

CHAPTER 21  
CRIMINAL PROCEDURE CODE

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First Schedule—Offences under the Penal Code  
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*Ordinances Nos. 19 of 1944, 26 of 1945, 18 of 1947, 15 of 1948, 24 of 1950, 11 of 1952, 27 of 1953, 37 of 1954, 4 of 1955, 19 of 1955, 35 of 1961, 37 of 1966, 13 of 1969, 26 of 1969, 9 of 1970 Orders 7th October 1970\* and 4th November 1970† Acts Nos. 12 of 1971, 11 of 1972, 29 of 1972, 16 of 1973, 11 of 1974, 14 of 1975, 18 of 1976, 3 of 1983*

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

[1 May 1945]

PART I—PRELIMINARY

Short title

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

*See* Legal Notice No. 112 of 1970.  
*See* Legal Notice No. 118 of 1970.

*Interpretation*

## 2. In this Code, unless the context otherwise requires—

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

“complaint” means an allegation that some person known or unknown has committed or is guilty of an offence;

“medical practitioner” means any person registered, conditionally or otherwise, under the provisions of the Medical and Dental Practitioners Act; (*Substituted by Ordinance 37 of 1966, s. 6.*) (Cap. 255.)

“non-cognizable offence” means an offence for which a police officer may not arrest without warrant;

“police officer” includes any member of the Royal Fiji Police Force;

“preliminary investigation” means an investigation of a criminal charge held by a magistrates’ court with a view to the committal of the accused person for trial before the Supreme Court;

“private prosecution” means a prosecution instituted and conducted by any person other than a public prosecutor or a police officer;

“public prosecutor” means any person appointed under section 73 of this Code, and includes the Attorney-General, the Director of Public Prosecutions, a Crown Counsel, any police officer and any person acting under the directions of the Attorney-General;

“summary trial” means a trial held by a magistrates’ court under Part VI. (*Amended by Order\*, 7th October 1970.*)

*Trial of offences under Penal Code*

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

(*Amended by Act 16 of 1973, s. 2.*)

(Cap. 17.)

*Trial of offences under other laws*

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

*Saving power of Supreme Court*

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

\* See Legal Notice No. 112 of 1970.

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PART II—POWERS OF COURTS

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*Offences under Penal Code*

4.—(1) Subject to the other provisions of this Code, any offence under the Penal Code may be tried by the Supreme Court, or by any magistrate by whom such offence is shown in the fifth column of the First Schedule to be triable:

Provided that where so stated in the fifth column of the First Schedule the offence shall not be tried by a magistrate unless the consent of the accused to such trial has first been obtained.

*Extension of jurisdiction*

(2) Notwithstanding the provisions of subsection (1), a judge of the Supreme Court may, by order under his hand and the seal of the Supreme Court, in any particular case, invest a resident magistrate† with jurisdiction to try any offence which, in the absence of such order, would be beyond his jurisdiction:

Provided nevertheless that in no such case shall the sentence passed exceed the limits specified in section 7. (*Amended by Ordinance 18 of 1947, s. 2, and by Order‡ 4th November 1970.*)

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† See Legal Notice No. 44 of 1977.

‡ See Legal Notice No. 118 of 1970.

*Offences under other laws*

5.—(1) Any offence under any law other than the Penal Code shall, when any court is mentioned in that behalf in such law, be tried by such court. (*Cap. 17*)

(2) When no court is so mentioned, it may, subject to the proviso to subsection (1) of section 4 and the other provisions of this Code, be tried by the Supreme Court, or by any magistrate by whom such offence is shown in the fifth column of the First Schedule to be triable.

*Sentences which Supreme Court may pass*

6. The Supreme Court may pass any sentence authorised by law and may make any order which a magistrate is authorised to make.

(Amended by 37 of 1959, s. 2.)

*Sentences which a resident magistrate may pass*

7. A resident magistrate may, in the cases in which such sentences are authorised by law, pass the following sentences, namely:—

(a) imprisonment for a term not exceeding five years;

(Amended by 18 of 1960, s. 2.)

(b) fine not exceeding one thousand dollars;

(c) corporal punishment not exceeding twelve strokes.

(Amended by 13 of 1969, s. 2 and 11 of 1974, s. 2.)

*Sentences which a second class magistrate may pass*

8. A second class magistrate may, in the cases in which such sentences are authorised by law, pass the following sentences, namely:—

(a) imprisonment for a term not exceeding one year;

(b) fine not exceeding two hundred dollars;

(c) corporal punishment not exceeding twelve strokes.

(Amended by 11 of 1974, s. 3.)

*Sentences which a third class magistrate may pass*

9. A third class magistrate may, in the cases in which such sentences are authorised by law, pass the following sentences, namely:—

(a) imprisonment for a term not exceeding six months;

(b) fine not exceeding one hundred dollars.

(Amended by 11 of 1974, s. 4.)

*Powers and jurisdiction of Fijian courts*

10. Provincial courts and tikina courts established under the Fijian Affairs Act shall have and exercise the powers and jurisdiction conferred upon them by or under that Act. (*Cap. 120*)

*Combination of sentences*

11.—(1) Any court may pass any lawful sentence combining any of the sentences which it is authorised by law to pass.

(2) In determining the extent of the court's jurisdiction under sections 7, 8 and 9 to pass a sentence of imprisonment the court shall be deemed to have jurisdiction to pass the full sentence of imprisonment provided in the said sections in addition to any term of imprisonment which may be awarded in default of payment of a fine, costs or compensation.

*Sentence in cases of conviction of several offences at one trial*

12.—(1) When a person is convicted at one trial of two or more distinct offences the court may sentence him, for such offences, to the several punishments prescribed therefor which such court is competent to impose; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the court may direct, unless the court directs that such punishments shall run concurrently.

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

Provided as follows:—

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

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

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

## PART III—GENERAL PROVISIONS

## ARREST, ESCAPE AND RETAKING

*Arrest Generally**Arrest*

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

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

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*

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

(2) If ingress to such place cannot be obtained under subsection (1), it shall be lawful in any case for a person acting under a warrant, and, in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity to escape, for a police officer, to enter such place and search therein, and, in order to effect an entrance into such place, to break open

any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, or otherwise effect entry into such house or place, if after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance.

*Power to break out of house, etc., for purpose of liberation*

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

*No unnecessary restraint*

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

*Search of arrested persons*

17.—(1) Whenever a person is arrested by a police officer or a private person, the police officer making the arrest or to whom the private person makes over the person arrested may search such person and any articles in his possession or under his control, and place in safe custody all articles found in his possession or under his control and any article found upon him, except necessary wearing apparel:

*(Amended by 13 of 1969, s. 3.)*

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

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

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

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

*Power of police officer to detain and search persons, vehicles and vessels in certain circumstances*

18.—(1) Any police officer who has reason to suspect that any article stolen or unlawfully obtained, or any article in respect of which a criminal offence or an offence against the customs laws has been, is being, or is about to be, committed, is being conveyed, whether on any person or in any vehicle, package or otherwise, or is concealed or carried on any person in a public place, or is concealed or contained in any vehicle or package in a public place, for the purpose of being conveyed, may, without warrant or other written authority, detain and search any such person, vehicle or package, and may take possession of and detain any such article which he may reasonably suspect to have been stolen or unlawfully obtained or in respect of which he may reasonably suspect that a criminal offence or an offence against the customs laws has been, is being, or is about to be committed, together with the



package, if any, containing it, and may also detain the person conveying, concealing or carrying such article:

Provided that this subsection shall not extend to the case of postal matter in transit by post except where such postal matter has been, or is suspected of having been, dishonestly appropriated during such transit.

(2) Any police officer of or above the rank of sergeant may, if he has reason to suspect that there is on board any vessel any property stolen or unlawfully obtained, enter without warrant, and with or without assistants, on board such vessel, and may remain on board for such reasonable time as he may deem expedient, and may search with or without assistance any and every part of such vessel, and, after demand and refusal of keys, may break open any receptacle, and upon discovery of any property which he may reasonably suspect to have been stolen or unlawfully obtained, may take possession of and detain such property and may also detain the person in whose possession the same is found. Such police officer may pursue and detain any person who is in the act of conveying any such property away from any such vessel or after such person has landed with the property so conveyed away or found in his possession.

(3) Any police officer may, if he has reason to suspect that an offence has been committed, seize any articles which may be in a public place and which may furnish evidence in regard to the commission of such offence:

Provided that no articles may be seized under the provisions of this subsection unless there is a possibility of such articles being removed or dealt with in such a way as to prevent their being available as evidence. (*Inserted by 13 of 1969, s. 4.*)

(4) Any person detained under this section shall be dealt with under the provisions of section 26.

#### *Mode of searching women*

19. Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency.

#### *Power to seize offensive weapons*

20. Notwithstanding the provisions of section 17, the officer or other person making any arrest may take from the person arrested any instruments 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 officer or person making the arrest is required by law to produce the person arrested.

