorded in English and, if any evidence is given in any other language, it shall be interpreted; and, in the case of any documents tendered in evidence which are written in a foreign language, a translation shall be provided. Any interpretation or translation shall be made by a person appointed or approved for the purpose by the court.

(3) If the accused does not understand English, any evidence given shall be interpreted to him in a language which he understands.

6 of 1990, s 3

[5](4) Except as may be otherwise expressly provided by any written law, a court shall not be required to record its performance or fulfilment of any duty or function prescribed under, the provisions of this Code:

[5] The insertion of subsection (4) deemed to have come into operation on 2nd April, 1969 in terms of section 1 of Act 6 of 1990

Provided that —

(a) where there is nothing in the record of the proceedings before a court to indicate that the court has performed or fulfilled any duty or function so prescribed, the court shall be deemed to have complied with those requirements unless the contrary is proven; and

(b) the failure by a court to comply with any of those requirements shall not in any way vitiate the trial of an accused person unless a court to which an appeal is made considers that by reason of the accused person not having had the benefit of legal representation, the accused person is shown to have been prejudiced by that failure.

18 of 1994, s 6

(5) Where an information before the Supreme Court is quashed by reason of a failure of the court of committal to comply with a requirement of this Code and to which paragraph (b) of the proviso to subsection (4) applies the court quashing the information may —

(a) remit the matter to the court of committal with directions to rectify the failure and to continue with the proceedings of the committal as from that stage; or

(b) make such other order as the court considers just.

Recording of evidence

15 of 1996, s 78 and Second Sch

105. (1) Subject to the provisions of section 77 of the Supreme Court Act, the Chief Justice may from time to time give directions as to the manner in which evidence or the substance thereof shall be taken down in any proceedings before any criminal court.

(2) Subject to the provisions of section 216 of this Code and to any directions issued under the provisions of subsection (1) of this section, in inquiries and trials in criminal matters before a magistrate's court, the evidence of the witnesses shall be recorded in the following manner —

(a) the evidence of each witness, or so much thereof as the magistrate deems material, shall be taken down by the magistrate, or in his presence and under his personal direction and superintendence, and shall be signed by the magistrate and shall form part of the record;

(b) such evidence shall not ordinarily be taken down in the form of question and answer but in the form of narrative:

Provided that a magistrate may, in his discretion, take down or cause to be taken down any particular question and answer or the evidence or any part thereof in any particular case in the form of questions and answers.

(3) At the request of a witness his evidence shall be read over to him.

Mode of delivering judgment

106. (1) Except in a case in which the personal attendance of the accused person has been dispensed with under the provisions of section 66 of this Code or by leave of the court, the judgment of any court in the exercise of its original jurisdiction in any criminal trial shall be pronounced, or the substance of such judgment explained, in open court either immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties and their legal representatives, if any:

Provided that the whole judgment shall be read out by the presiding judge or magistrate if he is requested so to do either by the prosecution or the defence.

(2) In any case in which judgment is required by subsection (1) of this section to be read, or the substance thereof explained, in open court, the accused person shall be required to be present to hear the same.

Magistrate may deliver judgment prepared by predecessor

9 of 1992, s 4

107. Unless the Chief Justice otherwise directs, where a magistrate has completed the hearing of a criminal trial save for the delivery of the judgment which is to be pronounced at some subsequent time and subsequently ceases to act as a magistrate or is transferred to another district that magistrate may, except in the case of a conviction, prepare the judgment to be delivered in respect of the criminal trial and that judgment may be read by his successor and such reading shall be regarded as complying in all respects with the provisions of section 106.

Contents of judgment in summary trial

108. (1) Every judgment in a summary trial, except as otherwise expressly provided by this Code or any other law, shall be written by the magistrate in English and shall contain the point or points for determination, the decision thereon and the reasons for the decision, and shall be dated and signed by such magistrate in open court at the time of pronouncing it:

Provided that in a case in which the accused person has admitted the truth of the charge and has been convicted, it shall be sufficient compliance with the provisions of this subsection if the judgment contains only the finding and sentence or other final order and is signed and dated by the magistrate at the time of pronouncing it.

(2) In the case of a conviction the judgment shall specify the offence of which, and the section of the law under which, the accused person is convicted and the punishment to which he is sentenced or other lawful order of the court upon such conviction.

(3) In the case of an acquittal the judgment shall state the offence of which the accused person is acquitted, and the section of the law under which the charge was preferred, and shall direct that he be set at liberty in respect of that offence.

Accused person entitled to copy of judgment on application.

109. On the application of the accused person a copy of the judgment in any criminal trial, and, if practicable and he so desires, a translation in his own language if that language is not English, shall be given to him without delay and free of any charge.

Costs in criminal cases.

Ch. 84.

110. In any criminal proceedings the court may make an order for the payment of costs in accordance with the provisions of section 119 or 120, as may be appropriate, of the Penal Code.

Order of magistrate for payment for costs appealable.

111. An appeal shall lie to the Supreme Court from any order by a magistrate's court awarding costs in any criminal trial under the provisions of section 110 of this Code.

Property found on accused person.

112. Where, upon the apprehension of a person charged with an offence, any property is taken from him, the court before which he is charged may order —

(a) that the property or any part thereof be restored to the person who appears to the court to be entitled thereto, and, if he be the person charged, that it be restored either to him or to such other person as he may direct; or

(b) that the property or a part thereof be applied to the payment of any fine or any costs or compensation directed to be paid by the person charged.

Restitution of stolen property after conviction

113. Any court before which any person is convicted of an offence, under the provisions of the Penal Code, involving stealing, taking, obtaining, embezzling, converting or disposing of or knowingly receiving any property, may direct the restitution of such property to the owner thereof or his representative in accordance with and subject to the provisions of section 64 of the Penal Code.

Conviction in case of variance between evidence and offence charged

114. (1) If upon the trial of any person for any misdemeanour the facts proved in evidence amount in law to a felony, such person shall not by reason thereof be entitled to be acquitted of such misdemeanour:

Provided that no person tried for such misdemeanour shall be liable to be afterwards prosecuted for felony on the same facts, unless the court before which such trial may be had shall think fit, in its discretion, to discharge the jury from giving any verdict upon such trial and to direct that such person be charged upon information for felony, in which case such person may be dealt with in all respects as if he had not been put upon his trial for such misdemeanour.

(2) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete lesser offence, and such combination is proved but the remaining particulars are to be proved, he may be convicted of the lesser offence although he was not charged with it.

(3) When a person is charged with an offence and facts are proved which reduce it to a lesser offence, he may be convicted of the lesser offence although he was not charged with it.

Accused persons entitled to be present at trial and may be represented by legal practitioner

115. (1) Every person accused of any criminal offence shall be entitled to be present in court during the whole of his trial unless he so conducts himself in the court as to render the continuance of the proceedings in his presence impossible. The court may, however, in its discretion and subject to the provisions of subsection (2) of section 106 of this Code, allow any part of any trial to take place in the absence of the accused with the consent of the accused, and may permit the accused to be absent in such case upon such terms as it thinks proper.

For the purposes of this section, the consent of the accused person to the conduct of the trial in his absence shall be deemed to have been given in a case in which he enters a written plea of guilty under the provisions of section 66 of this Code.

(2) Every person accused of any criminal offence, whether present in person or absent in accordance with the provisions of this section, may be defended before any court by a legal practitioner except in a case in which the provisions of section 66 of this Code apply and a written plea of guilty has been entered.

2 of 1987, s 3

PART V
PROVISIONS RELATING TO PRELIMINARY INQUIRIES INCLUDING THE USE OF EXPERT DOCUMENTARY EVIDENCE THEREAT AND IN OTHER CRIMINAL PROCEEDINGS

Power to commit for trial

116. Subject to the provisions of this Code, any magistrate's court may commit any person for trial before the Supreme Court.

Court to hold preliminary inquiry

117. Whenever any charge has been brought against any person in respect of an offence not triable summarily, or which may be tried either summarily or on information and as to which the magistrate before whom the case is brought is of the opinion that it ought to be committed for trial before the Supreme Court or the accused person, having a right to elect, desires to be tried before the Supreme Court, a preliminary inquiry shall be held in accordance with the provisions hereafter in this Code contained.

Magistrate to read charge to accused and explain purpose of the proceedings

118. A magistrate conducting a preliminary inquiry shall, at the commencement of such inquiry, read over and explain to the accused person the charge in respect of which the inquiry is being held and shall explain to the accused person that he will have an opportunity later on in the inquiry, if he so desires, of making a statement or calling witnesses (or both) and shall further explain to the

accused person the purpose of the proceedings, namely, to determine whether there is sufficient evidence to put him on his trial before the Supreme Court.

Taking of depositions.
8 of 1995, s 2

119.[6](1) When an accused person is brought before a magistrate's court, whether on summons, warrant or otherwise, charged with an offence in respect of which a preliminary inquiry is to be held, the magistrate shall, in the presence of the accused, take down in writing, or cause to be taken down in writing or recorded, whether mechanically or otherwise, the statements on oath of witnesses called in support of the charge by the prosecution. Such statements shall be deemed to be, and are hereafter in this Code referred to as, depositions, and —

(i) when taken down by the magistrate, shall be taken down in both narrative and question and answer form or either as the magistrate sees fit;

(ii) when caused to be taken down or recorded by the magistrate, shall be taken down or recorded in the question and answer form;

(2) The accused person or any legal practitioner appearing on his behalf shall be entitled to cross-examine any such witness and the answers of a witness thereto shall form part of the deposition of such witness.

(3) If the accused person is not represented by a legal practitioner, the magistrate shall, at the close of the examination of each witness for the prosecution, ask the accused person whether he wishes to put any questions to that witness.

8 of 1995, s 2

[7](4) Subject to subsection (6), the deposition of each witness shall be —

[6] In relation to the substitution of subsection (1), Act 8 of 1995, section 4, reads as follows —

"4. After the date of the coming into operation of section 2 [10th March, 1995], no objection shall be allowed by a court on the ground that before that date there was during a preliminary enquiry a failure to comply with any of the provisions relating to the conduct of the enquiry unless the court considers that the failure has or would substantially prejudice the fair trial of the person following upon that enquiry or otherwise occasion injustice to the person."

[7] In relation to the substitution of subsection (4), Act 8 of 1995, section 4, reads as follows —

"4. After the date of the coming into operation of section 2 [10th March, 1995], no objection shall be allowed by a court on the ground that before that date there was during a preliminary enquiry a failure to comply with any of the provisions relating to the conduct of the enquiry unless the court considers that the failure has or would substantially prejudice the fair trial of the person following upon that enquiry or otherwise occasion injustice to the person."

(a) read over to him;

(b) signed by the witness or attested by his mark; and

(c) signed by the magistrate before whom it was taken,

in the presence of the accused, at such time as is appointed therefor by the magistrate and notified to the accused.

(5) If any witness denies the correctness of any part of the deposition when the same is read over to him, the magistrate may, instead of altering the deposition as written down, make a memorandum thereon of the objection made to it by the witness and shall add any remarks as to the matter as he thinks necessary.

(6) If a statement is made by a witness in a language other than that in which it is taken down and the witness does not understand the language in which it is taken down, it shall be interpreted to him in a language which he understands by an interpreter who shall be sworn in accordance with the provisions of the Oaths Act, and the identity of the interpreter shall be recorded thereon by the magistrate.

Ch. 60.

8 of 1995, s 2

[8](7) The magistrate may permit a deposition upon completion to be read over to and signed or attested by a witness in the absence of the accused, if the accused, having been notified in accordance with subsection (4) to appear before the magistrate, fails to so appear.

8 of 1995, s 2

(8) The failure of an accused person to be present at the reading over to, and the signing or attesting by, a witness of his deposition as mentioned in subsection (4) shall not render that deposition invalid.

Admission or evidence of certain reports and plans.
2 of 1987, s 3
Ch. 251.

120. (1) Any document purporting to be —

(a) a survey for public purposes within the meaning of the Land Surveyors Act; or

[8] In relation to the substitution of subsection (7), Act 8 of 1995, section 4, reads as follows —

"4. After the date of the coming into operation of section 2 [10th March, 1995], no objection shall be allowed by a court on the ground that before that date there was during a preliminary enquiry a failure to comply with any of the provisions relating to the conduct of the enquiry unless the court considers that the failure has or would substantially prejudice the fair trial of the person following upon that enquiry or otherwise occasion injustice to the person."

(b) a report made under the hand of an analyst on any matter or thing duly submitted to him for examination and report,

shall be receivable in any criminal proceedings in any court as evidence of any matter or thing contained therein relating to the survey or examination as the case may be.

(2) Notwithstanding subsection (1) the court may of its own motion or where it appears desirable in the interests of justice on the application of any party to the proceedings require the person who did the survey or the analyst to attend before the court and give evidence.

(3) The provisions of this section shall with the necessary modifications apply to a document purporting to be a *post mortem* report of a duly registered medical practitioner and to a document purporting to be a report made by such a practitioner within forty-eight hours of his examination of —

(a) any injury received by; or

(b) the condition of,

a person and which injury or condition is relevant to the criminal proceedings in which the document is sought to be introduced as evidence.

(4) In this section the expression "analyst" means a person employed in the public service as an analyst, a firearms examiner, a ballistics expert, a firearms technician or a radiologist or, subject to him being designated for the purposes of this section by the Minister responsible for the Health Services, a laboratory technician. *33 of 1996, s 2*

(5) The court may for the purposes of the proceedings assume that the signature on any such document is genuine without further evidence on the point and that the person preparing or signing it held the qualification and office which he professed to hold at the time of that preparation or signature.

[9](6) Notwithstanding anything to the contrary in this or any other law, any document purporting to be a report of an analysis, test or examination carried out by a person employed in the public service in the capacity of an analyst, chemist, laboratory technician or medical practitioner shall *2 of 1989, s 3*

[9] In terms of section 1(2)(a) of Act 2 of 1989 the insertion of subsection (6) came into operation on 11th May, 1987

be receivable, without proof of the signature, qualification, employment or office of the person by whom the report purports to be issued, in any proceedings of a criminal nature as *prima facie* evidence of the results of such analysis, test or examination, as the case may be.

Variance between evidence and charge

121. No objection to a charge, summons or warrant for defect in substance or in form, or for variance between it and the evidence for the prosecution, shall be allowed at a preliminary inquiry; but if any variance appears to the court to be such that the accused person has been thereby deceived or misled, the court may, on the application of the accused person, adjourn the inquiry or may allow any witness to be recalled and such questions to be put to him as by reason of the terms of the charge may have been omitted.

Remand

122. (1) If, from the absence of witnesses or any other sufficient cause to be recorded in the proceedings, the court considers it necessary or advisable to adjourn the inquiry, the court may from time to time by warrant remand the accused for a reasonable time, not exceeding seven clear days at any one time, to some prison or other place of security; or, if the remand is not for more than three days, the court may in writing order the officer or person in whose custody the accused person is, or any other fit officer or person, to continue to keep the accused in his custody, and to bring him up at the time appointed for the commencement or continuance of the inquiry.

(2) During a remand the court may at any time order the accused to be brought before it and, subject to the provisions of the Bail Act, may on a remand at any time admit the accused to bail.

20 of 1994, s 15 and Third Sch

Provisions as to taking statements or evidence of accused persons

123. (1) If, after the examination of the witnesses called on behalf of the prosecution, the court considers that, on the evidence as it stands, there are sufficient grounds for committing the accused for trial, the magistrate shall satisfy himself that the accused understands the charge and shall ask the accused whether he wishes to make a statement in his defence or not and, if he wishes to make a statement, whether he wishes to make it on oath, or not. The magistrate shall also explain to the accused that he is not bound to make a statement and that his statement, if he makes one, will be part of the evidence at the trial.

(2) Everything which the accused person says, either by way of statement or evidence, shall be recorded in full and shall be shown or read over to him, and he shall be at liberty to explain or add to anything contained in the record thereof.

(3) When the whole is made conformable to what he declares is the truth, the record thereof shall be attested by the magistrate, who shall certify that such statement or evidence was taken in his presence and hearing and contains accurately the whole statement made, or evidence given, as the case may be, by the accused person. The accused person shall sign, or attest by his mark, such record. If he refuses, the court shall add a note of his refusal, and the record may be used as if he had signed or attested it.

2 of 1977, s 2

(4) After subsection (3) has been complied with, the magistrate shall explain to the accused person that if the court commits him for trial he may not be permitted at the trial to give evidence of an alibi or to call witnesses in support of an alibi unless he give particulars of the alibi and of the witnesses to the court immediately or to the Attorney-General within 21 days from the end of the committal proceedings; and where the court commits the accused person for trial the magistrate shall record in writing the fact that the explanation has been given.

Evidence and address of defence

124. (1) Immediately after complying with the requirements of section 123 of this Code, relating to the statement or evidence of the accused person, and whether the accused person has or has not made a statement or given evidence, the magistrate shall ask him whether he desires to call witnesses on his own behalf.

(2) The magistrate shall take the evidence of any witnesses called by the accused person in like manner as in the case of the witnesses for the prosecution, and every such witness, not being merely a witness to the character of the accused person, shall be bound by recognisance to appear and give evidence at the trial of such accused person.

(3) If the accused person states that he has witnesses to call, but that they are not present in court, and the magistrate is satisfied that the absence of such witnesses is not due to any fault or neglect of the accused person, and

that there is a likelihood that they could if present give material evidence on behalf of the accused person, the magistrate may adjourn the inquiry and issue process, or take other steps, to compel the attendance of such witnesses, and on their attendance shall take their depositions and bind them by recognisance in the same manner as witnesses under subsection (2) of this section.

(4) In any preliminary inquiry under this Part of this Code the accused person or his counsel (if any) shall be at liberty to address the court —

(a) after the examination of the witnesses called on behalf of the prosecution; or

(b) if no witnesses for the defence are to be called, immediately after the statement or evidence of the accused person; or

(c) if the accused person elects —

(i) to give evidence or to make a statement and witnesses for the defence are to be called; or

(ii) not to give evidence or to make a statement, but to call witnesses,

immediately after the evidence of such witnesses.

(5) If the accused person or his counsel addresses the court in accordance with the provisions of subsection (4) of this section, the prosecution shall have the right of reply.

(6) Where the accused person reserves his defence, or at the conclusion of any statement in answer to the charge or evidence in defence, as the case may be, the magistrate shall ask him whether he desires any assistance in regard to calling witnesses at the trial, other than any whose evidence has been taken under the provisions of this section, and, if so, whether he desires to give their names and addresses so that they may be summoned. The magistrate shall thereupon record the names and addresses of any such witnesses whom he may mention.

Discharge of accused persons

125. If, at the close of the case for the prosecution, or after hearing any evidence in defence, the magistrate considers that the evidence against the accused person is not sufficient to put him on his trial, the court shall forthwith order him to be discharged as to the particular charge under inquiry; but such discharge shall not be a bar to any subsequent charge in respect of the same facts:

Provided that nothing contained in this section shall prevent the court from proceeding either forthwith, or after such adjournment of the inquiry as may seem expedient in the interests of justice, to investigate any other charge upon which the accused person may have been summoned or otherwise brought before it, or which, from the evidence given in the course of the hearing of the charge so dismissed as aforesaid, it may appear that the accused person has committed.

Summary adjudication in certain cases

126. If, at the close of or during the preliminary inquiry, it shall appear to the court that the offence is of such a nature that it may suitably be dealt with under the powers possessed by the court and is not a case in which the accused has a right to elect to be tried on information and has so elected, the court may, subject to the other provisions of this Code, hear and finally determine the matter and either convict the accused person or dismiss the charge:

Provided that in every such case the accused shall be entitled to have recalled for cross-examination or further cross-examination all witnesses for the prosecution whom he may require to be recalled.

Committal for trial

15 of 1996, s 78 and Second Sch

127. (1) If the magistrate's court considers the evidence sufficient to put the accused person on his trial, the court shall commit him for trial before the Supreme Court, and shall, until the trial, either admit him to bail or send him to prison for safekeeping. The warrant of such first-named court shall be sufficient authority for the detention of the person therein named by the officer in charge of any prison.

(2) In the case of a corporation, the court may, if it considers the evidence sufficient to put the accused corporation on trial, make an order authorising the Attorney-General to file an information against such corporation, and for the purposes of this Code any such order shall be deemed to be a committal for trial.

Complainant and witnesses to be bound over

128. When an accused person is committed for trial before the Supreme Court, subject to the provisions of this Code with regard to witnesses who are about to leave The Bahamas or who are ill, the magistrate's court committing him shall bind by recognisance, with or without sureties as

the court may deem requisite, the complainant and every witness to appear at the trial to prosecute or to prosecute and give evidence or to give evidence, as the case may be, and also to appear and give evidence, if required, at any further examination concerning the charge which may be held by direction given by the Attorney-General under section 138 of this Code:

Provided that if the complainant is acting on behalf of the Crown, the Attorney-General, the Commissioner of Police or any department of the Government or is a public officer acting in his official capacity, he shall not be required to be bound by any recognisance or to give any security.

Refusal to be bound over.

129. If a person refuses to enter into such recognisance, the court may commit him to prison or into the custody of any officer of the court, there to remain until after the trial, unless in the meantime he enters into a recognisance. If afterwards, from want of sufficient evidence or other cause, the accused is discharged, the court shall order that the person imprisoned for so refusing be also discharged.

Accused person entitled to copy of depositions.

130. A person who has been committed for trial before the Supreme Court shall be entitled at any time before the trial to have a copy of the depositions without payment.

The court shall at the time of committing him for trial inform the accused person of the effect of this provision.

Binding over of witnesses conditionally.

131. (1) Where any person charged before a magistrate's court with an offence triable upon information before the Supreme Court is committed for trial, and it appears to such magistrate's court, after taking into account anything which may be said with reference thereto by the accused or the prosecutor, that the attendance at the trial of any witness who has been examined before it is unnecessary by reason of anything contained in any statement by the accused person, or of the evidence of the witness being merely of a formal nature, the magistrate's court shall, if the witness has not already been bound over, bind him over to attend the trial conditionally upon notice given to him and not otherwise, or shall, if the witness has already been bound over, direct

that he shall be treated as having been bound over to attend only conditionally as aforesaid, and shall transmit to the Supreme Court a statement in writing of the names, addresses and occupations of the witnesses who are, or who are to be treated as having been, bound over to attend the trial conditionally.

(2) Where a witness has been, or is to be treated as having been, bound over conditionally to attend the trial, the Attorney-General or the person committed for trial may give notice, at any time not later than seven days before the date fixed for trial, to the committing magistrate's court and at any time thereafter to the Registrar of the Supreme Court that he desires the witness to attend the trial, and any such court or Registrar to whom any such notice is given shall forthwith notify the witness that he is required so to attend in pursuance of his recognisance.

15 of 1996, s 78 and Second Sch

The magistrate's court shall, on committing the accused person for trial, inform him of his right to require the attendance at the trial of any such witness as aforesaid, and of the steps which he must take for the purposes of enforcing such attendance.

(3) Any documents or articles produced in evidence before the magistrate's court by any witness whose attendance at the trial is stated to be unnecessary in accordance with the provisions of this section and marked as exhibits shall, unless in any particular case the magistrate's court otherwise orders, be retained by the magistrate's court and forwarded with the depositions to the Registrar of the Supreme Court.

Deposition of witness who is ill or about to leave The Bahamas

132. If it is proved upon oath before any magistrate that any person is dangerously ill and unable to travel, or is about to leave The Bahamas 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 person has been charged before a magistrate (whether the preliminary inquiry has or has not been held or is in progress, but not after the accused has been discharged) 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 The Bahamas as aforesaid, in the court, in the manner prescribed by this Code, 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 upon which and place at which it was taken, and of the names of the persons, if any, present at the taking thereof.

Notice to be given

133. 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, be either served upon him or left with an adult inmate at his last or most usual place of abode. If the accused is in prison, the magistrate shall, by an order in writing, direct the gaoler having the custody of the accused to 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 be conveyed back to prison when it has been taken, but no accused person shall be taken to any such place (other than the court) for such a purpose without his consent.

Magistrate to deal with the deposition like any other deposition

134. If such deposition relates to an offence, the preliminary inquiry 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 shall not be called upon to enter into a recognisance to give evidence at the trial of the accused.

Such deposition to be admissible in evidence

135. Every deposition so taken under the provisions of section 132 of this Code 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:

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 had any opportunity of cross-examining the witness, if it is proved that the accused having received such notice aforesaid that

such deposition was about to be taken, refused or neglected to be present, or to cause his counsel to be present, when it was taken:

Provided further that if it is proved that the person whose evidence has been taken as aforesaid has so recovered from his sickness or returned to The Bahamas as to be able to be present at the sessions at which the accused is tried, such deposition so taken as aforesaid shall not be read.

Accused to have same privileges as prosecutor under section 135

136. 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 132 of this Code mentioned may be taken on behalf of the defence 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 section 135 of this Code.

Transmission of records to Supreme Court and Attorney-General

137. In the event of a committal for trial, the written charge, the depositions, the statement (if any) of the accused person, the recognisances of the complainant and the witnesses, the recognisances of bail (if any), and any documents or things which have been put in evidence shall be transmitted without delay by the committing court to the Registrar of the Supreme Court, and an authenticated copy of the depositions, the statement aforesaid and any documentary exhibits shall be supplied to the Attorney-General at the same time by the magistrate's court before which the committal proceedings were conducted.

Power for the Attorney-General to refer case back to magistrate for further preliminary inquiry

138. (1) After the receipt by the Attorney-General of an authenticated copy of the depositions, recognisances and other documents forwarded to him in relation to any case committed for trial and in which a preliminary inquiry has been held under the provisions of this Code, the Attorney-General may at any time refer back such documents to the magistrate's court concerned with directions to re-open the inquiry for the purpose of taking evidence or further evidence on a certain point or points to be specified, and with such directions as the Attorney-General may think proper.

(2) Subject to any express directions which may be given by the Attorney-General, the effect of any such reference back to the magistrate's court shall be that the inquiry shall be re-opened and dealt with in all respects as if the accused person had not been committed for trial.

Power for the Attorney-General to refer back case to be dealt with summarily.

139. If after such receipt of any documents as aforesaid the Attorney-General is of opinion that the accused person should not have been committed for trial, but that the case should have been dealt with summarily, the Attorney-General may, if he thinks fit, at any time after such receipt, refer back such documents to the magistrate's court with directions to deal with the case accordingly and with such other directions as he may think proper, and thereupon the magistrate's court shall deal with the case accordingly and as if the said accused person had not been committed for trial:

Provided that in every such case the accused shall be entitled to have recalled for cross-examination or further cross-examination all or any of the witnesses for the prosecution.

Further provisions as to referring back of case.

140. (1) Any directions given by the Attorney-General under section 138 or 139 of this Code shall be in writing signed by him or by an officer acting on his instructions under the provisions of section 54 of this Code, and shall be complied with by the magistrate, and by him be attached to the documents in the proceedings.

(2) The Attorney-General or the officer acting on his instructions as aforesaid may at any time add to, alter or revoke any such directions.

Mode of trial upon committal to the Supreme Court and preferment of information.
Ch. 59.

141. (1) Every person committed for trial before the Supreme Court shall be tried on an information preferred by the Attorney-General, and such trial shall be had by and before a judge and a jury to be summoned, drawn and empanelled according to the provisions of the Juries Act or any law for the time being in force repealing and replacing that Act.

(2) Every such information shall be drawn up in accordance with the provisions of this Code and, when signed by the Attorney-General, or by any person authorised by him under the provisions of section 54 of this Code, shall be filed in the office of the Registrar

together with such additional copies thereof as are necessary for service upon the accused person or persons.

(3) In any such information the Attorney-General may charge the accused person with any offence which, in his opinion, is disclosed by the depositions either in addition to or in substitution for the offence upon which the accused person has been committed for trial.

Notice of trial

15 of 1996, s 78 and Second Sch

142. The Registrar shall endorse or annex to every information filed as aforesaid, and to every copy thereof delivered to the officer of the court or peace officer for service thereof, a notice of trial, which notice shall specify the date when and the place where the accused person is to be tried by the Supreme Court on the said information, and shall be in the following form, or as near thereto as may be —

> "A.B. Take notice that you will be tried on the information whereof this is a true copy by the Supreme Court at ..... on the ..... day of ..... 19....."

Service of copy of information and notice of trial

15 of 1996, s 78 and Second Sch

143. The Registrar shall deliver or cause to be delivered to the officer of the court or peace officer serving the information a copy thereof with the notice of trial endorsed on the same or annexed thereto, and, if there are more accused persons committed for trial than one, then as many copies as there are such accused persons; and the officer of the court or peace officer aforesaid shall, as soon as may be after having received the copy or copies of the information and notice or notices of trial, and three days at least before the day for trial, by himself or his deputy or other officer, deliver to the accused person or persons committed for trial the said copy or copies of the information and notice or notices, and explain to him or them the nature and exigency thereof; and when any accused person shall have been admitted to bail and cannot readily be found, he shall leave a copy of the said information and notice of trial with someone of his household for him at his dwelling-house or with someone of his bail for him, and if none such can be found, shall affix the said copy and notice to the outer or principal door of the dwelling-house of the accused person or of any of his bail.

(2) The officer serving the copy or copies of the information and notice or notices of trial shall forthwith make to the Registrar a return of the mode of service thereof.

Postponement of trial.

15 of 1996, s 78 and Second Sch

144. (1) The Supreme Court, upon the application of the prosecutor or the accused person, if the court considers that there is sufficient cause for the delay, may postpone the trial of any accused person and may respite the recognisances of the complainant and witnesses, in which case the respited recognisances shall have the same force and effect as fresh recognisances to prosecute and give evidence at such subsequent sessions would have had.