#### *✓ Arrest without Warrant*

##### *Arrest by police officer without warrant*

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

- (a) any person whom he suspects upon reasonable grounds of having committed a cognizable offence;
- (b) any person who commits any offence in his presence;
- (c) any person who obstructs a police officer while in the execution of his duty, or who has escaped or attempts to escape from lawful custody;
- (d) any person in whose possession anything is found which may reasonably be suspected to be stolen property or who may reasonably be suspected of having committed an offence with reference to such thing;

- (e) any person whom he suspects upon reasonable grounds of being a deserter from Her Majesty's Army or Navy or Air Force;
- (f) any person whom he finds in any highway, yard or other place during the night and whom he suspects upon reasonable grounds of having committed or being about to commit a felony;
- (g) any person whom he suspects upon reasonable grounds of having been concerned in any act committed at any place out of Fiji which, if committed in Fiji, would have been punishable as an offence, and for which he is, under the Extradition Act, or otherwise, liable to be apprehended and detained in Fiji; (Cap. 23)
- (h) any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of housebreaking;
- (i) any released convict committing a breach of any provision prescribed by section 46 of the Penal Code or of any rule made thereunder;
- (j) any person for whom he has reasonable cause to believe a warrant of arrest has been issued.

*Refusal to give name and residence ✓*

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

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

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

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

*Disposal of persons arrested by police officer ~*

23. A police officer making an arrest without a warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a magistrate or before an officer of or above the rank of sergeant.

*Arrest by private person*

24.—(1) Any private person may arrest any person who in his view commits a cognizable offence, or whom he reasonably suspects of having committed a felony provided a felony has been committed.

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

*Disposal of person arrested by private person ✓*

25.—(1) Any private person arresting any other person without a warrant

shall without unnecessary delay make over the person so arrested to a police officer, or in the absence of a police officer shall take such person to the nearest police station.

(2) If there is reason to believe that such person comes under the provisions of section 21, a police officer shall re-arrest him.

(3) If there is reason be believe that he has committed a non-cognizable offence, and he refuses on the demand of a police officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 22. If there is no sufficient reason to believe that he has committed any offence he shall be at once released.

*Detention of persons arrested without warrant*

\*26. When any person has been taken into custody without a warrant for an offence other than murder or treason, the officer of or above the rank of corporal to whom such person shall have been brought may in any case and shall, if it does not appear practicable to bring such person before an appropriate magistrates' court within twenty-four hours after he has been so taken into custody, inquire into the case, and, unless the offence appears to the officer to be of a serious nature, release the person on his entering into a recognizance, with or without sureties, for a reasonable amount to appear before a magistrates' court at a time and place to be named in the recognizance, but where any person is retained in custody he shall be brought before a magistrates' court as soon as practicable:

Provided that an officer of or above the rank of sergeant may release a person arrested on suspicion on a charge of committing any offence, when, after due police inquiry, insufficient evidence is, in his opinion, disclosed on which to proceed with the charge.

*Offence committed in magistrate's presence*

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

*Arrest by magistrate*

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

*Escape and Retaking*

*Recapture of person escaping*

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

*Provisions of sections 14 and 15 to apply to arrests under section 29*

30. The provisions of sections 14 and 15 shall apply to arrests under section 29, although the person making any such arrest is not acting under a warrant and is not a police officer having authority to arrest.

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\* Amended by 37 of 1954 and 11 of 1972 s. 2.

*Assistance to magistrate or police officer*

31. Every person is bound to assist a magistrate or police officer reasonably demanding his aid—

- (a) in the taking or preventing the escape of any other person whom such magistrate or police officer is authorised to arrest;
- (b) in the prevention or suppression of a breach of the peace, or in the prevention of any injury attempted to be committed to any railway, canal, telegraph or public property.

## PREVENTION OF OFFENCES

*Security for keeping the Peace and for Good Behaviour**Security for keeping the peace*

\*32.—(1) Whenever a magistrate is informed on oath that any person is likely to commit a breach of the peace, or to do any wrongful act that may probably occasion a breach of the peace, the magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to enter into a recognizance, with or without sureties, for keeping the peace for such period, not exceeding one year, as the magistrate thinks fit.

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

*Security for good behaviour from persons disseminating seditious matters*

\*33. Whenever a resident or second class magistrate has information that there is within the limits of his jurisdiction any person who, within or without such limits, either orally or in writing or in any other manner, disseminates, or attempts to disseminate, or in any wise abets the dissemination of—

- (a) any seditious matter, that is to say, any matter the publication of which is punishable under section 66 of the Penal Code; or (Cap. 17)
- (b) any matter which is likely to be dangerous to peace and good order in Fiji or is likely to lead to the commission of an offence,  
(Inserted by 41 of 1960, s. 2 and amended by 14 of 1975, s. 7.)

such magistrate may (in manner provided in this Code) require such person to show cause why he should not be ordered to enter into a recognizance, with or without sureties, for his good behaviour for such period, not exceeding one year, as the magistrate thinks fit.

*Security for good behaviour from vagrants and suspected persons*

\*34. Whenever a resident or second class magistrate is informed on oath that any person is taking precautions to conceal his presence within the local limits of such magistrate's jurisdiction, and that there is reason to believe that such person is taking such precautions with a view to committing any offence, such magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to enter into a recognizance, with sureties, for his good behaviour for such period, not exceeding one year, as the magistrate thinks fit.

\* Amended by 37 of 1954.

*Security for good behaviour from habitual offenders*

**\*35.** Whenever a resident or second class magistrate is informed on oath that any person within the local limits of his jurisdiction—

- (a) is by habit a robber, house-breaker or thief; or
- (b) is by habit a receiver of stolen property, knowing the same to have been stolen; or
- (c) habitually protects or harbours thieves, or aids in the concealment or disposal of stolen property; or
- (d) habitually commits or attempts to commit, or aids or abets in the commission of, any offence punishable under Chapters XXXIII, XXXV or XXXVIII of the Penal Code; or (Cap. 17)
- (e) habitually commits or attempts to commit, or aids or abets in the commission of, offences involving a breach of the peace; or
- (f) is so desperate and dangerous as to render his being at large without security hazardous to the community,

such magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to enter into a recognizance, with sureties, for his good behaviour for such period, not exceeding two years, as the magistrate thinks fit.

*Order to be made*

**\*36.** When a magistrate acting under sections 32, 33, 34 or 35 deems it necessary to require any person to show cause thereunder, he shall make an order in writing setting forth—

- (a) the substance of the information received;
- (b) the amount of the recognizance;
- (c) the term for which it is to be in force; and
- (d) the number, character and class of sureties, if any, required.

*Procedure in respect of person present in court*

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

*Summons or warrant in case of person not so present*

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

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

*Copy of order under section 36 to accompany summons or warrant*

**39.** Every summons or warrant issued under section 38, shall be accompanied by a copy of the order made under section 36 and such copy shall be delivered by

\* Amended by 37 of 1954.

the officer serving or executing such summons or warrant to the person served with or arrested under the same.

*Power to dispense with personal attendance*

\*40. The magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered to enter into a recognizance for keeping the peace, and permit him to appear by barrister and solicitor.

*Inquiry as to truth of information*

41.—(1) When an order under section 36 has been read or explained under section 37 to a person present in court, or when any person appears or is brought before a magistrate in compliance with or in execution of a summons or warrant issued under section 38, the magistrate shall proceed to inquire into the truth of the information upon which the action has been taken, and to take such further evidence as may appear necessary.

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

(3) For the purposes of this section the fact that a person comes within the provisions of section 35 may be proved by evidence of general repute or otherwise.

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

*Order to give security*

\*42.—(1) If upon such inquiry it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should enter into a recognizance, with or without sureties, the magistrate shall make an order accordingly:

Provided that—

(a) no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 36;

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

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

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

*Discharge of person informed against*

\*43. If on an inquiry under section 41, it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should enter into a recognizance, the magistrate shall make an entry on the record to that effect, and, if such person is in

\* Amended by 37 of 1954.

custody only for the purposes of the inquiry, shall release him, or, if such person is not in custody, shall discharge him.

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

*Commencement of period for which security is required*

44.—(1) If any person in respect of whom an order requiring security is made under section 36 or 42 is, at the time such order is made, sentenced to or undergoing a sentence of imprisonment, the period for which such security is required shall commence on the expiration of such sentence.

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

*Contents of recognizance*

\*45. The recognizance to be entered into by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be, and in the latter case the commission or attempt to commit or the aiding, abetting, counselling or procuring the commission of any offence punishable with imprisonment, wherever it may be committed, shall be a breach of the recognizance.

*Power to reject sureties*

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

*Procedure on failure of person to give security*

47.—(1) If any person ordered to give security as aforesaid does not give such security on or before the date on which the period for which such security is to be given commences, he shall, except in the case mentioned in subsection (2), be committed to prison, or, if he is already in prison, be detained in prison until such period expires or until within such period he gives the security to the court or magistrate who made the order requiring it.

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

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

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

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

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\* Amended by 37 of 1954.

*Power to release persons imprisoned for failure to give security*

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

*Power of Supreme Court to cancel recognizance*

\*49. The Supreme Court may at any time, for sufficient reasons to be recorded in writing, cancel any recognizance for keeping the peace or for good behaviour executed under any of the preceding sections by order of any court.

*Discharge of sureties*

\*50.—(1) Any surety for the peaceable conduct or good behaviour of another person may at any time apply to a resident or second class magistrate to cancel any recognizance entered into under any of the preceding sections within the local limits of his jurisdiction.

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

(3) When such person appears or is brought before the magistrate, such magistrate shall cancel the recognizance and shall order such person to give, for the unexpired portion of the term of such recognizance, fresh security of the same description as the original security. Every such order shall for the purposes of sections 45, 46, 47 and 48 be deemed to be an order made under section 42.

## PREVENTIVE ACTION OF THE POLICE

*Police to prevent offences*

51. Every police officer may interpose for the purpose of preventing, and shall to the best of his ability prevent, the commission of any offence.

*Information of design to commit such offences*

52. It shall be the duty of every police officer below the rank of inspector who receives information of a design to commit any cognizable offence to communicate such information to the police officer to whom he is subordinate, or to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence.