(2) The Supreme Court may give such directions for the amendment of the information and the service of any notices which the court may deem necessary in consequence of any order made under subsection (1) of this section.

S I 65/1992

PART VI
PROCEDURE IN TRIALS BEFORE THE SUPREME COURT

Practice of Supreme Court in the exercise of its criminal jurisdiction.

145. Subject to the provisions of this Code and to any other law for the time being in force in The Bahamas, the practice of the Supreme Court in the exercise of its criminal jurisdiction and the mode of conducting and procedure at the trial of any person upon information shall be assimilated so far as circumstances admit to the practice of the High Court of Justice, in the exercise of its criminal jurisdiction, and of courts of oyer and terminer and general gaol delivery in England.

Bench warrant where accused does not appear.

146. Where any person against whom an information has been preferred, and who is at large, does not appear to plead to the information, whether he is under recognisances or not, the court may issue a warrant for his arrest.

Bringing up prisoner for trial.

147. If any person against whom an information is preferred is at the date appointed for the trial thereof confined in prison for some other cause, the court, by order in writing, may direct the gaoler to bring up the accused as often as may be required for the purpose of the trial, and such order shall be sufficient authority therefor and shall be obeyed by the gaoler. Any such person shall for all purposes be deemed to be in lawful custody during the period when he is absent from prison in accordance with any such order.

Arraignment of accused

148. (1) An accused person to be tried before the Supreme Court upon an information shall be placed at the bar unfettered, unless the court shall see cause otherwise to order, and the information shall be read over to him by the Registrar if need be, and such accused person shall be required to plead instantly thereto, unless he shall object that a copy of the information has not previously been served upon him under the provisions of section 140 of this Code or he raises objection to the information as hereafter in this Code provided.

(2) In the case of a corporation, the corporation may, by its representative, enter a plea in writing, and if either the corporation does not appear by its representative or, though it does so appear, fails to enter a plea, the court shall cause a plea of not guilty to be entered.

For the purposes of this section a representative of a corporation need not be appointed under the seal of the corporation and a statement in writing purporting to be signed by the managing director of the corporation or by any person (by whatever name called) having, or being one of the persons having, the management of the affairs of the corporation, to the effect that the person named in the statement has been appointed as the representative of the corporation for the purposes of this section shall be admissible without further proof as *prima facie* evidence that the person has been so appointed.

Objection to information on grounds of insufficiency of particulars

149. (1) No count in an information shall be quashed upon the ground that it contains insufficient particulars, but, in any case, if objection is taken to any count by the accused person, or if in default of such objection it appears to the court that the interest of justice so requires, the court may order that the prosecution furnish such particulars in support of the charge as it may consider necessary for a fair trial and a copy of any such particulars shall be given to the accused or his counsel without charge, and the trial shall proceed thereafter as if the information had been amended in conformity with the particulars.

(2) Every objection to any information on any of the grounds referred to in subsection (1) of this section or for any formal defect on the face thereof shall be taken immediately after the information has been read over to the accused and not later.

Amendment of information, separate trial and postponement of trial

150. (1) Where, before a trial upon information or at any stage of such trial, it appears to the court that the information is defective, the court shall make such order for the amendment of the information as the court considers necessary to meet the circumstances unless, having regard to the merits of the case, the required amendments cannot be made without injustice. Any such amendments shall be made upon such terms as to the court shall seem just.

(2) When an information is amended under the provisions of this section, a note of the order for amendment shall be endorsed on the information and thereafter the information shall be treated for the purposes of all proceedings in connection therewith as having been filed in the amended form.

(3) Where, before a trial upon information or at any stage of such trial, the court is of the opinion that the accused may be prejudiced or embarrassed in his defence by reason of being charged with more than one offence in the same information, or that for any reason it is desirable to direct that where there are two or more accused persons they should be tried separately, the court may order the separate trial of any count or counts in such information or the separate trial of any accused persons charged in the same information.

(4) Where, before a trial upon information or at any stage of such trial, the court is of the opinion that the postponement of the trial is expedient as a consequence of the exercise of any power of the court under this section or any other provisions of this Code, the court shall make such order as to the postponement of the trial as appears necessary.

(5) Where an order of the court is made under this section for a separate trial or for the postponement of a trial —

(a) the procedure on the separate trial of a count shall be the same in all respects as if the count had been found in a separate information, and the procedure on the postponed trial shall be the same in all respects as if the trial had not commenced; and

(b) the court may make such order as to admitting the accused to bail and as to the enlargement of recognisances and otherwise as the court may think fit.

(6) Any power conferred upon the court under this section shall be in addition to and not in derogation of any other power of the court for the same or similar purposes.

Quashing of information.

151. (1) No objection to an information shall be taken by way of demurrer, but if any information does not state in substance an indictable offence or states an offence not triable by the court, the accused may move the court to quash it or in arrest of judgment.

(2) If the motion is made before the accused pleads, the court shall either quash the information or amend it, if, having regard to the interest of justice, it considers that it is proper that it should be amended.

(3) If the defect in the information appears to the court during the trial and the court does not think fit to amend it, it may, in its discretion, quash the information or leave the objection to be taken in arrest of judgment.

(4) If the information is quashed, the court may direct the accused to plead to another information founded on the same facts when called on at the same session of the court.

Charge of previous conviction.

152. Where an information contains a count charging the accused with having been previously convicted, he shall not, at the time of his arraignment, be required to plead to it unless he pleads guilty to the rest of the information, nor shall the count be mentioned to the jury when the accused is given in charge to them, or when they are sworn, nor shall he be tried upon it if he is acquitted on the other counts; but if he is convicted on any other part of the information, he shall be asked whether he has been previously convicted as alleged or not, and, if he says that he has not or does not say that he has been so convicted, the jury shall be charged to inquire into the matter as in other cases.

Abolition of pleas in abatement.

153. No plea in abatement shall be allowed in any proceedings under this Code.

Pleading to the information.

154. When the accused is called upon to plead, he may plead either guilty or not guilty, or such other special pleas as are provided hereafter in this Code.

Refusal or incapacity to plead

155. (1) If an accused person upon being arraigned upon any information stands mute of malice or will not, or by reason of infirmity cannot, answer directly to the information, the court may, if it thinks fit, order the Registrar, or other proper officer of the court, to enter a plea of not guilty on behalf of such person, and the plea so entered shall have the same force and effect as if such person had actually pleaded the same.

(2) If it appears, before or upon arraignment, that an accused person may be insane, the court may order a jury to be empanelled to try his sanity, and the jury shall thereupon, after hearing evidence for that purpose, find whether he is or is not insane and unfit to stand his trial. If the finding of the jury is that the accused person is insane and unfit to stand his trial the provisions of section 192 of this Code shall apply.

Proceedings when plea made

156. (1) If upon arraignment the accused pleads guilty he may be convicted thereon.

(2) If upon arraignment the accused person pleads not guilty, or if a plea of not guilty is entered upon his behalf in accordance with the provisions of section 155 of this Code, the court shall proceed to try the case.

(3) Every plea, including any special plea hereafter in this Code provided for, shall be entered by the Registrar, or other proper officer of the court, on the back of the information or on a sheet of paper annexed thereto.

Special pleas allowed to be pleaded

157. (1) The following special pleas, and no others, may be pleaded, that is to say, a plea of *autrefois* acquit, a plea of *autrefois* convict, a plea of pardon, and such plea of justification in cases of defamatory libel as is hereafter in this Code mentioned.

(2) All other grounds of defence may be relied on under the plea of not guilty.

(3) The pleas of *autrefois* acquit, *autrefois* convict, and pardon may be pleaded together, and shall, if pleaded, be disposed of before the accused is called on to plead further; and if every such plea is disposed of against the accused, he shall be allowed to plead not guilty.

(4) In any plea of *autrefois* acquit, or *autrefois* convict, it shall be sufficient for the accused to state that he has

been lawfully acquitted or convicted, as the case may be, of the offence charged in the count to which the plea is pleaded.

(5) Every special plea shall be in writing or, if pleaded orally, shall be reduced in writing, and shall be filed with the Registrar.

General effect of pleas of *autrefois* acquit and convict

158. (1) On the trial of an issue on a plea of *autrefois* acquit or *autrefois* convict, if it appears that the matter on which the accused was tried on the former trial is the same in whole or in part as that on which it is proposed to try him, and that he might on the former trial have been convicted of any of the offences of which he may be convicted on the count to which the plea is pleaded, subject to subsection (2) of this section, the court shall give judgment that he be discharged from those counts which relate to such offences of which he might on the former trial have been convicted.

(2) If it appears that the accused might, on the former trial, have been convicted of any offence of which he may be convicted on the count to which the plea is pleaded, but that he may be convicted also on that count of some offence of which he could not have been convicted on the former trial, the court shall direct that he shall not be convicted on that count of any offence of which he might have been convicted on the former trial, but that he shall plead over as to the other offence charged.

(3) Upon the trial of an issue to which this section refers, the judge shall determine whether in law the accused was convicted or liable to be convicted of any offence of which he stands charged or may be convicted on the count to which he has pleaded *autrefois* acquit or *autrefois* convict; but any issue of fact arising in relation thereto shall be for determination by the jury and the judge may, if he shall think fit, require the jury to return a special verdict in relation thereto.

Effect where previous offence charged was without aggravation

159. (1) Subject to the provisions of section 79 of this Code, where an information charges substantially the same offence as that charged in the information on which the accused was given in charge on a former trial, but adds a statement of intention or circumstances of aggravation tending, if proved, to increase the punishment, the previous acquittal or conviction shall be a bar to the subsequent information.

(2) A previous acquittal or conviction on an information for murder shall be a bar to a second information for the same homicide charging it as manslaughter; and a previous acquittal or conviction on an information for manslaughter shall be a bar to a second information for the same homicide charging it as murder.

Use of depositions, etc on former trial, or trial of special plea

160. On the trial of an issue on a plea of *autrefois* acquit or *autrefois* convict, the depositions transmitted to the Registrar on the former trial, together with the judge's notes, if available, and the depositions transmitted to the Registrar on the subsequent charge or the copy of the record of the magistrate's court, as the case may be, shall be admissible in evidence to prove or disprove the identity of the charges.

Pleas of justification in case of libel

161. (1) Where any person accused of publishing a defamatory libel pleads that the defamatory matter published by him was true, and that it was for the public benefit that the matters charged should be published in the manner in which and at the time when they were published, the plea may justify the defamatory matter in the sense specified, if any, in the count, or in the sense which the defamatory matter bears without any such specification; or separate pleas justifying the defamatory matter in each sense may be pleaded separately, as if the libels had been charged in separate counts. The plea shall be in writing or, if made orally, shall be reduced to writing, and shall set forth the particular fact or facts by reason of which it was for the public good that the matter should be so published. The Crown may reply generally denying the truth thereof.

(2) The truth of the matters charged in an alleged libel shall in no case be inquired into without such plea of justification, unless the accused is put upon his trial upon an information charging him with publishing the libel, knowing the same to be false, in which case the evidence of the truth may be given in order to negative the allegation that the accused knew the libel to be false.

(3) The accused may, in addition to such plea, plead not guilty, and the pleas shall be inquired of together. No such plea of justification as is herein provided for shall be pleaded to any information or count so far as it charges a libel to be seditious, or blasphemous, or obscene libel.

(4) If, when such a plea of justification is pleaded, the accused is convicted, the court may, in pronouncing sentence, consider whether his guilt is aggravated or mitigated by the plea.

(5) If, when such plea of justification is pleaded, the issue thereon is found against the accused, the Crown shall be entitled to recover from the accused the cost sustained by the Crown by reason of such plea.

(6) The costs so to be recovered by the Crown shall be taxed by the Registrar.

Power to postpone or adjourn trial

162. (1) If, from the absence of witnesses or any other reasonable cause to be recorded in the proceedings, the court considers it necessary or advisable to postpone the commencement of or to adjourn any trial, the court may from time to time postpone or adjourn the same on such terms as it thinks fit for such time as it considers reasonable, and may remand the accused to the prison or other place of security, or may admit the accused to bail. During any remand the court may at any time order the accused to be brought before it.

(2) Subject to the provisions of subsection (1) of this section, when the accused is given in charge of the jury the trial shall proceed continuously. Upon any adjournment the court may in all cases, if it thinks fit, direct that during the adjournment the jury shall be kept together, and proper provision made for preventing them from holding communication with anyone on the subject of the trial. Such direction shall be given in all cases in which the accused might, upon conviction, be sentenced to death.

(3) In all cases which are not capital, the jurors may be permitted to separate upon adjournment of the court:

Provided that in a trial where the charge is one of felony no juror shall be allowed to depart from the court unless and until he has taken the special oath in that behalf prescribed by subsection (3) of section 13 of the Oaths Act. Ch 60

Procedure relating to jurors

163. All matters relating to the calling, challenging, empanelling or swearing of jurors, or otherwise in respect of any matter relating to juries for which no express provision is made in this Code, shall be conducted in accordance with the provisions of the Juries Act or any law for the time being in force repealing and replacing that Act. Ch 59

Giving prisoner in charge of the jury.

164. When a full jury have been sworn, the Registrar or clerk of the court shall call the prisoner to the bar and, addressing the members of the jury, shall state the substance of the offences charged in the information and shall say "to this information he has pleaded not guilty and it is your charge to say, having heard the evidence, whether he be guilty or not guilty".

Case for the prosecution.

165. After the accused has been given in charge to the jury or when the jury have been sworn, the counsel for the prosecution may open the case against the accused, and adduce evidence in support of the charge.

Additional witnesses for the prosecution.

166. No witness who has not given evidence at the preliminary inquiry shall be called by the prosecution at any trial unless the accused person has received reasonable notice in writing of the intention to call such witness.

Such notice must state the witness's name and give the substance of the evidence which he intends to give. It shall be for the court to determine in any particular case what notice is reasonable, regard being had to the time when and the circumstances under which the prosecution became acquainted with the nature of the witness's evidence and decided to call him as a witness:

2 of 1987, s 3

Provided that when, under the provisions of section 120 of this Code, the plan of a surveyor or the report of a medical practitioner or analyst has been tendered at the preliminary inquiry it shall not be necessary for the prosecution to give notice of the intention to call any such surveyor, medical practitioner or analyst as a witness at the trial of the information.

Cross-examination of prosecution witnesses. Ch. 65.

167. Subject to the provisions of the Evidence Act, the witness called for the prosecution shall be subject to cross-examination by the accused person or his counsel, and to examination by the prosecution.

Depositions may be read in certain cases. *6 of 2006, s 32*

168. (1) Where any person has been committed for trial for any offence, the deposition of any person taken before the committing court may, if the conditions hereinafter set out are satisfied, without further proof be read as evidence on the trial of that person, whether for that offence or for any other offence arising out of the same transaction, or set of circumstances, as that offence. The conditions hereinafter referred to are the following —

(a) the deposition must be the deposition either —

(i) of a witness whose attendance at the trial is stated to be unnecessary in accordance with the provisions of section 131 of this Code; or

(ii) of a witness who is proved to the satisfaction of the court by evidence on oath to be dead or so ill as not to be able to travel, although there may be a prospect of his recovery, or incapable in consequence of his condition of mind of giving evidence or of a witness who cannot be found after all reasonable steps have been taken to find him or who is absent from The Bahamas and it is not reasonably practicable to secure his attendance; or *6 c.f 2006, s 32*

(iii) of a witness who is proved to the satisfaction of the court, by evidence on oath, to be kept away by means of the procurement of the accused or on his behalf;

(b) the deposition must purport to be signed by the magistrate before whom it purports to have been taken;

(c) it must be proved at the trial either by a certificate purporting to be signed by the magistrate before whom the deposition purports to have been taken or by the oath of a credible witness that the deposition was taken in the presence of the accused and that the accused or his counsel had full opportunity of cross-examining the witness:

Provided that the provisions of this section shall not have effect in any case in which it is proved —

(i) that the deposition was not in fact signed by the magistrate before whom it purports to have been signed; or

(ii) that the deposition is that of a witness whose attendance at the trial was stated to be unnecessary as aforesaid, and the witness has been duly notified subsequently that he is required to attend the trial.

(2) If where the court is satisfied that the absence of a witness whose deposition is sought to be admitted on that *6 c.f 2006, s 32*

basis under subparagraph (a) (i) or (ii) of subsection (1) is caused by or due to any improper motive connected with the trial on the part of the deponent and, if that motive exists, that there is any collusion between the deponent and the party tendering the deposition in respect of the motive that subsection shall not apply.

6 of 2006, s 32

(3) If it is made to appear to the court that the witness who made any deposition aforesaid may, within a reasonable time be capable of attending to give evidence and that the ends of justice require that the witness should be examined personally before the jury the court may postpone the trial on any terms it thinks just.

Statement of accused.

169. The statement or evidence (if any) of the accused person duly recorded by or before the committing court and whether signed by the accused person or not, may be given in evidence without further proof thereof, unless it is proved that the magistrate purporting to sign the statement or evidence did not in fact sign it.

Close of case for prosecution.

170. (1) When the evidence of the witnesses for the prosecution has been concluded, and the statement or evidence (if any) of the accused person before the committing court has been given in evidence, the court, if it considers that there is no evidence that the accused or any one of several accused committed the offence, shall, after hearing any arguments which the counsel for the prosecution or the defence may desire to submit, record a finding of not guilty.

(2) When the evidence of the witnesses for the prosecution has been concluded, and the statement or evidence (if any) of the accused person before the committing court has been given in evidence, the court, if it considers that there is evidence that the accused person, or any one or more of several accused persons, committed the offence, shall inform each such accused person of his right to address the court, either personally or by his counsel (if any), to give evidence on his own behalf, or to make an unsworn statement, and to call witnesses in his defence, and in all cases shall require him or his counsel to state whether it is intended to call any witnesses as to fact other than the accused person himself. Upon being informed thereof, the judge shall record the same.

Case for the defence.

171. The accused person or his counsel may then open his case, stating the facts or law on which he intends to rely, and making such comments as he thinks necessary on the evidence for the prosecution. The accused person

may then give evidence on his own behalf and he or his counsel may call his witnesses (if any).

Additional witnesses for the defence.

172. The accused person shall be allowed to examine any witness not previously bound over to give evidence at the trial if such witness is in attendance. If he apprehends that any such witness will not attend the trial voluntarily, he shall be entitled to apply for the issue of process to compel such witness's attendance.

Notice of alibi.
2 of 1977, s 3

173. (1) On a trial on information the accused person shall not without the leave of the court adduce evidence in support of an alibi unless, before the end of the prescribed period, he gives notice of particulars of the alibi.

(2) Without prejudice to subsection (1), on any such trial the accused person shall not without the leave of the court call any other person to give evidence in support of an alibi unless —

(a) the notice under subsection (1) includes the name and address of the witness or, if the name and address is not known to the accused person at the time he gives the notice, any information in his possession which might be of material assistance in finding the witness;

(b) if the name and address is not included in that notice, the court is satisfied that the accused person, before giving the notice, took and thereafter continued to take all reasonable steps to secure that the name and address would be ascertained;

(c) if the name and address is not included in that notice, but the accused person subsequently discovers the name or address or receives other information which might be of material assistance in finding the witness, he forthwith gives notice of the name, address or other information, as the case may be;

(d) if the accused person is notified by or on behalf of the prosecutor that the witness has not been traced by the name or at the address given, he forthwith gives notice of any such information which is then in his possession or, on subsequently receiving any such information, forthwith gives notice of it.

(3) The court shall not refuse leave under this section if it appears to the court that the accused person

was not informed in accordance with the provisions of section 123(4) of the requirements of this section.

(4) Any evidence tendered to disprove an alibi may, subject to any directions by the court as to the time it is to be given, be given before or after evidence is given in support of the alibi.

(5) Any notice purporting to be given under this section on behalf of the accused person by his counsel and attorney shall, unless the contrary is proved, be deemed to be given with the authority of the accused person.

(6) A notice under subsection (1) shall either be given in court during, or at the end of, the committal proceedings before the magistrate or be given in writing to the prosecutor, and a notice under subsection (2)(c) or (d) shall be given in writing to the prosecutor.

(7) A notice required by this section to be given to the prosecutor may be given by delivering it to the Attorney-General or by leaving it at the Attorney-General's office, or by sending it by registered post addressed to the Attorney-General at his office.

(8) In this section —

"evidence in support of an alibi" means evidence tending to show that by reason of the presence of the accused person at a particular place or in a particular area at a particular time he was not, or was unlikely to have been, at the place where the offence is alleged to have been committed at the time of its alleged commission;

"the prescribed period" means the period of 21 days from the end of the committal proceedings before the magistrate.

(9) In computing the prescribed period there shall be disregarded any Saturday or Sunday or any day which is a public holiday under the Public Holidays Act.

Ch 36

When accused unrepresented calls no evidence

174. If an accused person who is not represented by counsel does not call any witnesses as to fact in his defence, he shall be entitled to address the court in his defence, whether or not he has himself given evidence, but counsel for the prosecution shall not be entitled to address the court a second time.

Where accused adduces no evidence

175. If the accused person says that he does not desire to call evidence and the court considers that there is evidence on which he could be convicted of the offence,

counsel on both sides or the accused person if he is unrepresented may address the court.

Order of speeches.

176. When the accused person is represented by counsel, or when he is not so represented but calls witnesses as to fact in his defence, the counsel for the prosecution shall be entitled to address the court a second time and the counsel for the accused person, or the accused person, where he is not represented by counsel but calls witnesses as aforesaid, shall be entitled to address the court after the counsel for the prosecution has made his address.

Court may require witness to be called.

177. If the court is of the opinion that any witness who is not called for the prosecution ought to be so called, it may require the Crown to call him and, if the witness is not in attendance, may make an order that his attendance be procured and adjourn the further hearing of the case until the witness attends, or may on the application of the accused discharge the jury and postpone the trial.

Recalling a witness.

178. The court shall have power in its discretion at any stage of the trial, prior to the conclusion of the summing up, to call any witness, whether or not such witness has been called before the court in the course of the trial or not, and to examine such witness. If a witness for the Crown is recalled by the court or by leave of the court, the accused or his counsel shall be allowed to cross-examine him on the new evidence given. In any other case a witness called under the provisions of this section may only be cross-examined by either party with the leave of the court.

Summing up by the judge.

179. When the case on both sides is closed the judge shall, as necessary, sum up the law and the evidence in the case.

Consideration of verdict by jury.

180. After the summing up, the jury shall consider their verdict.

Recording of verdict.

181. The verdict, when returned by the jury and accepted by the court, shall be entered by the Registrar on the back of the information, or on a sheet of paper annexed thereto, before the jury are discharged.

Verdict of not guilty.

182. If the jury find the accused not guilty, he shall be immediately discharged from custody on that information.

Calling upon the accused.

183. If the accused person is convicted, or if the accused pleads guilty, the Registrar shall ask him if he has anything to say why sentence should not be passed upon him according to law, but the omission so to ask him shall have no effect upon the validity of the proceedings.

Motion in arrest of judgment.

184. (1) The accused person may at any time before sentence, whether on his plea or otherwise, move in arrest of judgment on the ground that the information does not, after any amendment which the court is willing and has power to make, state any offence which the court has power to try.

(2) The court may, in its discretion, either hear and determine the matter during the same sitting or adjourn the hearing thereof to a future date to be fixed for that purpose.

(3) If the court decides in favour of the accused he shall be discharged from that information.

Evidence for arriving at proper sentence.

185. The court may, before passing sentence, receive such evidence as it thinks fit in order to inform itself as to the sentence proper to be passed and may hear counsel on any mitigating or other circumstances which may be relevant.

Sentence.

15 of 1996, s 78 and Second Sch

186. (1) If no motion in arrest of judgment is made, or if the court decides against the accused person upon such motion, the court may thereupon sentence the accused person or may remand him in custody or, in its discretion, discharge him on his own recognisance, or on that of such sureties as the court may think fit, or both, to appear and receive judgment at the same or some future sitting of the court or when called upon.

25 of 1996, s 3

(2) The judgment or sentence of the court shall take effect from the beginning of the day on which it is imposed or given, unless the court otherwise directs.

Recording of judgment.

187. The judgment or sentence of the court shall be entered by the Registrar on the back of the information or on a sheet of paper annexed thereto.

Objections cured by verdict.

188. No judgment shall be stayed or reversed on the ground of any objection, which, if stated after the information was read over to the accused person, or during the progress of the trial, might have been amended by the court, nor for any informality in swearing the witnesses or any of them.

Time for raising objections.

189. The proper time for making objections at a trial on the grounds of improper admission or rejection of evidence, or any irregularity or informality in the proceedings (other than defects in the information) shall be as follows —

(a) if the objection is to admission or rejection of evidence, at the time of such admission or rejection;

(b) if the irregularity or informality occurs before the verdict, objection shall be made before verdict;

(c) if the irregularity or informality occurs in the giving of the verdict or at any time before sentence is pronounced, the objection shall be made before sentence is pronounced,

and the court shall so far as possible correct any irregularity or informality which occurs in the proceedings and may direct the trial to be recommenced, for this purpose, at any stage before the verdict is given:

Provided that nothing in this section shall be construed as being in derogation of any powers conferred upon the Court of Appeal to entertain any appeal in the exercise of its criminal jurisdiction under the Court of Appeal Act. Ch 52

Minute of proceedings in trial before Supreme Court

190. (1) The Registrar shall cause to be preserved all informations and all depositions filed with or transmitted to him, and he shall keep a book, to be called the Crown Book, and such book shall be the property of the court and shall be deemed a record thereof.

(2) In the Crown Book the Registrar shall enter the name of the judge and a memorandum of the substance of all the proceedings at every trial and of the result of every trial:

Provided that nothing herein contained shall dispense with the taking of notes by the judge presiding at the trial.

(3) Any erroneous or defective entry in the Crown Book may at any time be amended by the judge in accordance with the fact.

(4) The information, the plea or pleas thereto, the verdict and the judgment or sentence of the court shall form and constitute the record of the proceedings in each case and shall be kept and preserved in the office of the Registrar, as of record.

PART VII
MISCELLANEOUS PROVISIONS RELATING TO PERSONS TRIED BEFORE THE SUPREME COURT

Special verdict where accused found guilty, but insane at date of offence charged.

191. Where in any information any act or omission is charged against any person as an offence and it is given in evidence on his trial for that offence that he was insane so as not to be responsible, according to law, for his actions at the time when the act was done or omission made, then, if it appears to the jury before whom he is tried that he did the act or made the omission charged but was insane as aforesaid at the time when he did or made the same, the jury shall return a special verdict that the accused was guilty of the act or omission charged against him, but was insane as aforesaid at the time when he did the act or made the omission.

Provision for custody of accused person found insane.

192. (1) Where any person is found to be insane before or upon arraignment, in accordance with the provisions of subsection (2) of section 155 of this Code, or a special verdict is found against him under the provisions of section 191 of this Code, the court shall order him to be conveyed to any hospital or other place for the time being appointed under any law to be a public lunatic asylum or for the reception of criminal lunatics, there to be kept until discharged by order of the Governor-General.

(2) Whenever any convict shall be sent to any hospital or other place under the provisions of this section, it shall be lawful for the Minister of Health and the officers of such hospital or place to exercise all and singular the same and the like powers and authorities for the restraint and punishment of such convict as can by law be exercised by or are vested in the visiting committee, the gaoler and other officers of the prison in New Providence.

(3) The Governor-General may from time to time issue all necessary orders for the care, control and custody of any such lunatic convict.

(4) All persons acting under this section shall have the same and the like protection, in all respects as is given to magistrates under the Magistrates Act or any law repealing and replacing the same.

Ch. 54.

Expenses for the removal abroad of lunatic convicts.

47 & 48 Vict. c. 31.

193. Whenever any insane person detained in custody under the provisions of section 192 of this Code shall be removed from The Bahamas to any lunatic asylum in any other part of the Commonwealth by virtue of and under the authority and direction of a warrant issued under the Act of the Parliament of the United Kingdom entitled the Colonial Prisoners Removal Act, 1884, it shall be lawful for the Governor-General to defray out of the Treasury by warrant in the usual manner all expenses incurred in the removal of such insane person, and for the future maintenance of such person in any lunatic asylum in the Commonwealth to which such person may be conveyed by virtue of the above-mentioned warrant, and of his return therefrom should such an event take place.

Counsel for defence to be assigned in certain cases.

194. In any case in which it appears to the Supreme Court that an accused person committed for trial has not money wherewith to retain counsel —

(a) if the accused is charged with an offence for which the punishment is death, the court shall assign counsel for the defence at public expense; and

(b) in any other case, the court, in its discretion may assign counsel for the defence at public expense.

PART VIII
PROCEDURE IN TRIALS BEFORE MAGISTRATES' COURTS

Non-appearance of complainant at trial.

195. If, in any case which a magistrate's court has jurisdiction to hear and determine, the accused person appears at the time and place appointed in the summons for the hearing of the case, or is brought before the court under arrest, then, if the complainant, having had notice of the time and place appointed for the hearing of the charge, does not appear, either in person or by a legal practitioner or other person authorised to represent him, the court shall dismiss the charge, unless for some reason the court shall think proper to adjourn the hearing of the case to some other date, upon such terms as it shall think fit, in which event it may, pending such adjourned hearing, either admit the accused to bail or remand him in custody, or take such security for his appearance as the court shall think fit.

Non-appearance of defendant at trial.

196. If at the same time and place of hearing appointed in the summons the defendant does not appear, and it be proved on oath that the summons was duly served a reasonable time before the time appointed for his appearance, and if the court is satisfied on any sufficient evidence that the accused has wilfully refused to attend and has not consented to the trial taking place in his absence, the court may issue a warrant for the arrest of the defendant in accordance with the provisions of section 67 of this Code and may adjourn the trial to some other date.