*Arrest to prevent such offences*

53. A police officer knowing of a design to commit any cognizable offence may arrest, without orders from a magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot otherwise be prevented.

*Prevention of injury to public property*

54. A police officer may of his own authority interpose to prevent any injury attempted to be committed in his view to any public property, moveable or

\* Amended by 37 of 1954.



immovable, or the removal of or injury to any public landmark or buoy or other mark used for navigation.

*Power to arrest and produce before court person attempting to kill himself*

55. Any police officer may, when he has reason to believe that any person is attempting or is about to attempt to kill himself, arrest such person and produce him before a court which may make an order in respect of such person requiring him to be under the supervision of a probation officer for such period as the court may specify in such order. (*Inserted by 13 of 1969, s. 6.*)

## PART IV—PROVISIONS RELATING TO ALL CRIMINAL INVESTIGATIONS

### PLACE OF INQUIRY OR TRIAL

*General authority of courts of Fiji*

56. Every court has authority to cause to be brought before it any person who—

- (a) is in Fiji and is charged with an offence committed within, or which may be inquired into or tried within the local limits of its jurisdiction; or
- (b) is within the local limits of its jurisdiction and is charged with an offence committed in Fiji, or which according to law may be dealt with as if it had been committed in Fiji,

and to deal with the accused person according to its jurisdiction.

*Accused person to be sent to Division where offence committed*

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

*Removal of accused person under warrant*

58. Where any person is to be sent in custody in pursuance of section 57, a warrant shall be issued by the court within whose jurisdiction he is found, and that warrant shall be sufficient authority to any person to whom it is directed to receive and detain the person therein named and to carry him and deliver him up to the court within whose jurisdiction the offence was committed or may be inquired into or tried. The person to whom the warrant is directed shall execute it according to its tenor with out delay.

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*Powers of Supreme Court*

59. 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 cognizance of the Supreme Court unless the same shall have been previously investigated by a

magistrates' court and the accused person shall have been committed for trial before the Supreme Court. (*Amended by 14 of 1975, s. 7.*)

*Place and date of sessions of the Supreme Court*

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

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

*Ordinary place of inquiry or trial*

61. Subject to the provisions of section 59 and to the powers of transfer conferred by section 70 every offence shall ordinarily be inquired into and tried by a court within the local limits of whose jurisdiction it was committed, or within the local limits of whose jurisdiction the accused was apprehended, or is in custody on a charge for the offence, or has appeared in answer to a summons lawfully issued charging the offence.

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

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

*Trial where offence is connected with another offence*

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

*Trial where place of offence is uncertain*

64. When it is uncertain in which of several local areas an offence was committed; or

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

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

(c) when it consists of several acts done in different local areas, it may be inquired into or tried by a court having jurisdiction over any of such local areas.

*Offence committed on a journey*

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

*Supreme Court to decide in cases of doubt*

66. Whenever any doubt arises as to the court by which any offence should be inquired into or tried, any court entertaining such doubt may, in its discretion,

report the circumstances to the Supreme Court, and the Supreme Court shall decide by which court the offence shall be inquired into or tried. Any such decision of the Supreme Court shall be final and conclusive, except that it shall be open to an accused person to show that no court in Fiji has jurisdiction in the case.

*Court to be open*

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

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

TRANSFER OF CASES

*Transfer of case where offence committed outside jurisdiction*

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

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

(3) If the accused person is not continued or placed in custody as aforesaid, the court shall inform him that it has directed the transfer of the case as aforesaid, and thereupon the provisions of subsection (2) respecting the transmission and validity of the documents in the case shall apply.

*Transfer after commencement of inquiry or trial*

69. If in the course of any inquiry or trial before a magistrate the evidence appears to warrant a presumption that the case is one which should be tried or committed for trial by some other magistrate, he shall stay proceedings and submit the case with a brief report thereon to the Chief Magistrate.

(Amended by 18 of 1976, s. 2.)

*Power to change venue*

70.—(1) Whenever it is made to appear to the Chief Magistrate—

- (a) that a fair and impartial inquiry or trial cannot be had in any magistrates' court; or
- (b) that some question of law of unusual difficulty is likely to arise; or

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

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

(e) that such an order is expedient for the ends of justice or is required by any provision of this Code;  
he may order—

(i) that any offence be inquired into or tried by any court not empowered under the preceding sections of this Part but in other respects competent to inquire into or try such offence;

(ii) that any particular criminal case or class of cases be transferred from a magistrates' court to any other magistrates' court of equal or superior jurisdiction;

(iii) that an accused person be committed for trial to his court.

(2) The Chief Magistrate may act on the report of the lower court or on the application of a party interested or on its own initiative.

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

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

(Section amended by 18 of 1976, s. 3.)

## CONTROL OF CROWN IN CRIMINAL PROCEEDINGS

### *Power of Director of Public Prosecutions to enter nolle prosequi*

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

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

*Crown Counsel*

72. The Director of Public Prosecutions may by notice in writing authorize any legal officer to be a Crown Counsel and may authorize any such officer to exercise all or any of the functions vested in the Director of Public Prosecutions by sections 70 and 71 and Part VII.

*(Substituted by Act 12 of 1971, s. 2.)*

## APPOINTMENT OF PUBLIC PROSECUTORS AND CONDUCT OF PROSECUTIONS

*Power to appoint public prosecutors*

73. The Director of Public Prosecutions may appoint any barrister and solicitor to be a public prosecutor for the purposes of any case.

*(Amended by Order\* 7 October 1970.)*

*Powers of public prosecutors*

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

*Police may conduct prosecutions before magistrates' courts*

75. In any trial or inquiry before a magistrates' court, if the proceedings have been instituted by a police officer, any police officer may appear and conduct the prosecution notwithstanding the fact that he is not the officer who made the complaint or charge.

*Prosecutors to be subject to directions of Director of Public Prosecutions*

76. Every police officer conducting a prosecution under the provisions of section 75, and every public prosecutor, shall be subject to the express directions of the Director of Public Prosecutions.

*(Amended by Order\* 7 October 1970.)*

*Conduct of prosecution*

77. Any person conducting the prosecution may do so personally or by a barrister and solicitor.

## INSTITUTION OF PROCEEDINGS

*Proceedings by way of Summons or Warrant*

*(Substituted by Act 3 of 1983, s.2.)*

*Complaint and charge*

78.—(1) 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 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 having jurisdiction to cause such person to be brought before him.

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\* See Legal Notice No. 112 of 1970.

(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 police 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. (*Amended by Ordinance 26 of 1945, s. 2.*)

(4) The magistrate, upon receiving any such complaint, shall, unless such complaint has been laid in the form of a formal charge under subsection (3), 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.

(*Amended by Ordinance 26 of 1945, s. 2.*)

(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 police officer preferring the charge.

*Issue of summons or warrant*

79.—(1) Upon receiving a complaint and having signed the charge in accordance with the provisions of section 78 the magistrate may in his discretion issue either a summons or a warrant to compel the attendance of the accused person before a magistrates' 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 made upon oath either by the complainant or by a witness or witnesses.

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

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

*Proceedings by way of Notice to Attend Court*

(*Inserted by Act 3 of 1983, s. 2.*)

*Notice to attend court*

80.—(1) Notwithstanding the other requirements of this Code, it shall be lawful for any police officer to institute proceedings by and to serve personally upon any person who is reasonably suspected of having committed any offence to which this section applies a notice in the prescribed form requiring such person to attend court in answer to the charge stated thereon at such place and on such date and time (not being less than 10 days from the date of such service) as shown on such notice or to appear by barrister and solicitor or to enter a written plea of guilty:

Provided that such notice shall be served not later than 14 days from the date upon which the offence is alleged to have been committed.

(*Amended by Ordinance 13 of 1969, s. 8.*)

(2) A notice served in accordance with the provisions of subsection (1), shall for all purposes be regarded as a summons issued under the provisions of this Code and, in the event of a person upon whom such a notice has been served failing to comply with the requirements of the notice, a warrant for the arrest of such person may be issued notwithstanding that no complaint has been made on oath.

(*Substituted by Ordinance 13 of 1969, s. 8.*)

(3) A copy of such notice shall be signed by the police officer preferring the charge and shall be placed before the court by which the charge is to be heard at least seven days before the time fixed for such hearing.

(Amended by Act 18 of 1976 s. 4.)

(4) This section shall apply to all offences punishable by fine or by imprisonment with or without a fine, for a term not exceeding 3 months or by disqualification from holding or obtaining a driving licence or by endorsement on a driving licence of particulars of a conviction or disqualification. (Substituted by Ordinance 13 of 1969, s. 8 and amended by Act 3 of 1983, s. 2.)

(5) Nothing in this section shall be deemed to prevent the institution of proceedings under the other provisions of this Code. (Inserted by Ordinance 4 of 1955, s. 3.)

### *Proceedings by way of Fixed Penalty Notice*

#### *Interpretation, etc.*

80A.—(1) In this section and in sections 80B, 80C and 80D—

“fixed penalty”, in relation to a prescribed offence, means the penalty specified in Column 3 of the Third Schedule in relation to that offence;

“fixed penalty notice” means a notice, in the prescribed form, that complies with subsection (2) of section 80B;

“police officer” includes a person who is, for the time being, a member of the Special Constabulary;

“prescribed offence” means an offence, being an offence to which section 80 applies, that is specified in Column 2 of the Third Schedule.

(2) For the purposes of sections 80B and 80C, a motor vehicle shall be taken to have been a Government vehicle at the time of the alleged commission of an offence if, at the time, the registration plate or registration plates (if any) borne by the vehicle were of the kind required by regulations under the Traffic Act to be affixed to Government vehicles. (Inserted by Act 3 of 1983, s. 4.)

#### *Issue of fixed penalty notice*

80B.—(1) Notwithstanding the other requirements of this Code, but subject to the succeeding provisions of this section, it shall be lawful for a police officer to institute proceedings in respect of the alleged commission of a prescribed offence—

(a) by serving personally upon the person alleged by him to have committed the offence a fixed penalty notice; or

(b) where the presence, at any time or for any period of time, of a motor vehicle in a place is evidence of the commission of the offence, by affixing a fixed penalty notice to the vehicle in a conspicuous position.

(2) A fixed penalty notice shall comply with the following requirements:—

(a) the notice shall require the person to whom it is addressed to attend court in answer to the charge stated in the notice at such place, and on such date and at such time (not being less than 28 days from the date of the notice), as are specified in the notice unless—

(i) not later than 21 days after the date of the notice, payment is made, as specified in the notice, of the fixed penalty applicable in relation to the offence charged; or

- (ii) failing that payment, that person appears by barrister and solicitor or enters a written plea of guilty;
  - (b) if the notice is affixed to a motor vehicle in pursuance of paragraph (b) of subsection (1), it shall be addressed—
    - (i) where the vehicle is a Government vehicle—to the driver of the vehicle; and
    - (ii) in any other case—to the owner of the vehicle, that driver or owner being identified in the notice by reference to the registered number of the vehicle;
  - (c) the notice shall bear the date on which it was served on the person charged, or affixed to the motor vehicle to which the charge relates, as the case requires.
- (3) A fixed penalty notice shall not be served upon a person, or affixed to a motor vehicle, more than 14 days after the day on which the offence is alleged to have been committed.
- (4) The police officer by whom a fixed penalty notice is issued shall cause a signed copy of that notice to be placed before the court specified in the notice not later than 7 days after the date of the notice.
- (5) Nothing in this section shall be taken to prevent the institution of proceedings under any other provision of this Code.

*(Inserted by Act 3 of 1983, s. 4.)*

*Procedure consequent upon issue of fixed penalty notice*

80c.—(1) Where proceedings are instituted by means of the service upon a person, or the affixing to a motor vehicle, of a fixed penalty notice (in this section referred to as “the notice”), the following provisions of this section apply in relation to the charge set out in the notice (in this section referred to as “the charge”).

(2) Where payment of the fixed penalty that is applicable in relation to the charge (in this section referred to as “the fixed penalty”) is made in accordance with the instructions set out in the notice not later than 14 days after the date of the notice—

- (a) the proceedings instituted by the notice shall be deemed to have been dismissed; and
- (b) it shall not be lawful for any person to be convicted of the offence as charged in the notice.

(3) Subject to subsection (4), where payment of the fixed penalty is not made as mentioned in subsection (2), the notice shall be regarded for all purposes as a summons issued under the provisions of this Code.

(4) A Court shall not proceed with the hearing of proceedings instituted by the affixing of a fixed penalty notice to a motor vehicle unless, before the date of the hearing, a signed copy of the notice has been served upon the owner of that motor vehicle.

(5) Where the notice is a notice to which paragraph (b) of subsection (1), and paragraph (b) of subsection (2), of section 80b apply—

- (a) it shall be presumed, for the purposes of the proceedings instituted by the notice, that the acts or omissions giving rise to the alleged commission of the offence charged were the acts or omissions of the



person (in this subsection referred to as "the responsible person") who, at the time of the alleged commission of that offence, was—

- (i) where the notice is addressed, in accordance with subparagraph (i) of paragraph (b) of subsection (2) of section 80B, to the driver of the vehicle, the person having immediate lawful charge of the vehicle; or
  - (ii) where the notice is addressed, in accordance with subparagraph (ii) of that paragraph, to the owner of the vehicle, the person (whether a natural person or not) registered, for the purposes of the Traffic Act, as the owner of the vehicle; and (Cap. 176.)
- (b) the presumption established by paragraph (a) shall not be taken to be rebutted by proof that, at the time of alleged commission of the offence, the vehicle was in the charge of a person other than the responsible person unless it is also proved that the other person had charge of the vehicle at the time without the consent, express or implied, of the responsible person.

(6) Except as expressly provided by an Act passed after the date of coming into operation of this section, subsection (5) has effect notwithstanding any provision to the contrary contained in any written law, whether made before or after that date.

(7) In any proceedings, a certificate signed by the Clerk of the Court specified in the notice that payment of the fixed penalty was, or was not, made as mentioned in subsection (2) shall, unless the contrary is proved, be conclusive evidence of the matters stated in that certificate.

*(Inserted by Act 3 of 1983 s. 4.)*

*Unauthorised removal of, or interference with, notice*

**80D.**—(1) Subject to subsection (2), a person who removes, or interferes with, a fixed penalty notice affixed to a motor vehicle in accordance with paragraph (b) of subsection (1) of section 80B is liable to a fine of \$100 and imprisonment for 3 months.

(2) It is a defence to a prosecution of a person for an offence against subsection (1) that that person was, or was acting on behalf of, either—

- (a) the person to whom the notice was addressed; or
- (b) the person having immediate lawful charge of the motor vehicle.

*(Inserted by Act 3 of 1983, s.4.)*

## PROCESSES TO COMPEL THE APPEARANCE OF ACCUSED PERSONS

*Summons**Form and contents of summons*

81.—(1) Every summons issued by a court under this Code shall be in writing, in duplicate, signed by the presiding officer of such court or by such other officer as the Chief Justice may from time to time by rule direct.

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

*Service of summons*

82. Every summons shall, if practicable, be served personally on the person summoned by delivering or tendering to him one of the duplicates of the summons.

*Service when person summoned cannot be found*

83. Where the person summoned cannot by the exercise of due diligence be found, the summons may be served by leaving one of the duplicates for him with some adult member of his family or with his servant residing with him or with his employer.

*Procedure when service cannot be effected as before provided*

84. If service in the manner provided by sections 82 and 83 cannot by the exercise of due diligence be effected, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides, and thereupon the summons shall be deemed to have been duly served.

*Service on a company*

85.—(1) Subject to the provisions of any other written law, service of a summons on an incorporated company or other body corporate may be effected either by serving it personally on any officer of the corporation or by sending it by registered letter addressed to the registered or other principal office of the corporation in Fiji.

(2) Subject to the provisions of any other written law, service of a summons on a foreign company which has established a place of business within Fiji under Part XII of the Companies Act may be effected by serving it personally on, or by sending it by registered letter addressed to, any person authorised by the company for that purpose under the provisions of paragraph (d) of section 325 of the Companies Act.

(Cap. 247)

(3) When service is effected under the provisions of either of subsections (1) or (2) by the sending of a registered letter, service shall be deemed to have been effected when the letter would arrive in the ordinary course of post.

(Substituted by 11 of 1974 s. 5)

*Where summons may be served*

86. A summons may be served at any place within Fiji.

*Proof of service when serving officer not present*

87.—(1) Where the officer who has served a summons is not present at the

hearing of the case, and in any case where a summons issued by a court has been served outside the local limits of its jurisdiction, an affidavit purporting to be made before a magistrate or justice of the peace that such summons has been served shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved.

(2) The affidavit mentioned in this section may be attached to the duplicate of the summons and returned to the court.

*Power to dispense with personal attendance of accused*

88.—(1) Whenever a magistrate issues a summons in respect of any offence other than a felony, he may if he sees reason to do so, and shall when the offence with which the accused is charged is punishable only by fine or only by fine and/or imprisonment not exceeding three months or by disqualification from holding or obtaining a driving licence, dispense with the personal attendance of the accused, provided that he pleads guilty in writing or appears by a barrister and solicitor. (*Amended by Ordinance 13 of 1969, s. 9 and Act 3 of 1983, s. 5.*)

(2) But the magistrate inquiring into or trying any case may in his discretion, at any subsequent stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in manner hereinafter provided. But no such warrant shall be issued unless a complaint or charge has been made upon oath.

(3) Where a magistrate convicts an accused person and it is proved to the satisfaction of the court that not less than seven days previously to such conviction a notice was served on such person in the prescribed form and manner specifying any alleged previous conviction of such accused of an offence proposed to be brought to the notice of the court in the event of his conviction of the offence charged, and the accused is not present in person before the court, the court may take account of any such previous conviction so specified as if the accused had appeared and admitted it. (*Inserted by Ordinance 13 of 1969, s. 9.*)

(4) If a magistrate imposes a fine on an accused person whose personal attendance has been dispensed with under this section, and such fine is not paid within the time prescribed for such payment, the magistrate may forthwith issue a summons calling upon such accused person to show cause why he should not be committed to prison for such term as the magistrate may then prescribe. If such accused person does not attend upon the return of such summons the magistrate may forthwith issue a warrant and commit such person to prison for such term as the magistrate may then fix:

Provided that if the summons referred to in subsection (1) clearly specifies the period within which any fine which may be imposed by the court must be paid (which period shall in no case expire on a date less than seven days later than the return date on the summons), and clearly warns the accused person that he will not receive notification from the court as to any fine which may be imposed but that it is his duty to make inquiry from the court, and that upon failure to pay the fine within the time allowed or to apply to the court for an extension thereof he will be liable without further warning to be committed to prison, then, upon expiration of the period allowed, if the accused person shall not have paid the fine and shall not have applied to the court for an extension of time for payment, the magistrate may forthwith issue a warrant and commit him to prison for such term as the magistrate may order without issuing a summons calling upon him to show cause why he should not be so committed. (*Inserted by Ordinance 26 of 1957, s. 4.*)

(5) Where the magistrate is of the opinion that it would be just to order disqualification under the provisions of section 28 of the Traffic Act against an accused person whose personal appearance has been dispensed with under the provisions of this section, he shall order a summons to be served upon the accused calling upon him to show cause why such disqualification should not be imposed and, if the accused person does not attend upon the return of such summons or fails to show good cause why the disqualification should not be imposed, the magistrate may order disqualification. (*Substituted by Ordinance 13 of 1969, s 9 and amended by Act 3 of 1983, s. 5.*) (Cap. 176)

(6) Whenever the attendance of an accused person has been so dispensed with and his attendance is subsequently required, the cost of any adjournment for such purpose shall be borne in any event by the accused.