When neither party appears.

197. If at the time and place appointed for a trial under this Part of this Code neither party appears, the court may dismiss or adjourn the case as shall seem fit.

Courts to have the same powers at adjourned hearing as at first hearing.

198. At the time and place appointed for any adjourned hearing, a magistrate's court shall have the same powers to proceed with, dismiss or adjourn the case as if the complainant was before the court for the first time:

Provided that the court shall not proceed with the case in the absence of the accused person unless it is satisfied that in all the circumstances of the case such person has consented to the trial taking place in his absence.

Appearance of both parties.

199. (1) If both parties appear, the court shall proceed to hear the case, and the substance of the charge or complaint shall be read to the accused person by the court and he shall be asked whether he admits or denies the truth of the charge.

(2) In a case in which the defendant is corporation, it shall be sufficient if the corporation appears by a representative appointed in like manner to that provided by subsection (2) of section 148 of this Code.

If accused pleads guilty.

200. If the accused person admits the truth of the charge, his admission shall be recorded as nearly as possible in the words used by him and the court shall convict him and pass sentence upon or make an order against him unless, after hearing anything which may be said by or on behalf of the accused, whether in mitigation or otherwise, there shall appear to the court to be sufficient cause to the contrary.

Pleas in other cases.

201. If the accused person pleads not guilty, the court shall proceed to try the case as hereinafter provided. If the accused person refuses to plead, the court shall direct that a plea of not guilty be entered for him, or, in an appropriate case, may act in accordance with section 99 of this Code.

Procedure after plea of not guilty.

202. If the accused person does not admit the truth of the charge, the court shall proceed to hear the witnesses for the prosecution. The accused person or his counsel may cross-examine each witness called by the prosecution and if the accused person is not represented by a legal practitioner, the court shall, at the close of the examination of each witness for the prosecution, ask the accused person whether he wishes to put any question to that witness and shall record his answer.

Acquittal of accused person if no case to answer.

203. At the close of the evidence in support of the charge, the court shall consider whether or not a sufficient case is made out against the accused person to require him to make a defence, and if the court considers that such a case is not made out the charge shall be dismissed and the accused forthwith acquitted and discharged.

The defence.

204. (1) At the close of the evidence in support of the charge, if it appears to the court that a case is made out against the accused person sufficiently to require him to make a defence, the court shall again explain the substance of the charge to the accused and shall inform him that he has a right to give evidence on oath from the witness box and that, if he does so, he will be liable to cross-examination, or to make a statement not on oath from the dock, in which case he will not be liable to cross-examination; and the court shall ask him whether he has any witnesses to examine or other evidence to adduce in his defence, and shall then hear the accused and his witnesses (if any).

(2) If the accused person states that he has witnesses to call but that they are not present in court, and the court is satisfied that the absence of such witnesses is not due to any fault or neglect of the accused person and that there is a likelihood that they could, if present, give material evidence on behalf of the accused person, the court may adjourn the trial and issue process or take other steps, as necessary, to compel the attendance of such witnesses.

Evidence in reply.

205. If the accused person adduces evidence in his defence introducing new matter which the prosecutor could not reasonably have foreseen, the court may allow the prosecutor to adduce evidence in reply to rebut such new matter.

Opening and closing of cases for prosecution and defence.
2 of 1987, s 4

206. The provisions of sections 174 and 176 shall *mutatis mutandis* apply in relation to the opening and closing of the case for the prosecution and defence in trials before the magistrates' courts as they apply in respect of a trial before the Supreme Court.

General provisions with respect to evidence in magistrates' courts.
Ch. 65.

207. Subject to the provisions of this Code, the provisions of the Evidence Act shall apply to all matters of evidence and the examination and cross-examination of witnesses in trials in magistrates' courts.

Amendment of charge and variance between charge and evidence.

208. (1) Where, at any stage of a trial before the close of the case for the prosecution, it appears to the court that the charge is defective, either in substance or in form, the court may make such order for the alteration or addition of a new charge, as the court thinks necessary to meet the circumstances of the case:

Provided that where a charge is altered, added or substituted as aforesaid, the court shall thereupon call upon the accused person to plead to the altered or new charge:

Provided further that in such case the accused person shall be entitled, if he so wishes, to have the witnesses (or any of them) recalled to give evidence afresh or to be further cross-examined by the defence and, in such last-mentioned event, the prosecution shall have the right to re-examine any such witness on matters arising out of such further cross-examination.

(2) Variance between a charge and the evidence adduced in support of it with respect to the day upon which the alleged offence is committed is not ordinarily material and the charge need not be amended for such variance if it is proved that the proceedings were in fact instituted within the time (if any) limited by law for the institution thereof and the actual date is not material on any other ground.

(3) Where an alteration, addition or substitution of a charge is made under subsection (1) of this section or there is a variance between the evidence and the charge as described in subsection (2) of this section, the court shall, if it is of the opinion that the accused has been thereby misled, or deceived, adjourn the trial for such period as may be reasonably necessary in the interest of justice.

The decision of the court.

209. The court, having heard both the prosecutor and the accused person and their witnesses, shall either convict the accused and pass sentence upon or make an order against him according to law or shall acquit him, or may without proceeding to conviction, if it is of the opinion that it is not expedient to inflict any punishment notwithstanding that it finds the charge against the accused is proved, make an order discharging the accused absolutely or conditionally.

Drawing up conviction.

210. If the court convicts the accused person, a minute or memorandum thereof shall be then made and the conviction shall afterwards be drawn up by the presiding magistrate in proper form under his hand and seal.

Acquittal of accused person to bar further proceedings.

211. If the court acquits the accused person, the magistrate shall, when requested to do so, make an order for the dismissal of the charge and give the accused person a certificate thereof which shall, without further proof, be a bar to any subsequent charge for the same matter against the same person.

Magistrate to conform with sections 210 and 211.
9 of 1992, s 5

212. Where pursuant to section 107 the judgment in a criminal trial is read by a magistrate other than the magistrate who heard and determined the matter and prepared the judgment, the Magistrate who has read the judgment shall draw up the conviction in conformity with the judgment, sign the minute or memorandum required by section 210 and, if requested to do so, exercise the powers conferred by section 211.

Limitation of time for proceedings for summary offences.

213. Except where a longer time is specially allowed by law, no offence which is triable summarily shall be triable by a magistrate's court unless the charge or complaint relating to it is laid within six months from the time when the matter of such complaint or charge arose:

Provided that if the circumstances giving rise to the complaint or charge occurred upon a vessel upon the high seas, then the court shall have jurisdiction in respect thereof if the complaint or charge was laid within six months after the arrival of the vessel at her port of discharge in The Bahamas.

Procedure in case where accused person has right to trial by Supreme Court

25 of 1996, s 4

214. (1) Where a person charged with an offence referred to in the Third Schedule to this Code is brought before a magistrate's court presided over by the Chief Magistrate, by a Deputy Chief Magistrate, by a Senior Stipendiary and Circuit Magistrate or by a stipendiary and circuit magistrate, the court shall inform the accused person that he may be tried summarily for such offence but that he has the right to be tried for that offence by jury before the Supreme Court, and shall ask him whether he wishes to be tried by jury or consents to be tried summarily by such magistrate; and if the accused person does not consent to be tried summarily, the presiding magistrate shall either remit the case to some other magistrate to hold a preliminary inquiry or may himself hold such preliminary inquiry in respect of the charge, in accordance with the provisions of this Code.

25 of 1996, s 4

(2) If, in a case such as is referred to in subsection (1) of this section, the accused person consents to be tried summarily in respect of such offence, the Chief Magistrate, Deputy Chief Magistrate, Senior Stipendiary and Circuit Magistrate or stipendiary and circuit magistrate may proceed to hear and determine the charge in accordance with the provisions of this Part of this Code:

Provided that —

(a) if the presiding magistrate does not consider it expedient in the interest of justice to deal with any such particular case summarily, he may refuse to do so and in such a case a preliminary inquiry shall be held as aforesaid; and

(b) the presiding magistrate shall not in any case proceed to hear and determine summarily a charge against any person which may be tried on information, if the Attorney-General in writing directs that the case shall not be tried summarily.

Power of magistrate in cases triable both summarily and on information.

215. Without the derogation from the provisions of section 214 of this Code, if, before or during the course of a trial before a magistrate's court, in any case which may be tried summarily or on information, it appears to the magistrate that the case is one which ought to be tried by the Supreme Court, whether or not upon application made by the prosecution or the accused person, the magistrate may stay all further proceedings in respect of the trial of the matter as a summary offence and in lieu thereof may hold a preliminary inquiry in accordance with the provisions of this Code, and in such case the provisions of section 126 of this Code shall not apply.

Special procedure in minor cases where the charge is admitted.

216. (1) Notwithstanding anything contained in this Code, but subject to the provisions of any directions given by the Chief Justice under the provisions of subsection (1) of section 105 of this Code, a magistrate may in any case in which the accused person admits the offence, record the proceedings in accordance with the provisions of this section.

(2) In a case to which this section applies, it shall be sufficient compliance with the requirements of this Code relating to the manner of recording of evidence if the magistrate, when the accused makes a statement admitting the truth of the charge, instead of recording the accused person's statement in full, enters in the record a plea of guilty, and it shall be sufficient compliance with the provisions of section 108 of this Code relating to the contents of the judgment, if the judgment of the court consists only of the finding, the specific offence to which it relates and the sentence or other order:

Provided that a magistrate may be required by the Supreme Court to state in writing the reasons for his decision in any particular case.

Where court awards imprisonment without option of fine, prisoner shall be committed to prison.

217. Where a magistrate's court convicts a person and orders him to be imprisoned without the option of a fine, the court shall, by warrant, commit him to prison, there to be imprisoned or imprisoned and kept at hard labour (as the case may be) for the period mentioned in the warrant.

Committal to Supreme Court for sentences in certain cases.

25 of 1996, s 5

218. (1) In any case in which a magistrate's court presided over by the Chief Magistrate, a Deputy Chief Magistrate, a Senior Stipendiary and Circuit Magistrate or a stipendiary and circuit magistrate, in exercise of the

jurisdiction conferred by section 214 of this Code, has convicted any person charged with an indictable offence and such magistrate is of the opinion, having regard to the character and antecedents of the person so convicted, that greater punishment should be inflicted than he has power to impose, the magistrate, instead of passing sentence in accordance with this Part of this Code, may commit such convicted person in custody for sentence to the Supreme Court either at any sessions then in progress or at the next convenient sessions.

32 of 1971, s 2

(2) In any such case as is referred to in subsection (1) of this section, the Supreme Court may proceed to sentence the accused person or may exercise any other powers vested in it as if the person so committed had pleaded guilty before the Supreme Court to that offence or had been found guilty by verdict of a jury:

Provided that the Supreme Court shall not sentence any person, or exercise any other power, under this subsection in any case until the time limited by section 235 of this Code for an appeal against conviction has expired or, in the event of a notice of appeal being served within that time, until that appeal has been finally determined.

(3) In a case referred to in this section, it shall not be necessary for any information to be filed against the person so committed for sentence and the accused person shall be sentenced or otherwise dealt with for the offence in respect of which he has pleaded guilty or been convicted as aforesaid.

Issue of distress warrant in respect of unpaid fine

219. (1) Where a conviction adjudges a fine to be paid and the amount thereof is not paid forthwith, the court, unless time is allowed for the payment of the fine, may issue a distress warrant under the hand and seal of a magistrate.

(2) In any case in which time is allowed for the payment of a fine and the fine is unpaid at the expiration of such time, a distress warrant may be issued in like manner to that provided in subsection (1) of this section.

(3) In all cases in which a distress warrant has been issued against any person and such person pays or tenders to the officer having the execution of the same the sum or sums specified in the warrant, together with the amount

lawfully payable in respect of the expenses of the distress up to the time of such payment or tender, the officer shall cease to execute the same.

When distress warrant issued magistrate may allow defendant to go at large or detain him, unless defendant gives security for his reappearance.

220. In all cases where a magistrate issues a warrant of distress, he may suffer the defendant to go at large, 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 recognisance 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.

221. 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 whereon to levy, the magistrate shall 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 person into such prison, and there to imprison him or imprison him and keep him to hard labour (as the case may be) in the manner and for the time prescribed by subsection (5) of section 118 of the Penal Code, 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.

Ch. 84.

Defendant who pays after commitment to be discharged on payment.

222. 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.

223. A magistrate by whose conviction any sum is adjudged to be paid may do all or any of the following things —

(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 a 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 Code;

(e) issue a warrant of distress for the levying of the said sum;

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

On default of payment of instalment process to issue for the whole.

224. 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 such amount as remains unpaid.

Mode of payment by instalments.

225. 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 court; and every person to whom any such sum or instalment is paid, when not the clerk of the court, shall, as soon as may be, account for and pay over the same to the proper officer of the court.

Magistrate may postpone issue of warrant of distress or commitment.

226. 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 on a conviction or to issue a warrant for committing a person to prison for non-payment of a sum of money adjudged to be paid on a conviction, or 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.

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

227. Where any person has been summarily convicted and has been sentenced to pay a fine and it shall be shown to the court 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, the court may order such third person to pay such sum of money, or such part thereof as will be sufficient to satisfy the said fine, to such person or persons as would be by law entitled to receive payment of the fine, in such manner and form as a garnishee may be compelled to pay over money in his hands for the satisfaction of a judgment debt under any law relating to civil actions.

Return of proceedings. *25 of 1996, s 6*

228. (1) Every magistrate's court shall without delay forward to the Registrar, through the Chief Magistrate, a monthly return, under the hand of the magistrate, of all proceedings had before the court under this Part of this Code.

(2) Where required by the Supreme Court, a magistrate shall forward to such court without delay a complete copy of the record in respect of any proceedings forming the basis of a return under subsection (1) for the purpose of enabling the court to satisfy itself as to the correctness, legality and propriety of any finding, sentence or order recorded or passed and as to the regularity of any such proceedings.

(3) Notwithstanding section 263 of this Code, subsections (1) and (2) of this section apply *mutatis mutandis* as respects proceedings had before a juvenile court under the Children and Young Persons (Administration of Justice) Act, as if references in those subsections — Ch. 97.

(a) to a magistrate's court, were references to a juvenile court; and

(b) to a magistrate, were references to the magistrate sitting as chairman of the juvenile court.

Power of Supreme Court on revision.

229. (1) In the case of any proceedings a copy of the record of which has been required under the provisions of section 228 of this Code, when it appears that in such proceedings an error material to the merits of any case or involving a miscarriage of justice has occurred, the Supreme Court may review any finding, sentence or order recorded or passed in such proceedings and in so doing may have and exercise all the powers of the court on hearing appeals under the provisions of section 248 of this Code.

(2) No order under this section shall be made unless the Attorney-General has had an opportunity of being heard and no order shall be made to the prejudice of an

accused person unless he has had an opportunity of being heard, either personally or by counsel, in his own defence.