### *Warrant of Arrest*

#### *Warrant after issue of summons*

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

#### *Summons disobeyed*

90. If the accused does not appear at the time and place appointed in and by the summons, and his personal attendance has not been dispensed with under section 88, the court may issue a warrant to apprehend him and cause him to be brought before such court.

#### *Form, contents and duration of warrant of arrest*

91.—(1) Every warrant of arrest shall be under the hand of the judge or magistrate issuing the same.

(2) Every warrant shall state shortly the offence with which the person against whom it is issued is charged and shall name or otherwise describe such person, and it shall order the person or persons to whom it is directed to apprehend the person against whom it is issued and bring him before the court issuing the warrant or before some other court having jurisdiction in the case to answer to the charge therein mentioned and to be further dealt with according to law.

(3) Every such warrant shall remain in force until it is executed or until it is cancelled by the court which issued it.

#### *Court may direct security to be taken*

92.—(1) Any court issuing a warrant for the arrest of any person in respect of any offence other than murder or treason may in its discretion direct 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 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.

*Warrants to whom directed*

93.—(1) A warrant of arrest shall normally be directed generally to all police officers. But any court issuing such a warrant may, if its immediate execution is necessary, and no police officer is immediately available, direct it to any other person or persons, and such person or persons shall execute the same.

(2) When the warrant is directed to more officers or persons than one, it may be executed by all or by any one or more of them.

*Notification of substance of warrant*

94. The police officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested.

*Person arrested to be brought before the court without delay*

95. A person arrested under a warrant of arrest shall (subject to the provisions of section 92 as to security) without unnecessary delay be taken before the court before which he is required by law to be brought.

*Where warrant of arrest may be executed*

96. A warrant of arrest may be executed at any place in Fiji.

*Procedure on arrest of person outside jurisdiction*

97.—(1) When a warrant of arrest is executed outside the local limits of the jurisdiction of the court by which it was issued, the person arrested shall, unless the court which issued the warrant is nearer than the magistrate within the local limits of whose jurisdiction the arrest was made, or unless security is taken under section 92, be taken before a magistrate within the local limits of whose jurisdiction the arrest was made.

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

Provided that if such person has been arrested for an offence other than murder or treason, and he is ready and willing to give bail to the satisfaction of such magistrate, or if a direction has been endorsed under section 92 on the warrant and such person is ready and willing to give the security required by such direction, the magistrate may take such bail or security, as the case may be and shall forward the bond to the court which issued the warrant.

(3) Nothing in this section shall be deemed to prevent a police officer from taking security under section 92.

*Irregularities in warrant*

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

the hearing of the case to some future date and in the meantime remand the accused or admit him to bail.

*Miscellaneous Provisions regarding Processes*

*Power to take bond for appearance*

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

*Arrest for breach of bond for appearance*

100. When any person who is bound by any bond taken under this Code to appear before a court or who has made a deposit of money or Government currency notes in lieu of executing such bond, does not so appear, the officer presiding in such court may issue a warrant directing that such person be arrested and produced before him. (*Amended by 15 of 1948, s. 2.*)

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

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

*Provisions of this Part generally applicable to summonses and warrants. Powers of justices of the peace*

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

## SEARCH WARRANTS

*Power to issue search warrant*

103. Where it is proved on oath to a magistrate or a justice of the peace that in fact or according to reasonable suspicion anything upon, by or in respect of which an offence has been committed or anything which is necessary to the conduct of an investigation into any offence is in any building, ship, vehicle, box, receptacle or place, the magistrate or justice of the peace may by warrant (called a search warrant) authorise a police officer or other person therein named to search the building, ship, carriage, box, receptacle or place (which shall be named or described in the warrant) of any such thing and, if anything searched for be found, or any other thing which there is reasonable cause to suspect to have been stolen or unlawfully obtained be found, to seize it and carry it before the court issuing the warrant or some other court to be dealt with according to law.

*Execution of search warrants*

104. Every search warrant may be issued on any day (including Sunday) and may be executed on any day (including Sunday) between the hours of sunrise and sunset, but the magistrate or justice of the peace may, by the warrant, in his discretion, authorise the police officer or other person to whom it is addressed to execute it at any hour.

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

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

(2) If ingress into or egress from such building or other place cannot be so obtained, the police officer or other person executing the search warrant may proceed in the manner prescribed by section 14 or 15.

(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 19 shall be observed.

*Detention of property seized*

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

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

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

*Provisions applicable to search warrants*

107. The provisions of sections 91 (1) and (3), 93 and 96 shall, so far as may be, apply to all search warrants issued under section 103.

## PROVISIONS AS TO BAIL AND RECOGNIZANCES

*Bail in certain cases*

108.—(1) Subject to the provisions of section 26, where any person, other than a person accused of murder or treason, is arrested or detained without warrant by a police officer or appears or is brought before a court and is prepared at any time while in the custody of such officer or at any stage of the proceedings before such court to give bail, such person may in the discretion of the officer or court be admitted to bail with or without a surety or sureties and, in the case of a court, subject to such conditions and limitations as the court may think it fit to impose.

(Substituted by 37 of 1954, s. 12 and amended by 16 of 1973, s. 3.)

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

(3) Notwithstanding anything contained in subsection (1), the Supreme Court may in any case direct that any person be admitted to bail or that the bail required by a magistrates' court or police officer be reduced.

*Recognizance of bail*

109. Before any person is released on bail, the court or police officer, as the case may be, shall take the recognizance of such person and of his surety or sureties, where such is or are required, conditioned for the appearance of such person at the time and place mentioned in the recognizance and shall continue so to attend until otherwise directed by the court or police officer as the case may be.

*(Substituted by 37 of 1954, s. 14.)*

*Discharge from custody*

110.—(1) As soon as the recognizance with or without sureties, as the case may be, has been entered into the person admitted to bail shall be released and when he is in prison the court admitting him to bail shall issue an order of release to the officer in charge of the prison and such officer on receipt of the order shall release him.

(2) Nothing in this section shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the recognizance was entered into. *(Section substituted by 37 of 1954, s. 14.)*

*Deposit instead of recognizance*

\*111. When any person is required by any court or officer to enter into a recognizance, with or without sureties, such court or officer may, except in the case of a recognizance for good behaviour, permit him to deposit a sum of money or Government currency notes to such amount as the court or officer may fix in lieu of executing such a recognizance.

*Power to order sufficient bail when that first taken is insufficient*

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

*Discharge of sureties*

\*113.—(1) All or any of the sureties for the appearance and attendance of a person released on bail may at any time apply to a magistrate to discharge the recognizance either wholly or so far as it relates to the applicant or applicants.

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

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

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\* Amended by 37 of 1954.



*Death of surety*

\*114. Where a surety to a recognizance dies before the recognizance is forfeited, his estate shall be discharged from all liability in respect of the recognizance, but the party who gave the recognizance may be required to find a new surety.

*Persons bound by recognizance absconding may be committed*

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

*Forfeiture of recognizance*

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

(2) If sufficient cause is not shown, the court shall order the payment of the penalty or, at its discretion, may remit any portion thereof and order payment in part only.

(3) A penalty, or portion thereof, ordered to be paid under the provisions of subsection (2) shall, for the purposes of the enforcement of payment and recovery thereof, including the giving of time for payment, take effect as if it were a fine, and the provisions of the Penal Code relating to fines shall accordingly apply to any such penalty, or portion thereof, so ordered to be paid. (Cap. 17)

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

(5) Where a sum of money or Government currency notes has been deposited in lieu of executing a bond conditioned for the appearance of a person before a court, such court, if such sum of money or Government currency notes appears to the court to be forfeited, may make an order accordingly:

Provided that the court, upon application made within a period of fourteen days from the making of such order by or on behalf of the person who has deposited such sum of money or Government currency notes, may in its discretion cancel or mitigate the forfeiture.

(Inserted by 15 of 1948, s. 3 and amended by 13 of 1969, s. 11.)

*Appeal from and revision of orders*

117. <sup>44C</sup>All orders passed under section 116 by any magistrate shall be appealable to and may be revised by the Supreme Court.

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\*Amended by 37 of 1954.

*Power to direct levy of amount due on certain recognizances*

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

## CHARGES AND INFORMATIONS

*Offence to be specified in charge or information with necessary particulars*

119. 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 person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the offence charged.

*Joinder of counts in a charge or information*

120.—(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 charged 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 person be tried separately for any one or more offences charged 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*

121. The following persons may be joined in one charge or information and may be tried together, namely—

- (a) persons accused of the same offence committed in the course of the same transaction;
- (b) persons accused of an offence and persons accused of abetment, or of an attempt to commit such offence;
- (c) persons accused of different offences provided that all offences are founded on the same facts, or form or are part of a series of offences of the same or a similar character; (*Substituted by 11 of 1972 s. 3*)
- (d) persons accused of different offences committed in the course of the same transaction.

*Rules for the framing of charges and informations*

122. The following provisions shall apply to all charges and informations and, notwithstanding any rule of law or practice, a charge or information shall, subject to the provisions of this Code, not be open to objection in respect of its form or contents if it is framed in accordance with the provisions of this Code—

*Mode in which offences are to be charged*

- (a) (i) a count of a charge or information shall commence with a statement of the offence charged, called the statement of offence;
- (ii) the statement of offence shall describe the offence shortly in

ordinary language, avoiding as far as possible the use of technical terms, and without necessarily stating all the essential elements of the offence, and if the offence charged is one created by enactment shall contain a reference to the section of the enactment creating the offence;

- (iii) 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 a charge or information, nothing in this paragraph shall require any more particulars to be given than those so required;

- (iv) the forms set out in the Second Schedule or forms conforming thereto as nearly as may be shall be used in cases to which they are applicable; and in other cases forms to the like effect or conforming thereto as nearly as may be shall be used, the statement of offence and the particulars of offence being varied according to the circumstances of each case;
- (v) where a charge or information contains more than one count, the counts shall be numbered consecutively;

*Provisions as to statutory offences*

- (b) (i) where an enactment 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 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; (*Amended by 37 of 1954, s. 17.*)
- (ii) it shall not be necessary, in any count charging an offence constituted by an enactment, to negative any exception or exemption from, or proviso or qualification to, the operation of the enactment creating the offence;

*Description of property*

- (c) (i) the description of property in a charge or information 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;
- (ii) where the 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 with others, and if the persons owning the property are a body of persons with a collective name, such as a company or "Inhabitants", "Trustees", "Commissioners", or "Club" or other

such name, it shall be sufficient to use the collective name without naming any individual.

- (iii) property belonging to or provided for the use of any public establishment, service or department may be described as the property of Her Majesty the Queen;
- (iv) coin and bank or currency notes may be described as money; and any allegation as to money, so far as regards the description of the property, shall be sustained by proof of any amount of coin or of any bank or currency note (although the particular species of coin of which such amount was composed or the particular nature of the bank or currency note, shall not be proved); and in cases of stealing, embezzling and defrauding by false pretences, by proof that the accused person dishonestly appropriated or obtained any coin or any bank or currency note, or any portion of the value thereof, although such coin or bank or currency note may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same or to any other person and such part shall have been returned accordingly;

*Description of persons*

- (d) 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 document*

- (e) where it is necessary to refer to any document or instrument in a charge or information, it shall be sufficient to describe it by any name or designation by which it is usually known, or by the purport thereof, without setting out any copy thereof;

*General rule as to description*

- (f) subject to any other provisions of this section, 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*

- (g) it shall not be necessary in stating any intent to defraud, deceive or injure to state an intent to defraud, deceive or injure any particular person, where the enactment creating the offence does not make an intent to defraud, deceive or injure a particular person an essential ingredient of the offence;

*Mode of charging previous convictions*

- (h) where a previous conviction of an offence is charged in a charge or information, it shall be charged at the end of the charge or information by means of a statement that the accused person has been previously convicted of that offence at a certain time and place without stating the particulars of the offence;

*Use of figures and abbreviations*

- (i) figures and abbreviations may be used for expressing anything which is commonly expressed thereby;

*Gross sum may be specified in certain cases of stealing*

- (j) when a person is charged with any offence under sections 260, 274 or 279 of the Penal Code it shall be sufficient to specify the gross amount of property in respect of which the offence is alleged to have been committed and the dates between which the offence is alleged to have been committed without specifying particular times or exact dates.

(Cap. 17)

## PREVIOUS CONVICTION OR ACQUITTAL

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

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

*Person may be tried again for separate offence*

124. A person convicted or acquitted of an offence may afterwards be tried for any other offence with which he might have been charged on the former trial under subsection (1) of section 120.

*Consequences supervening or not known at time of former trial*

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

*Where original court was not competent to try subsequent charge*

126. Subject to the provisions of section 20 of the Penal Code, a person convicted or acquitted of any offence constituted by any acts may, notwithstanding such conviction or acquittal, be subsequently charged with and tried for any other offence constituted by the same acts which he may have committed, if the court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(Cap. 17)

*Previous conviction how proved*

127.—(1) In any inquiry, trial or other proceeding under this Code, a previous

conviction may be proved, in addition to any other mode provided by any law for the time being in force—

- (a) by an extract certified, under the hand of the officer having the custody of the records of the court in which such conviction was had, to be a copy of the sentence or order; or
- (b) by a certificate signed by the officer in charge of the prison in which the punishment or any part thereof was inflicted, or by production of the warrant of commitment under which the punishment was suffered, together with, in each of such cases, evidence as to the identity of the accused person with the person so convicted.

(2) A certificate in the form prescribed by the Minister given under the hand of an officer appointed by the Minister in that behalf, who shall have compared the fingerprints of an accused person with the fingerprints of a person previously convicted, shall be *prima facie* evidence of all facts therein set forth provided it is produced by the person who took the fingerprints of the accused.

(3) A previous conviction in any place outside Fiji may be proved by the production of a certificate purporting to be given under the hand of a police officer in the country where the conviction was had, containing a copy of the sentence or order, and the 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.

Such a certificate as aforesaid shall be *prima facie* evidence of all facts therein set forth without proof that the officer purporting to sign it did in fact sign it and was empowered so to do.

#### OFFENCES BY FOREIGNERS WITHIN THE WATERS OF FIJI

*Leave of Director of Public Prosecutions necessary before prosecution instituted*

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

(2) This section is subject to the following provisions—

- (a) proceedings before a magistrates' court previous to the committal of an accused person for trial or to the determination of the court that the offender is to be put upon his trial shall not be deemed proceedings for the trial of the offence committed by such offender for the purposes of the said consent and certificate under this section;
  - (b) it shall not be necessary to aver in any charge or information that the consent or certificate of the Director of Public Prosecutions required by this section has been given, and the fact of the same having been given shall be presumed unless disputed by the accused person at the trial. The production of a document purporting to be signed by the Director of Public Prosecutions and containing such consent and certificate shall be sufficient evidence for all the purposes of this section of the consent and certificate required by this section;
  - (c) this section shall not prejudice or affect the trial of any act of piracy as defined by the law of nations.
- (3) The term "offence" as used in this section means an act, neglect or default

of such a description as would, if committed in England, be punishable on indictment according to the law of England for the time being in force.

### COMPELLING ATTENDANCE OF WITNESSES

#### *Summons for witness*

129. 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, it shall be lawful for a court having cognizance of any criminal cause or matter to issue a summons to such person requiring his attendance before such court or requiring him to bring and produce to such court for the purpose of evidence all documents and writings in his possession or power which may be specified or otherwise sufficiently described in the summons.

(Amended by 15 of 1948, s. 4.)

#### *Warrant for witness who disobeys summons*

130. If, without sufficient excuse, a witness does not appear in obedience to the summons, the court, on proof of the proper service of the summons a reasonable time before, may issue a warrant to bring him before the court at such time and place as shall be therein specified.

#### *Warrant for witness in first instance*

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

#### *Mode of dealing with witness arrested under warrant*

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

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

133.—(1) Any court desirous of examining as a witness, in any case pending before it, any person confined in any prison may issue an order to the officer in charge of such prison requiring him to bring such prisoner in proper custody, at a time to be named in the order, before the court for examination.

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

#### *Penalty for non-attendance of witness*

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

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

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

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

#### EXAMINATION OF WITNESSES

##### *Power to summon material witness, or examine person present*

135. Any court may, at any stage of any inquiry, trial or other proceeding under this Code, summon or call any person as a witness, or examine any person in attendance though not summoned 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 barrister and solicitor for the prosecution or the defendant or his barrister and solicitor, 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*

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

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

##### *Refractory witness*

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

(a) refuses to be sworn; or

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

(c) refuses or neglects to produce any document or thing which he is required to produce; or

(d) refuses to sign his deposition,

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

(2) If such person, upon being brought before the court at or before such adjourned hearing, again refuses to do what is required of him, the court may, if it



sees fit, again adjourn the case and commit him for the like period, and so again from time to time until such person consents to do what is so required of him.

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

*Cases when wife or husband may be called without the consent of the accused*

**138.** In any inquiry or trial the wife or husband of the person charged shall be a competent witness for the prosecution or defence without the consent of such person—

- (a) in any case where the wife or husband of a person charged may, under any law in force for the time being, be called as a witness without the consent of such person;
- (b) in any case where such person is charged with an offence under Chapter XVII or section 185 of the Penal Code; (Cap. 17)
- (c) in any case where such person is charged in respect of an act or omission affecting the person or property of the wife or husband of such person or the children of either of them.

COMMISSIONS FOR THE EXAMINATION OF WITNESSES

*Issue of commission for examination of witness*

**139.—**(1) Whenever in the course of any proceeding under this Code, the Supreme Court, or a resident magistrate, 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 or magistrate may with the consent of the parties issue a commission to any magistrate, within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.

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

*Parties may examine witnesses*

**140.—**(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 or magistrate 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 barrister and solicitor, or, if not in custody, in person, and may examine, cross-examine, and re-examine (as the case may be) the said witness.