(3) Nothing in this section shall be deemed to authorise the Supreme Court to convert a finding of acquittal into one of conviction.

(4) On dealing with a case under this section the Supreme Court, pending the final determination of the case, may release any convicted person on bail:

Provided that if the convicted person is ultimately sentenced to imprisonment, the time he has spent on bail shall be excluded in computing the period for which he is sentenced.

(5) Save as provided in this section, no party has any right to be heard either personally or by counsel before the Supreme Court when exercising its powers of revision:

Provided that such court may, if it thinks fit, when exercising such powers, hear any party either personally or by a legal practitioner, and nothing in this subsection shall be deemed to affect the provisions of subsection (2) of this section.

(6) When a case is revised by the Supreme Court under the provisions of this section, it shall certify its decision or order to the court by which the finding, sentence or order so revised was recorded or passed and the court to which the decision or order is so certified shall thereupon make such orders as are conformable to the decisions so certified, and, if necessary, the record shall be amended in accordance therewith.

Withdrawal of complaint.

230. (1) With the leave of the court and notwithstanding any other provisions in this Part of this Code, the prosecutor may at any time before a final order is made, in any case triable summarily and in which the accused person has pleaded not guilty, withdraw the complaint.

(2) On any withdrawal as aforesaid —

(a) where the withdrawal is made after the accused person is called upon to make his defence, the court shall acquit the accused;

(b) where the withdrawal is made before the accused person is called upon for his defence, the court shall, subject to the provisions of section 203 of this Code, in its discretion make one of the following orders —

(i) an order acquitting the accused; or

(ii) an order discharging the accused.

(3) An order discharging the accused under paragraph (b)(ii) of subsection (2) of this section shall not operate as a bar to subsequent proceedings against the accused person on account of the same facts.

PART IX
APPEALS FROM MAGISTRATES' COURTS AND CASES STATED

Appeals from decisions of magistrates' courts.

2 of 1989, s 3

231. (1) Save as hereinafter in this Code provided, any person who is dissatisfied with any judgment, sentence or order of a magistrate's court in any criminal cause or matter to which he is a party, may appeal against such judgment, sentence or order.

(2) Subject to subsection (1) of this section, an appeal to the Supreme Court may be on a matter of fact as well as on a matter of law.

(3) For the purposes of any appeal, the Attorney-General shall be deemed to be a party to any criminal cause or matter other than those in which the proceedings were instituted and carried on as a private prosecution and in which the conduct of such proceedings has not been taken over by the Attorney-General under the provisions of section 56 of this Code.

21 of 2004

(4) For the purposes of this Part, "Registrar" means the Registrar of the Supreme Court or the Court of Appeal respectively, to which an appeal lies.

Magistrate to inform accused person of right of appeal.

232. When any person is convicted by a magistrate's court, the magistrate shall inform him, at the time when the sentence is passed, of his right of appeal and the steps which must be taken by a party wishing to appeal and a note shall be made at the time by the magistrate that such information has been given by him to such person and such note shall be conclusive as to the provisions of this section having been complied with.

Limitations on right of appeal.

233. No appeal shall be allowed in a case in which the accused person has pleaded guilty and has been convicted by a magistrate's court on such plea, except as to the extent or legality of the sentence.

Courts to which appeals lie.

25 of 1996, s 7

234. Appeals from magistrate's courts, filed under this Part of this Code after the coming into operation of this section shall lie —

(a) where the case has been heard by the Chief Magistrate, a Deputy Chief Magistrate, a Senior Stipendiary and Circuit Magistrate, a stipendiary and circuit magistrate or a circuit justice on circuit and the case relates to an offence referred to in the Third Schedule or an offence for which the offender is liable to imprisonment for a period of not less than one year, to the Court of Appeal;

(b) subject to paragraph (a) of this section, where the case has been heard by the Chief Magistrate, a Deputy Chief Magistrate, a Senior Stipendiary and Circuit Magistrate, a stipendiary and circuit magistrate or a circuit justice on circuit, exercising original jurisdiction, to the Supreme Court; and

(c) in all other cases, to the Chief Magistrate, a Deputy Chief Magistrate, a Senior Stipendiary and Circuit Magistrate, a stipendiary and circuit magistrate or a circuit justice on circuit:

Provided that in any case where appeal is by way of case stated such appeal shall lie to the Supreme Court.

Appeal to operate as a stay.

235. (1) An appeal shall have the effect of suspending the execution of the decision appealed against until the appeal shall have been determined, and shall be on motion or by case stated as hereafter in this Code provided:

Provided that where the decision involves a sentence of imprisonment, the filing of an appeal shall not require that the convicted person be released from custody except in accordance with the provisions of section 238 of this Code:

31 of 2008, s 2

Provided further that where the decision involves –

First Schedule

(a) the payment of a fine in respect of an offence specified in Part I of the First Schedule, no licence or renewal of licence to drive a motor vehicle shall be granted; or

(b) the cancellation or suspension of any licence to drive a motor vehicle, such licence shall be deemed cancelled or suspended,

until the fine is paid or the appeal is determined whichever is the earlier, unless a court shall otherwise direct upon application made by the appellant.

(2) An appellant, within seven days after the day upon which the decision was given from which the appeal is made, shall serve a notice in writing, signed by the appellant or his counsel, on the other party and on the magistrate's court of his intention to appeal and of the general grounds of his appeal:

Provided that any person aggrieved by the decision of a magistrate's court may upon notice to the other party apply to the court to which an appeal from such decision lies, for leave to extend the time within which such notice of appeal prescribed by this subsection may be served, and the court upon the hearing of such application may extend such time as it deems fit.

236. *Repealed by 16 of 2000.*

Transmission of appeal papers. *25 of 1996, s 8*

237. (1) When an appeal relates to a case which has been tried by the Chief Magistrate, Deputy Chief Magistrate, Senior Stipendiary and Circuit Magistrate, or a stipendiary and circuit magistrate or a circuit justice on circuit, the magistrate's court shall without delay transmit to the Registrar a copy of the conviction, order or judgment and all papers relating to the appeal and, if the appellant is represented by counsel, such counsel shall not less than three days prior to the date of the hearing of the appeal serve upon the Registrar and the respondent a notice containing particulars of the matters of law or fact in regard to which the magistrate's court is alleged to have erred.

25 of 1996, s 8

(2) In a case in which an appeal relates to a case which does not fall within the scope of subsection (1) of this section, the magistrate's court concerned shall without delay notify the Chief Magistrate, Deputy Chief Magistrate, Senior Stipendiary and Circuit Magistrate, or any stipendiary and circuit magistrate appointed from time to time for hearing such appeals, in accordance with any directions given by the Chief Justice, and shall at the same time transmit a copy of the conviction, order or judgment and all papers relating to the appeal to the Chief Magistrate, Deputy Chief Magistrate, Senior Stipendiary and Circuit Magistrate, or such stipendiary and circuit magistrate, unless, in the case of an Out Island, by reason of the pending arrival of the Circuit Justice in such Out Island, where there would be convenience in handing such copy and papers to such Circuit Justice on arrival.

Admission of appellant to bail.

18 of 1994, s 7

238. (1)Where any person who has been convicted and sentenced to a term of imprisonment gives notice in accordance with the provisions of this Code of his intention to appeal against the conviction or sentence, he may make application to the magistrate's court by which he was so convicted or the court to which the appeal lies, for bail and that application shall be subject to the provisions of the Bail Act, 1994.

(2) Where the appellant is released on bail or the sentence is suspended pending an appeal, any time during which he is at large after being released or during which the sentence has been suspended shall be excluded in computing the term of any sentence to which he is subject:

Provided that in the case of an appellant whose sentence is suspended but who is not released from custody, the court hearing the appeal shall order that the time so spent in custody awaiting the hearing of the appeal shall be included in computing the term of the sentence.

(3) An appellant whose sentence is suspended but who is not admitted to bail, shall, during the period in custody during such suspension, be treated in the same manner as a prisoner awaiting trial.

Case stated.

16 of 2000

239. In all cases of appeal by way of case stated, the appellant shall, within the times and in the manner and form hereinbefore prescribed, serve a notice of appeal and shall within fourteen days after the day on which the magistrate's court gave the decision from which the appeal is made apply to such court to state a case for the purposes of the appeal, setting forth the facts of the case and the grounds on which the proceeding is questioned and the grounds of the court's decision.

When magistrate refuses to state case.

240. A magistrate may refuse to state a case if he considers the matter is frivolous, and shall on request deliver to the appellant a certificate of refusal, and thereupon the appellant may apply to the Supreme Court for an order requiring the case to be stated:

Provided that the magistrate shall not refuse to state a case where the application for that purpose is made to him by or under the directions of the Attorney-General.

Duty of magistrates' court as to case stated.

241. (1) The magistrate concerned, upon receiving the application of the appellant or an order of the Supreme Court in that behalf, as the case may be, shall, subject to section 240 of this Code, state the case concisely setting forth such facts and documents (if any) as may be

necessary to enable the court to decide the questions raised in the case, and shall forthwith transmit the same together with a copy of the conviction, order or judgment appealed from and all documents alluded to in the stated case to the Registrar who, on application of either party, shall supply such applicant with a copy of the stated case, on payment for the same at the rate of two cents per folio.

(2) A case stated under the provisions of this section, in addition to any other matter which appears to the magistrate to be relevant, shall set out —

(a) the charges, summons, information or complaint in respect of which the proceedings arose;

(b) the facts found by the magistrate's court to be admitted or proved;

(c) any submission of law made by or on behalf of the complainant during the trial or inquiry;

(d) any submission of law made by or on behalf of the accused person during the trial or inquiry;

(e) the finding and, in the case of conviction, the sentence of the magistrate's court;

(f) any question of law which the magistrate or any of the parties desires to be submitted for the opinion of the Supreme Court; and

(g) any question of law which the Attorney-General may require to be submitted for the opinion of the Supreme Court.

Appellant entitled to copies of evidence.

16 of 2000

242. On an appeal by motion the appellant, on serving notice on the magistrate's court of his intention to appeal, shall be entitled to receive with all convenient speed a copy of the evidence taken by the court in the case, and also a copy of the conviction, order or judgment made or given.

Registrar to set appeal down for argument.

243. The Registrar shall in either case set the appeal down for argument on such day, and shall cause notice of the same to be published in such manner, as the court may direct.

Appeal not a re-hearing unless the court so directs.

244. On an appeal by motion, unless the court considers the justice of the case requires a re-hearing, the appellant shall begin, and, unless he satisfies the court that it is necessary to call on the respondent, the conviction, order or judgment shall be confirmed:

Provided that, if the court directs a re-hearing, the respondent, if the issue is with him, shall begin and prove

his case, and the court may, if the justice of the case requires it, adjourn the hearing to some convenient day.

Procedure on hearing of appeal on motion.

245. At the hearing of an appeal on motion, the appellant shall, before going into the case, state all the grounds of appeal on which he intends to rely, and shall not, unless by leave of the court, go into any matters not raised by such statement, nor shall he be entitled to examine any witnesses not examined at the hearing of the case before the magistrate's court, unless he has given to the respondent three clear days' notice in writing of the names and addresses of such witnesses and of the substance of the evidence they will give and unless he has subsequently obtained the leave of the court to the examination thereof.

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Court on hearing appeal on motion to decide on facts as well as law.

246. On an appeal by motion the court may draw inferences of fact from the evidence given before the magistrate's court, and, subject to due notice having been given as hereinbefore mentioned, may hear any further evidence tendered by the appellant, and may take and admit, if it thinks fit, any further evidence tendered in reply and also such other evidence as it may require, and it may decide the appeal with reference both to matters of fact and to matters of law.

On appeal by stated case court confined to facts and evidence stated therein.

247. On appeal by stated case the court shall entertain such appeal on the ground only that the decision of the magistrate's court was erroneous in point of law, or in excess of jurisdiction, and only upon the facts stated and the evidence mentioned in the stated case. The Supreme Court may remit the case to the magistrate's court for amendment or restatement if necessary, or for re-hearing and determination in accordance with such directions as may be deemed necessary.

Powers of court on hearing appeals.

248. The court may adjourn the hearing of the appeal, and may upon the hearing thereof, confirm, reverse, vary or modify the decision of the magistrate's court or remit the matter with the opinion of the court thereon to the magistrate's court, or may make such other order in the matter as it may think just, and may, by such order, exercise any power which the magistrate's court 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's court.

Costs.

249. The court hearing any appeal may make such order as to the costs to be paid by either party as it may think just, and, in the event of costs being allowed, may direct a lump sum to be paid by way of costs not exceeding fifteen dollars, for each day of attendance at court according to the importance of the appeal, or the length of time occupied by the hearing thereof, and such sum shall cover all fees of office and all fees of counsel and attorney:

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

Where appeal is abandoned court may give respondent his costs.

250. Where an appeal is abandoned or withdrawn, the court, 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 may allow.

No appeal on point of form or matter of variance.

251. No judgment shall be given in favour of the appellant if the appeal is based on an objection to any information, complaint, summons, or warrant for any alleged defect therein in matter of substance or for any variance between such information, complaint, summons or warrant and the evidence adduced in support thereof, unless it be proved that such objection was raised before the magistrate's court whose decision is appealed against.

Court may decide on merits notwithstanding any defect in form.

252. In any case of appeal the court may hear and determine the case upon the merits, notwithstanding any defect in form or otherwise in the conviction, order or judgment, and, if the appellant is found guilty, the conviction, order or judgment shall be confirmed, and if necessary, amended.

Defect in order or warrant of commitment not to render void.

253. No conviction or order shall for want of form be quashed or removed by *certiorari* into any other court, and no warrant of commitment shall be held void by reason of any defect therein:

Provided that it be therein alleged that the party has been convicted or ordered to do or abstain from doing any act or thing required to be done or left undone, and there be a good and valid conviction or order to sustain the same.

Where conviction confirmed warrant may issue as though no appeal had been made.

254. (1) Whenever the decision of a magistrate's court is confirmed on appeal, the Registrar shall inform the magistrate's court of such confirmation, and thereupon the magistrate's court may issue a warrant of distress, or commitment, or writ of execution, as the case may be, for enforcing such decision in the same manner as though no appeal had been brought.

(2) Whenever the decision is not confirmed, the Registrar shall send to the magistrate's court from the decision of which the appeal was made, for entry in the register of that court, and shall also endorse on the conviction, order or judgment appealed against a memorandum of the decision of the Supreme Court, and whenever a copy or certificate of such conviction, judgment or order is made, a copy of such memorandum shall be added thereto, and shall be sufficient evidence of the decision on appeal in every case where such copy or certificate would be sufficient evidence of such conviction, order or judgment.

Notice to be given to parties in case of appeal to be heard by circuit justice.