*Power of magistrate to apply for issue of commission*

**141.** Whenever in the course of any proceeding under this Code before any magistrate, other than a resident magistrate, it appears that a commission ought to be issued for the examination of a witness whose evidence is necessary for the ends

of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense and inconvenience which, under the circumstances of the case, would be unreasonable, such magistrate shall apply to the Supreme Court, stating the reasons for the application; and the Supreme Court may either issue a commission in the manner hereinbefore provided or reject the application.

*Return of commission*

142.—(1) After any commission issued under section 139 or 141 has been duly executed it shall be returned, together with the deposition of the witness examined thereunder, to the Supreme Court or to the resident magistrate (as the case may be), and the commission, the return thereto, and the deposition shall be open at all reasonable times to inspection of the parties, and may, subject to all just exceptions, be read in evidence in the case by either party, and shall form part of the record.

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

*Adjournment of inquiry or trial*

143. In every case in which a commission is issued under sections 139 or 141 the proceedings may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

## NEGATIVE AVERMENTS

*Negative averments*

144. Any exception, exemption, proviso, excuse or qualification, whether it does or does not accompany in the same section the description of the offence in the Act creating such offence, and whether or not specified or negatived in the charge or complaint, may be proved by the defendant or accused, but no proof in relation thereto shall be required on the part of the complainant or prosecution.

(Inserted by 13 of 1969, s. 12.)

## EVIDENCE FOR DEFENCE

*Competency of accused and husband or wife as witnesses in criminal cases*

145. Every person charged with an offence, and the wife or husband, as the case may be, of the person so charged shall be a competent witness for the defence at every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person:

Provided that—

*Own application*

(a) a person charged shall not be called as a witness in pursuance of this section except upon his own application;

*No comment if not called as witness*

(b) the failure of any person charged with an offence, or of the wife or husband, as the case may be, of the person so charged, to give evidence shall not be made the subject of any comment by the prosecution;

*Spouses*

- (c) the wife or husband of the person charged shall not, save as hereinbefore mentioned, be called as a witness except upon the application of the person so charged;

*Communications during marriage*

- (d) nothing in this section shall make a husband compellable to disclose any communication made to him by his wife during the marriage, or a wife compellable to disclose any communication made to her by her husband during the marriage;

*Cross-examination*

- (e) a person charged and being a witness in pursuance of this section may be asked any question in cross-examination notwithstanding that it would tend to criminate him as to the offence charged;

*No question to show commission of offence not charged*

- (f) a person charged and called as a witness in pursuance of this section shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of or been charged with any offence other than that wherewith he is then charged, or is of bad character, unless—

*Exceptions*

- (i) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged; or
- (ii) he has personally or by his barrister and solicitor asked questions of the witness for the prosecution with a view to establishing his own good character, or has given evidence of his own good character, or the nature or conduct of the defence is such as to involve imputations on the character of the complainant or the witnesses for the prosecution; or
- (iii) he has given evidence against any other person charged with the same offence;

*Evidence from box*

- (g) every person called as a witness in pursuance of this section shall, unless otherwise ordered by the court, give his evidence from the witness box or other place from which the other witnesses have given their evidence; and

*Statement by person charged*

- (h) nothing in this section shall affect the provisions of section 229 or any right of the person charged to make a statement without being sworn.

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*Procedure where person charged is the only witness called*

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

*Right of reply*

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

PROCEDURE IN CASE OF THE UNSOUNDNESS OF MIND OR OTHER INCAPACITY OF  
AN ACCUSED PERSON

*Inquiry by court as to unsoundness of mind of accused*

148.—(1) When, in the course of a trial or preliminary inquiry or at any time after a formal charge has been presented or drawn up, the court has reason to believe that the accused may be of unsound mind so as to be incapable of making his defence, it shall inquire into the fact of such unsoundness and may adjourn the case under the provisions of section 202 for the purposes of obtaining a medical report and of making such other enquiries as it shall deem to be necessary.

*(Substituted by 13 of 1969, s. 14 and amended by 16 of 1973, s. 4.)*

(2) If the court is of opinion that the accused is of unsound mind so that he is incapable of making his defence, it shall postpone further proceedings in the case and shall report the case to the Governor-General.

*(Amended by 24 of 1950, s. 3.)*

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

(4) Upon consideration of the court record the Governor-General may order that the accused may be confined in a mental hospital or other suitable place of custody and the court shall issue a warrant in accordance with such order. Any such order of the Governor-General shall be sufficient authority for the detention of such accused person until the Governor-General shall make a further order in the matter or until the court finding him incapable of making his defence shall order him to be brought before it again in the manner provided by sections 151 and 152.

*(Substituted by 11 of 1958, s.2.)*

*Defence of unsoundness of mind at preliminary investigation*

149. When the accused person appears to be of sound mind at the time of a preliminary investigation, the court, notwithstanding that it is alleged that, at the time when the act was committed in respect of which the accused person is charged, he was by reason of unsoundness of mind incapable of knowing the nature of the act or that it was wrong or contrary to law, shall proceed with the case and, if the accused person ought, in the opinion of the court, to be committed for trial on information, the court shall so commit him.

*Defence of unsoundness of mind on trial*

150. Where any act or omission is charged against any person as an offence, and it is given in evidence on the trial of such person for that offence that he was insane so as not to be responsible for his action at the time when the act was done or omission made, then if it appears to the court before which such person is tried that he did the act or made the omission charged but was insane as aforesaid at the time when he did or made the same, the court shall make a special finding to the effect that the accused was not guilty by reason of insanity.

*(Amended by 13 of 1969, s.15.)*

When such special finding is made the court shall report the case for the order of the Governor-General and shall meanwhile order the accused to be kept in custody in such place and in such manner as the court shall direct.

The Governor-General may order such person to be confined in a mental hospital, prison or other suitable place of safe custody.

*Resumption of trial or investigation*

151. Whenever any preliminary investigation or trial is postponed the court may at any time resume the preliminary investigation or trial and require the accused to appear or be brought before such court, when, if the court considers him capable of making his defence, the preliminary investigation or trial shall proceed.

But if the court considers the accused to be still incapable of making his defence, it shall act as if the accused were brought before it for the first time.

*Certificate of medical officer of mental hospital as to sanity to be evidence*

152. If a person is confined in a mental hospital under the provisions of this Code and the medical officer in charge of such hospital certifies that the accused is capable of making his defence, such accused shall be taken before the court at such time as the court appoints to be dealt with according to law, and the certificate of such medical officer shall be receivable in evidence.

*Procedure when accused does not understand proceedings*

153.—(1) If the accused, though not insane, cannot be made to understand the proceedings—

(a) in cases tried by a magistrate's court, the court shall proceed to hear the evidence, and, if at the close of the evidence for the prosecution and, if the defence has been called upon, of any evidence for the defence, the court is of opinion that the evidence which it has heard would not justify a conviction, it shall acquit and discharge the accused, but if the court is of opinion that the evidence which it has heard would justify a conviction it shall order the accused to be detained during the Governor-General's pleasure; but every such order shall be subject to confirmation by the Supreme Court;

(b) in cases which are the subject of a preliminary investigation by a magistrate's court and of trial by the Supreme Court—

(i) the magistrate's court shall hear the evidence for the prosecution, and if satisfied that a prima facie case has been proved shall commit the accused for trial by the Supreme Court, and either admit him to bail or commit him to prison for safe keeping; and

(ii) if the Director of Public Prosecutions has filed an information, the Supreme Court shall proceed to hear the evidence, and, if at the close of the evidence for the prosecution and, if the defence has been called upon, of any evidence for the defence, the court is of opinion that the evidence which it has heard would not justify a conviction, it shall acquit and discharge the accused, but if the court is of opinion that the evidence which it has heard would justify a conviction, it shall order the accused to be detained during the Governor-General's pleasure;

(iii) if the Director of Public Prosecutions states to the committing court that he does not intend to file an information, the accused shall be at once discharged in respect of the charge made against him, and if he has been committed to prison shall be released, or, if on bail, his recognizances shall be discharged, but such a discharge shall not operate as a bar to any subsequent proceedings against him on account of the same facts.

(2) A person ordered to be detained during the Governor-General's pleasure shall be liable to be detained in such place and under such conditions as the Governor-General may, from time to time, by order, direct, and whilst so detained shall be deemed to be in lawful custody.

(3) The Governor-General may, at any time of his own motion, or after receiving a report from any person or persons thereunto empowered by him, order that a person detained as provided in subsection (2) be discharged or otherwise dealt with, subject to such conditions as to the person remaining under supervision in any place or by any person, and such other conditions for ensuring the welfare of the said person and the public, as the Governor-General shall think fit.

(4) When a person has been ordered to be detained during the Governor-General's pleasure under the provisions of paragraph (a) or paragraph (b) of subsection (1), the confirming or presiding judge shall forward to the Governor-General a copy of the notes of evidence taken at the trial, with a report in writing signed by him containing any recommendation or observations on the case he may think fit to make. (*Section inserted by 13 of 1969, s. 16.*)

#### JUDGMENT

##### *Mode of delivering judgment*

154.—(1) The judgment in every trial in any criminal court in the exercise of its original jurisdiction shall be pronounced, or the substance of such judgment shall be explained, in open court either immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties and their barristers and solicitors, 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) The accused person shall, if in custody, be brought before the court, or, if not in custody, be required by the court to attend, to hear judgment delivered, except where the court has proceeded to the determination of the case in the absence of the accused under section 199, or where his personal attendance during the trial has been dispensed with and the sentence is one of fine only, or he is acquitted.