255. (1) In the case of an appeal to the circuit justice it shall be the duty of the magistrate's court, against the decision of which the appeal has been lodged, to service the notice upon the parties to the appeal, in accordance with such procedure as may be directed by the Chief Justice, stating the date and place at which the appeal is to be heard, and no such appeal shall be heard in the absence of either party unless it is proved to the circuit justice that such party has been duly served with notice under this section and has refused to attend or otherwise consented to the hearing of the appeal in his absence.

(2) For the purpose of service of notice in accordance with the provisions of subsection (1) of this section, each party shall, as soon as notice of appeal is given, serve on the magistrate's court concerned notice in writing of his address in The Bahamas for service of all matters relating to the appeal, and service at such address shall be deemed to be good and sufficient service on the party concerned. Any party who fails to provide an address for service in accordance with the provisions of this section shall be deemed to have consented to the appeal being heard and determined in his absence.

PART X
PROCEDURE FOR INDICTMENT OF OFFENDERS

18 of 1994, s 8

Proceedings for indictment of offenders.
18 of 1994, s 8
Ch. 92.

256. (1) Notwithstanding section 36 the provisions of Part V of this Code and the provisions of the Preliminary Inquiries (Special Procedure) Act, the Attorney-General may make application by summons to a judge of the Supreme Court for an order of consent to prefer a bill of indictment against any person charged with an indictable offence; and where a bill of indictment signed by the Attorney-General or on his behalf by any legal practitioner acting on his instructions has been so preferred, the judge shall if he is satisfied that the requirements of subsections (2) and (3) have been complied with, direct —

(a) the bill to be filed with the Registrar of the Supreme Court together with such additional copies thereof as are necessary for service upon the accused person; and

(b) the issue by the Registrar of a summons requiring the attendance of the accused person before the judge at a date specified in the summons, which date shall not be earlier than two days after service upon the accused person of the documents mentioned in paragraph (a).

(2) An application under subsection (1) shall be accompanied by the bill of indictment, together with —

(a) statements of the evidence of witnesses whom it is proposed to call in support of the charge; and

(b) a declaration signed by the Attorney-General or by any legal practitioner acting on his behalf that the evidence shown by the statements will be available at the trial and that the case disclosed by the statements is, to the best of the knowledge, information and belief of the applicant, substantially a true case.

(3) No bill of indictment charging any person with an indictable offence shall be preferred unless the bill is preferred by the direction or with the consent of a judge or pursuant to directions given under section 81 of the Penal Code.

(4) Unless the judge to whom an application is made under subsection (1) otherwise directs in any particular case, his decision on an application shall be signified in writing on the application without requiring the attendance before him of the applicant or of any of the witnesses. If the judge thinks fit to require the attendance of the applicant or of any of the witnesses, their attendance shall not be in open court.

(5) For the purposes of subsection (2), the term "statement" has the meaning ascribed to it by section 2 of the Preliminary Inquiries (Special Procedure) Act.

Ch 92

Certain requirements to be fulfilled

18 of 1994, s 8

257. (1) The provisions of sections 141 to 143 shall *mutatis mutandis* apply to a person against whom a bill of indictment is preferred by or with the directions of a judge pursuant to subsection (1) of section 256 as if that person were a person who had been committed for trial by a magistrate.

(2) Where the accused person fails to attend upon the date specified in the summons issued under section 256(1)

or the judge is satisfied that he is avoiding service of the bill of indictment, the attendance of the accused person may be enforced by the issue of a warrant for his arrest.

(3) Upon the appearance of the accused person before the judge, the judge shall —

(a) explain to the accused person that should he wish to adduce evidence of an alibi at his trial before the Supreme Court he would not be able to do so unless he gives notice of particulars of the alibi and of the witnesses to the Attorney-General within twenty-one days thereafter; and

(b) give to the accused a written notice of the aforegoing explanation.

(4) Every written statement purporting to be evidence of witnesses submitted to a judge under section 256(2) shall be deemed a deposition taken in accordance with the provisions of the Evidence Act relating to the taking of oral evidence and shall notwithstanding anything to the contrary in any other law be treated as evidence taken under Part V of this Code. Ch 65

(5) If it appears to a judge that any part of a statement referred to in subsection (4) is inadmissible as evidence there shall be written against that part "Treated as inadmissible" followed by the initials of the judge.

(6) Any document or object referred to as an exhibit and identified in a written statement referred to in subsection (4) shall be treated as if it had been produced as an exhibit and identified before the judge by the maker of the statement and that document or object shall wheresoever possible be identified by means of a label or other mark of identification signed by the maker of the statement.

(7) Notwithstanding anything to the contrary in any law, the fact that there is pending before a magistrate preliminary inquiry proceedings against an accused person in respect of the same alleged offence for which a bill of indictment is sought shall not preclude a judge from entertaining an application under section 256 if no evidence has begun to be taken in those proceedings before the magistrate who shall dismiss those proceedings upon being informed of the application before the judge.

Voluntary bill of indictment
8 of 1995, s 3

258. (1) Notwithstanding any rule of practice or anything to the contrary in this or any other written law, the Attorney-General may file a voluntary bill of indictment in the Supreme Court against a person who is charged before a magistrate's court with an indictable offence whether before or after the coming into operation of this section, in the manner provided in this section.

33 of 1996, s 3

(2) Every voluntary bill shall be signed by the Attorney-General or on his behalf by any legal practitioner acting on his instructions, and shall be filed with the Registrar of the Supreme Court, together with —

(a) statements of the evidence of witnesses whom it is proposed to call in support of the charge;

(b) a statement signed by the Attorney-General or by any legal practitioner acting on his behalf, to the effect that the evidence shown by the statements will be available at the trial and that the case disclosed by the statements is, to the best of his knowledge, information and belief, substantially a true case; and

(c) such additional copies of the voluntary bill and of the respective statements mentioned in paragraphs (a) and (b) as are necessary for service upon the accused person.

(3) Upon the filing of a voluntary bill, the Registrar shall issue a summons requiring the attendance of the accused person before a judge at a date specified in the summons, which date shall not be earlier than seven days after service upon the accused person of the documents mentioned in paragraph (c) of subsection (2).

33 of 1996, s 3

(4) Where a voluntary bill is filed against a person who is before a magistrate's court charged with an offence triable on information, the prosecutor shall, within a reasonable time after the filing of the voluntary bill, produce to the magistrate and to the person charged, respectively, a copy of the voluntary bill and of the relevant summons issued by the Registrar under subsection (3).

33 of 1996, s 3

(5) Where a voluntary bill and summons have been produced to a magistrate pursuant to subsection (4), the magistrate, in accordance with the provisions of the Bail Act, 1994, may admit the person charged under the

voluntary bill, to bail conditioned to appear before the Supreme Court on the relevant date specified in the summons or remand him into custody so to appear; and, upon so admitting the person charged to bail or remanding him into custody, the jurisdiction of the magistrate to deal with him in respect of the charge shall cease, but the warrant of the magistrate shall be sufficient authority for the detention of the person named therein, by the officer in charge of any prison.

(6) The provisions of sections 141 to 144 shall *mutatis mutandis* apply to an accused person against whom a voluntary bill is filed as if that person were a person who has been committed for trial by a magistrate.

(7) Where the accused person fails to attend upon the date specified in the summons issued under subsection (3), or the judge is satisfied that he is avoiding service of the voluntary bill, the attendance of the accused person may be enforced by the issue of a warrant for his arrest.

(8) Upon the appearance before the judge of an accused person against whom a voluntary bill is filed, the voluntary bill shall be read over to him by the Registrar and the accused person shall be required to plead instantly thereto, unless he shall object that copies of the documents mentioned in paragraph (c) of subsection (2) have not previously been served upon him or he raises objection to the voluntary bill as in this Code provided.

(9) If upon arraignment the accused person pleads guilty he may be convicted thereon.

(10) If upon arraignment the accused person pleads not guilty, or if a plea of not guilty is entered upon his behalf in accordance with the provisions of section 155, the judge shall —

(a) explain to the accused person that should he wish to adduce evidence of an alibi at his trial before the court he would not be able to do so unless he gives notice of particulars of the alibi and of the witnesses to the Attorney-General within twenty-one days thereafter; and

(b) give to the accused person a written notice of the foregoing explanation.

(11) Every statement purporting to be evidence of witnesses submitted under subsection (2) shall be deemed a deposition taken in accordance with the provisions of the Evidence Act relating to the taking of oral evidence and shall notwithstanding anything to the contrary in any other law be treated as evidence taken under Part V of this Code.

Ch. 65.

(12) In this section, the term "voluntary bill" means a voluntary bill of indictment filed by the Attorney-General in accordance with the provisions of this section.

Provisions of Code to similarly apply to bills of indictment.
8 of 1995, s 3

259. The provisions of this Code and of any other law respecting the form and contents of an information and respecting the proceedings on information in the Supreme Court, shall apply, *mutatis mutandis*, to the form and contents of a bill of indictment, and to the proceedings following upon the filing of a bill of indictment in that Court, whether a voluntary bill of indictment or otherwise, as if the references in those provisions to an information were references to a bill of indictment.

PART XI
SUPPLEMENTARY PROVISIONS

Proceedings in wrong place.

260. No finding, sentence or order of any criminal court shall be set aside merely on the ground that the inquiry, trial or other proceeding, in the course of which it was arrived at or passed, took place in a wrong district or other local area, unless it appears that such error has in fact occasioned a failure of justice.

Powers of Supreme Court in respect of *habeas corpus*.
Ch. 63.

261. Nothing in this Code shall be construed to affect or limit the provisions of the *Habeas Corpus* Act, and the Supreme Court shall have and exercise all the powers conferred by that Act upon any court to issue writs of *habeas corpus*, in respect of proceedings thereupon and for any purposes connected therewith.

Copies of proceedings.

262. If any person affected by any order made or judgment passed in any proceedings under this Code desires to have a copy of such order or judgment, or of any deposition or other part of the record in any such proceedings, he shall, upon making application for such

copy, be furnished therewith, provided he pays for the same according to such scale as may be prescribed, unless, in any particular case, the court directs that it be furnished free of cost.

Code not to affect proceedings in juvenile courts. Ch. 97.

263. Nothing in this Code shall be construed to affect or apply to the jurisdiction, procedure and powers of any juvenile court established in accordance with the provisions of the Children and Young Persons (Administration of Justice) Act.

Security for keeping the peace.

264. Whenever a magistrate is informed on oath that any person within his district is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act which may probably occasion a breach of the peace or disturb the public tranquility, the magistrate may in the manner hereinafter prescribed require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period not exceeding one year as the magistrate thinks fit.

Order to be made.

265. (1) When a magistrate acting under section 264 of this Code deems it necessary to require any person to show cause under that section, he shall make an order in writing setting forth —

(a) the substance of the information received;

(b) the amount of the bond to be executed;

(c) the term for which it is to be in force; and

(d) the number, character and class of sureties, if any, required.

(2) If the person in respect of whom an order is made under subsection (1) of this section is present in court, it shall be read over to him and, if he so desires, the substance thereof shall be explained to him.

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

Provided that whenever it appears to the magistrate upon the report of a police officer or upon information that there is reason to fear the commission of a breach of the peace by any person and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the magistrate may, after recording the substance of such report or information, issue a warrant for his arrest.

(4) Every summons or warrant issued under subsection (3) of this section shall be accompanied by a copy of the order made under subsection (1) of this section and such copy shall be delivered by the officer serving the summons or executing such warrant to the person served with or arrested under the same.

Inquiry as to truth of information

266. (1) When an order under section 265 of this Code has been read and, if required, explained to a person present in court in accordance with subsection (2) of that section or when any person appears or is brought before a magistrate in compliance with or in execution of a summons or warrant issued under subsection (3) of that section, the magistrate shall proceed to inquire into the truth of the information upon which the oath has been taken and to take such further evidence as may appear necessary.

(2) Such inquiry shall be made, as nearly as may be practical, in the manner in this Code prescribed for conducting trials and recording evidence in trials before magistrates' courts.

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

Order to give security

267. (1) If upon an inquiry under section 266 of this Code it is proved to the satisfaction of the magistrate that it is necessary for keeping the peace or maintaining good behaviour that the person in respect of whom the inquiry is made should execute a bond with or without sureties, the magistrate shall make an order accordingly:

Provided that —

(a) no person shall be ordered to give security of a nature different from or of an amount larger than, or for a period longer than, that specified under section 265 of this Code;

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

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

(2) Any person ordered to give security for good behaviour under this section may appeal to the court specified in section 234 of this Code as the case may be and the provisions of Part IX of this Code (relating to appeals) shall apply to every such appeal.

Discharge of person informed against

268. If upon an inquiry under section 266 of this Code it is not proved to the satisfaction of the magistrate that it is necessary for keeping the peace or maintaining good behaviour that the person in respect of whom the inquiry is made shall execute a bond, the magistrate shall make an entry on the record to that effect, and, if such person is in custody only for the purposes of the inquiry, shall release him, or, if such person is not in custody, shall discharge him.

Magistrate's court may try summarily charge of escape

269. Notwithstanding anything in any Act or the common law, where any person is charged with escape from lawful custody, a magistrate's court may hear and determine such charge summarily.

Seizure of property obtained by offence

270. (1) Any court may order the seizure of any property which there is reason to believe has been obtained by, or is the proceeds or part of the proceeds of any offence, or into which the proceeds of any offence have been converted, and may direct that the same shall be kept or sold and that the same, or the proceeds thereof if sold, shall be held as such court directs until some person establishes a right thereto to the satisfaction of such court. If no person establishes such a right within twelve months from the date of such seizure, the property, or the proceeds thereof, shall vest in the Treasurer for the use of The Bahamas and shall be disposed of accordingly.

(2) Any court may order the seizure of any instruments, materials or things which there is reason to believe are provided or prepared or being prepared with a view to the commission of any offence and may direct them to be held and dealt with in the same manner as property seized under subsection (1) of this section.

(3) Any order made under this section may be enforced by means of a search warrant which, upon being satisfied by evidence on oath that there is reasonable cause for the issue of such warrant, any such court is hereby authorised to issue for the purpose.

Rules

Ch 53

271. (1) The Rules Committee constituted by section 75 of the Supreme Court Act acting pursuant to that section may make rules for prescribing anything required to be prescribed and generally for carrying into effect the provisions of this Code.

(2) Without derogation from the generality of the power conferred by subsection (1) of this section, such rules may provide for —

(a) the payment of expenses or subsistence allowances to witness;

(b) the forms to be used for particular purposes in criminal proceedings;

(c) the functions and duties of registrars, clerks and other officers of courts in regard to the administration of criminal courts and the custody of documents, exhibits and records of criminal proceedings; and

(d) the procedure for the recovery of costs payable to any party in pursuance of an order made in any criminal proceedings:

Provided that, until any such rules are made, payments to witnesses shall be made in accordance with the law in force immediately before the date of commencement of this Act; and the forms in use at that date in criminal proceedings shall continue to be used with such modifications as are necessary for conformity with the requirements of this Code.

Anonymity of complainants in rape, etc., cases *12 of 1984, s 5*

272. (1) Subject to subsection (7)(a) and notwithstanding anything to the contrary in any other law, after a person is accused of a rape offence no matter likely to lead members of the public to identify a woman as the complainant in relation to that accusation shall either be published in The Bahamas in a written publication available to the public or be broadcast in The Bahamas except as authorised by a direction given in pursuance of this section.

(2) If, before the commencement of a trial at which a person is charged with a rape offence, he or another person against whom the complainant may be expected to give evidence at the trial applies to a judge for a direction in pursuance of this subsection and satisfies the judge —

(a) that the direction is required for the purpose of inducing persons to come forward who are likely to be needed as witnesses at the trial; and

(b) that the conduct of the applicant's defence at the trial is likely to be substantially prejudiced if the direction is not given,

the judge shall direct that subsection (1) shall not, by virtue of the accusation alleging the offence aforesaid, apply in relation to the complainant.

(3) If at a trial at which a person is charged with a rape offence the judge is satisfied that the effect of subsection (1) is to impose a substantial and unreasonable restriction upon the reporting of proceedings at the trial and that it is in the public interest to remove or relax the restriction, he shall direct that that subsection shall not apply to such matter relating to the complainant as is specified in the direction; but a direction shall not be given in pursuance of this subsection by reason only of an acquittal of an accused person at the trial.

(4) If a person who has been convicted of an offence and given notice of appeal to the Court of Appeal against the conviction, or notice of an application for leave so to appeal, applies to the Court of Appeal for a direction in pursuance of this subsection and satisfies the Court —

(a) that the direction is required for the purpose of obtaining evidence in support of the appeal; and

(b) that the applicant is likely to suffer substantial injustice if the direction is not given,

the Court shall direct that subsection (1) shall not, by virtue of an accusation which alleges a rape offence and is specified in the direction, apply in relation to a complainant so specified.

(5) If any matter is published or broadcast in contravention of subsection (1), the following persons, namely —

(a) in the case of a publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical;

(b) in the case of any other publication, the person who publishes it; and

(c) in the case of a broadcast, any body corporate which transmits or provides the programme in which the broadcast is made and any person having functions in relation to the programme corresponding to those of an editor of a newspaper,

shall be guilty of an offence and liable on summary conviction to a fine of five thousand dollars.

(6) For the purposes of this section a person is accused of a rape offence if —

(a) an information is laid alleging that he has committed a rape offence; or

(b) he appears before a court charged with a rape offence; or

(c) a court before which he is appearing commits him for trial on a new charge alleging a rape offence,

and references in this section to an accusation alleging a rape offence shall be construed accordingly; and in this section —

"a broadcast" means a broadcast by wireless telegraphy of sound or visual images intended for general reception, and cognate expressions shall be construed accordingly;

"complainant", in relation to a person accused of a rape offence or an accusation alleging a rape offence, means the woman against whom the offence is alleged to have been committed;

"rape offence" means any offence under sections 6 and 10 to 12 of the Sexual Offences and Domestic Violence Act, 1991, any attempt to commit any such offence, and any offence constituted pursuance to section 85 of the Penal Code in relation to, and any attempt to commit, an offence under any of those sections; and *9 of 1991, s 38 and Sch* Ch 99

"written publication" includes a film, a sound track and any other record in permanent form but does not include an indictment or other document prepared for use in particular legal proceedings.

(7) Nothing in this section —

(a) prohibits the publication or broadcasting, in consequence of an accusation alleging a rape offence, of matter consisting only of a report of legal proceedings other than proceedings at, or intended to lead to, or on an appeal arising out of, a trial at which the accused is charged with that offence; or

(b) affects any prohibition or restriction imposed by virtue of any other enactment upon a publication or broadcast,

and a direction in pursuance of this section does not affect the operation of subsection (1) at any time before the direction is given.

(8) Anything which was lawfully done before the coming into operation of this section in relation to an accusation alleging a rape offence and which would if done thereafter be a contravention of this section shall not be regarded as such a contravention or be deemed to be to the prejudice of the trial pertaining to that accusation.

(9) Proceedings for an offence under this section shall not be instituted otherwise than by or with the consent of the Attorney-General.

11 of 1990, s 3

FIRST SCHEDULE

PART I (Section 66(1) and (3))

OFFENCES IN RESPECT OF WHICH NOTICE MAY BE GIVEN

OFFENCES	*LAW*
	Road Traffic (Vehicle Inspection) Regulations
Failure to submit motor vehicle for inspection	4
No valid certificate of inspection	5
	Vehicle and Speed Limit Regulations
Vehicle having no, or no proper identification plates	6
Vehicle not carrying a licence properly affixed	8
Failing to replace identification plates	9
Failing to give notice of change of ownership of motor vehicle	10
Using, driving, etc , motor vehicle or trailer without valid inspection certificate	15
No brakes in good working order	18
Driving motor vehicle with sign, poster, etc , on front windshield obstructing view	19
No windshield wipers in good working order	20
No rear view mirror	21
No muffler in good working order	22
No horn fitted or excessive or prohibited use of horn	23
No or no fitted front head lamps	24
No or no fitted rear lamp	24(4)
Vehicle causing danger or unnecessary annoyance due to condition	26
Unnecessary noise	27
Trailer having no or no proper identification plates	28
	Road Traffic Regulations
No or no proper horn	5
Driving without giving proper signals	7
Unlawful parking or over parking	8
Prohibited driving of vehicle on one way streets	9
Driving bus or truck in prohibited place	11
Driving motor vehicle in prohibited place	12
Mounting or otherwise interfering with vehicle	19(a)
Holding on to a vehicle while in motion	19(b)

Unlawfully and wilfully hindering, preventing progress of any vehicle	19(c)
Riding or pushing a bicycle on public place or street more than two abreast	19(d)
Unlawfully and wilfully discharging or throwing objects from motor vehicle	19(e)
Driver, rider of vehicle —	
Failing to do things he must do when in charge of a vehicle	20
Driver, rider of vehicle —	
Doing things he should not do when in charge of a vehicle	22
Cycling offences	26
	Road Traffic Act Chapter 220
Failure to register or licence motor vehicle	31
Causing obstruction to traffic	48
Driving vehicle in defective condition	51
Playing of instrument loudly in road	101

Note: The description of an offence in the first column of this Schedule is only intended as an indication in general terms of the nature of the offence and is not to be construed in any way as altering or qualifying the provisions of the relevant Regulations or sections of the statute.

PART II (Section 66(14))

FORM OF NOTICE

Royal Bahamas Police Force

NOTICE OFFERING WAIVER OF APPEARANCE BEFORE MAGISTRATE AND OF NO EVIDENCE OF THE COMMISSION OF OFFENCE BEING AVAILABLE

TO: (Offender) .....

of .....

Driver's Licence No .....

(if available)

Vehicle Licence No .....

Registered Owner's Name .....

Take Notice that I, (number, rank and name of police officer) have reason to believe that the offence of (name offence and give particulars) has been committed by you.

You may waive your obligation to appear before the Magistrate and have no conviction for the offence recorded if you sign this notice in the appropriate place below admitting guilt of the offence and returning the signed notice together with the fixed penalty of $ ..... before the ..... day of ..... 20 ..... to the clerk of Magistrate's Court # ..... situated at ..... Failure to return the signed notice together with the above sum in payment of the fixed penalty in the manner and within the time specified above will result in your trial for the above offence before the Magistrate of the aforementioned Magistrate's Court at ..... o'clock in the morning of ..... 20 .... and for which trial you are hereby requested to attend before that Magistrate at that time.

.....

Signature of Officer

I admit the above offence and make the payment of the sum of $ .....

.....

Signature of Offender

SECOND SCHEDULE (Section 76)

RULES FOR FRAMING CHARGES AND INFORMATIONS

Material, etc., for information.

1. (1) An information may be on parchment or durable paper, and may be either written or printed, or partly written and partly printed.

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(2) Each sheet on which an information is set out shall be 11 inches long by 8½ inches wide or A4 International Standards Organisation.

(3) A proper margin not less than 2 inches in width shall be kept on the left hand side of each sheet.

(4) Figures and abbreviations may be used in an information for expressing anything which is commonly expressed thereby.

(5) There shall be endorsed on the information the name of every witness intended to be examined.

(6) An information shall not be open to objection by reason, only, of any failure to comply with this rule.

Commencement of information.

2. The commencement of an information shall be in the following form —

THE BAHAMAS
IN THE SUPREME COURT

Criminal Side.
The Queen versus A. B.

To Wit:

A. B. is charged with the following offence (offences) —

Mode in which offences are to be charged.

3. (1) A description of the offence charged in a charge or information, or where more than one offence is charged, of each offence so charged, shall be set out in a separate paragraph called a count.

(2) A count shall commence with a statement of the offence charged, called the statement of offence.

(3) The statement of an offence shall describe the offence shortly in ordinary language, avoiding as far as possible the use of technical terms, and without necessarily stating all the essential elements of the offence, and, if the offence charged is one created by Act, shall contain a reference to the section of the Act creating the offence.

(4) After the statement of the offence, particulars of such offence shall be set out in ordinary language, in which the use of technical terms shall not be necessary:

Provided that where any rule of law or any Act limits the particulars of an offence which are required to be given in an information, nothing in this rule shall require any more particulars to be given than those so required.

(5) Where a charge or information contains more than one count, the counts shall be numbered consecutively.

Provisions as to statutory offences.

4. (1) Where an Act constituting an offence states the offence to be the doing or the omission to do any one of any different acts in the alternative, or the doing or the omission to do any act in any one of any different capacities, or with any one of any different intentions, or states any part of the offence in the alternative, the acts, omissions, capacities or intentions or other matters stated in the alternative in the enactment may be stated in the alternative in the count charging the offence.

(2) It shall not be necessary, in any count charging a statutory offence, to negative any exception or exemption from, or qualification to, the operation of the Act creating the offence.

Description of property.

5. (1) The description of property in a count shall be in ordinary language and such as to indicate with reasonable clearness the property referred to, and if the property is so described it shall not be necessary (except when required for the purpose of

describing an offence depending on any special ownership of property or special value of property) to name the person to whom the property belongs or the value of the property.

(2) Where property is vested in more than one person, and the owners of the property are referred to in a charge or information, it shall be sufficient to describe the property as owned by one of those persons by name and with others, and if the persons owning the property are a body of persons with a collective name, such as "Inhabitants", "Trustees", "Commissioners" or "Club", or such other name, it shall be sufficient to use the collective name without naming any individual.

Description of persons.

6. The description or designation in a charge or information of the accused person, or of any other person to whom reference is made therein, shall be such as is reasonably sufficient to identify him, without necessarily stating his correct name, or his abode, style, degree or occupation and if, owing to the name of the person not being known, or for any other reason, it is impracticable to give such a description or designation, such description or designation shall be given as is reasonably practicable in the circumstances, or such person may be described as "a person unknown".

Description of documents.

7. Where it is necessary to refer to any document or instrument, it shall be sufficient to describe it by any name or designation by which it is usually known, or by the purport thereof without setting out any copy thereof.

Description of engraving.

8. In a count in respect of an offence for engraving, or making the whole or any part of any instrument, matter or anything whatsoever, or for using or having the unlawful possession of any plate or other material upon which the whole or any part of any instrument, matter or thing whatsoever shall have been engraved or made, or for having the unlawful possession of any paper upon which the whole or any part of any instrument, matter or thing whatsoever shall have been made or printed, it shall be sufficient to describe such instrument, matter or thing by any name or designation by which the same may be usually known, without setting out any copy or facsimile of the whole or any part of such instrument, matter or thing.

Description of money.

9. In a count in which it shall be necessary to make any averment as to any money, or any currency note, it shall be sufficient to describe such money or currency note simply as money, without specifying any particular coin or bank note; and such allegation so far as regards the description of the property shall be sustained by proof of any amount of coin, or any bank note, although the particular species of coin of which such amount was composed or the particular nature of the bank note shall not be proved; and in cases of embezzlement, and obtaining money or bank notes by false pretences, by proof that the offender embezzled or obtained any pieces of coin, or any bank note, or any portion of

the value thereof, although such piece of coin or bank note may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same, or to any other person and such part shall have been returned accordingly.

General rule as to description.

10. Subject to any other provisions of these Rules, it shall be sufficient to describe any place, time, thing, matter, act or omission whatsoever, to which it is necessary to refer in any charge or information, in ordinary language in such a manner as to indicate with reasonable clearness the place, time, thing, matter, act or omission referred to.

Statement of intent.

11. It shall not be necessary in stating any intent to defraud, deceive or injure to state an intent to defraud, deceive or injure any particular person where the statute creating the offence does not make any intent to defraud, deceive or injure a particular person an essential ingredient of the offence.

Charge of previous convictions, etc.

12. Any charge of a previous conviction of an offence shall be charged at the end of the information by means of a statement that the person accused has been previously convicted of that offence at a certain time and place without stating the particulars of the offence:

Provided, that in reading such information to the jury regard shall be had to the provisions of section 152 of this Code.

THIRD SCHEDULE (Section 214)

9 of 1991, s 38 and Sch; 21 of 1994, s 9

INDICTABLE OFFENCES TRIABLE SUMMARILY

PART I

Offences under the following sections of the Penal Code (Ch. 84) —

9 of 1991, s 38 and Sch

264, 265, 266 to 281, 282, 297, 315, 327 to 336 (inclusive), 338, 339(1), 340, 341, 344 to 359 (inclusive), 362, 364 to 367 (inclusive), 369 to 386 (inclusive), 396, 397, 398(2), 400 to 403 (inclusive), 406, 409 to 422 (inclusive), 424, 426, 427, 429 to 445 (inclusive), 447 to 455 (inclusive), 457 to 470 (inclusive), 481 to 487 (inclusive), 489, 490, 491 to 495 (inclusive).

PART II

Offences under section 5 of the Explosive Substances (Illegal Use and Possession Act) (Ch. 216).

PART III

Offences under section 44 of the Road Traffic Act (Ch. 220).

9 of 1991, s 38 and Sch 29 of 2008, s. 13.

PART IV

Offences under the following sections of the Sexual Offences and Domestic Violence Act (Ch. 99) —

7, 8, 10(2), 11, 12, 13(1)(b), 13(2)(b), 14, 15 and 16, 19, 21 to 23, 26 and 28.

1 of 2000, s 4

FOURTH SCHEDULE (Section 10)

OFFENCES WHICH REQUIRE SENTENCING GUIDELINES

Offences under sections 5(1), 9(2), 15(2), 30(2) and 36(4) of the Firearms Act (Ch. 213);

Offence under section 339(1) of the Penal Code (Ch. 84);

Offences under sections 22(2), (4) and 29 of the Dangerous Drugs Act (Ch. 228);

Offences under sections 6, 10, 11(1), (2), 12, 13(1)(a), (2)(a) and 14(1), (2) of the Sexual Offences and Domestic Violence Act (Ch. 99);

Offences under sections 41(2) and 41(3) of the Mental Health Act (Ch. 230).