(3) No judgment delivered by any court shall be deemed to be invalid by reason only of the absence of any party or his barrister and solicitor on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties or their barristers and solicitors, or any of them, the notice of such day and place.

##### *Contents of judgment*

155.—(1) Every such judgment shall, except as otherwise expressly provided by this Code, be written by the presiding officer of the court 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 the presiding officer in open court at the time of pronouncing it:

Provided that where the accused person has admitted the truth of the charge and has been convicted, it shall be a 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 presiding officer at the time of pronouncing it.

*(Amended by 24 of 1950, s. 5.)*

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

(3) In the case of an acquittal the judgment shall state the offence of which the accused person is acquitted and shall direct that he be set at liberty.

*Judgment in trials before the Supreme Court*

**156.** In the case of trials before the Supreme Court, the provisions of sections 154 and 155 shall be subject to the provisions of section 299.

*(Inserted by 16 of 1973, s. 5.)*

*Copy of judgment, etc., to be given to accused on application*

**157.** On the application of the accused person a copy of the judgment, or, when he so desires, a translation in his own language, if practicable, shall be given to him without delay. Such copy shall be given free of cost.

**COSTS AND COMPENSATION**

*Costs against accused*

**158.—(1)** It shall be lawful for a judge of the Supreme Court or any magistrate to order any person convicted before him of an offence or discharged by him without conviction under the provisions of section 44 of the Penal Code, to pay to a public or private prosecutor such reasonable costs as to such judge or magistrate may seem fit, in addition to any other penalty imposed.

*Costs against prosecutor*

(2) It shall be lawful for a judge of the Supreme Court or any magistrate who acquits or discharges a person accused of an offence, to order the prosecutor whether public or private, to pay to the accused such reasonable costs as to such judge or magistrate may seem fit:

Provided that such an order shall not be made unless the judge or magistrate considers that the prosecutor either had no reasonable grounds for bringing the proceedings or has unreasonably prolonged the same.

(3) The costs awarded under this section may be awarded in addition to any compensation awarded under section 160. Payment of costs by the accused shall be enforceable in the same manner as a fine.

(4) In this section "private prosecutor" means any prosecutor other than a public prosecutor.

*(Section amended by 37 of 1957, s. 4, 55 of 1961, s. 5 and 13 of 1969, s. 17.)*

*Order to pay costs appealable*

**159.** An appeal shall lie to the Supreme Court from any order awarding costs made by a magistrate. The appellate court shall have power to give such costs of the appeal as it shall deem reasonable.

*Compensation*

**160.**—(1) If on the dismissal of any case any court shall be of opinion that the charge was frivolous or vexatious, such court may order the complainant to pay to the accused person a reasonable sum as compensation for the trouble and expense to which such person may have been put by reason of such charge in addition to his costs.

(2) Any person who is convicted of an offence may be ordered to pay compensation to any person injured by, or who suffers damage to his property or loss as a result of, such offence and such compensation may be either in addition to, or in substitution for, any punishment or other sentence.

*(Section amended by 16 of 1973, s. 6.)*

*Power of courts to award expenses or compensation out of fine, etc.*

**161.**—(1) Any court may, in its discretion, order the whole or any part of any fine imposed or money found on or in the possession of a convicted person to be applied in or towards—

- (a) the defraying of the costs or expenses properly incurred in the prosecution;
- (b) the payment to any person of compensation for any loss or injury caused by the offence;
- (c) the defraying of any compensation awarded under the provisions of section 160;
- (d) the payment to any person of compensation for any loss sustained by him in consequence of any order made under the provisions of this Part for the restitution or disposal of any property or thing.

*(Substituted by 13 of 1969, s. 18.)*

- (2) If the fine is imposed in a case which is subject to appeal no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.
- (3) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the court shall take into account any sum paid or recovered as compensation under this section.

*Payment to innocent person of money found on accused*

**162.** When any person is found guilty of any offence which includes or amounts to theft or receiving stolen property, and the court is satisfied that any other person has bought the stolen property from him without knowing or having reason to believe that the same was stolen and it appears that any money has been found on or in the possession of the person found guilty, the court may (whether or not it proceeds to conviction) on the application of such purchaser and on the restitution of the stolen property to the person entitled to the possession thereof, order that out of such money a sum not exceeding the price paid by such purchaser shall be delivered to him. *(Inserted by 13 of 1969, s. 19.)*

## RECONCILIATION

*Promotion of reconciliation*

**163.** In the case of any charge or charges brought under any of the provisions of subsection (1) of section 197 or of section 244 or of section 245 or of subsection



(1) of section 324 of the Penal Code, the court may, in such cases which are substantially of a person or private nature and which are not aggravated in degree, promote reconciliation and encourage and facilitate the settlement in an amicable way of the proceedings, on terms of payment of compensation or on other terms approved by the court, and may thereupon order the proceedings to be stayed or terminated. (*Substituted by 18 of 1976, s. 5.*) (Cap. 17)

## RESTITUTION OF PROPERTY

### *Preservation or disposal of property*

164.—(1) It shall be lawful for any court in any proceedings to make orders for—

- (a) the preservation or interim custody or detention of any property or thing produced in evidence or as to which questions may arise in the proceedings;
- (b) the sale, destruction or other disposal of any such property or thing as may be of a perishable nature or liable to deteriorate, or as may be dangerous;
- (c) the restoration or awarding of possession of any such property or thing to the person appearing to the court to be entitled to possession thereof, without prejudice however to any civil proceedings which may be taken with respect thereto;
- (d) the payment by any person of the expense incurred in or about the preservation, custody, detention, sale, destruction or other disposal of any such property or thing, or the proceeds thereof;
- (e) the application of any such property or thing, or the proceeds thereof, in or towards satisfaction or payment of any such costs or compensation as may be ordered by the court to be paid by any person.

(2) Any order made under the provisions of paragraph (d) of subsection (1) may be enforced as if such order were the imposition of a fine.

(3) When an order is made under the provisions of this section in a case in which an appeal lies, such order shall not, except when the property is livestock or is liable to deterioration or decay, be carried out until the period allowed for presenting such appeal has passed or, when such appeal is presented within such period, until such appeal has been determined.

(*Section substituted by 13 of 1969, s. 21.*)

### *Property stolen*

165.—(1) If any person guilty of any offence as is mentioned in Chapters XXVII to XXXIV, both inclusive, of the Penal Code, in stealing, taking, obtaining, extorting, converting, or disposing of, or in knowingly receiving any property, is prosecuted to conviction by or on behalf of the owner of such property, the property shall be restored to the owner or his representative. (Cap. 17)

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

Provided that—

- (a) where goods as defined in the Sale of Goods Act have been obtained by

fraud or other wrongful means not amounting to stealing, the property in such goods shall not revert in the person who was the owner of the goods, or his personal representative, by reason only of the conviction of the offender; (Cap. 230)

- (b) nothing in this section shall apply to the case of any valuable security which has been in good faith paid or discharged by some person liable to the payment thereof, or, being a negotiable instrument, has been in good faith taken or received by transfer or delivery by some person for a just and valuable consideration without any notice or without reasonable cause to suspect that the same has been stolen.

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

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

(b) in a case where an appeal is lodged, until the determination of the appeal,

and in cases where the operation of any such order is suspended until the determination of the appeal, the order shall not take effect as to the property in question if the conviction is quashed on appeal.

The Chief Justice may make provision by rules for securing the safe custody of any property pending the suspension of the operation of any such order.

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

#### *Stay of order*

166. Upon the application of any person, affected by any order or interested in the property the subject of any order made under the provisions of sections 164 and 165 the Supreme Court may direct any such order made by a court subordinate thereto to be stayed pending consideration by the Supreme Court and may modify, alter or annul such order. (Inserted by 13 of 1969, s. 23.)

#### *Restoration of possession of real property*

167.—(1) Whenever a person is convicted of an offence attended by criminal force, threat or intimidation and it appears to the court that by such force, threat or intimidation any person has been dispossessed of any real property, the court may, if it thinks fit, order possession of such property to be restored to the person so dispossessed.

(2) Any such order may be enforced by warrant addressed to the police officers of Fiji.

(3) No such order shall prejudice any right or interest to or in such real property which any person may be able to establish in a civil suit.

(Inserted by 13 of 1969, s. 23.)

#### *Procedure by police on seizure of property*

168.—(1) A report of any property or thing which has come into the possession of any police officer in connection with any charge or offence or suspected offence or otherwise in the course or performance of his duty as such, the

ownership of which property or thing is in doubt, shall be made forthwith to a magistrate's court which shall make such order as it thinks fit respecting the delivery of such property to the person entitled to the possession thereof or, if such person cannot be ascertained, respecting the custody and production of such property. (*Amended by 12 of 1971, s. 3.*)

(2) If the identity of the person so entitled is known, the court may order the property to be delivered to him on such conditions, if any, as the court thinks fit.

(3) The court shall, on making an order under the provisions of subsection (2), cause a notice to be served on such person, informing him of the terms of the order, and requiring him to take delivery of the property within such period from the date of the service of the notice, not being less than forty-eight hours, as the court may in such notice prescribe.

(4) If such person is unknown or cannot be found, the court may direct that the property be detained in police custody and the Commissioner of Police shall, in such case, publish a notice in the Gazette specifying the articles of which such property consists and requiring any person who has a claim thereto to appear before him and establish his claim within six months from the date of such notice:

Provided that, where it is shown to the satisfaction of the court that the property is of no appreciable value, or that its value is so small as, in the opinion of the court, to render impracticable the sale of such property under the provisions of subsection (5), or as to make its detention in police custody unreasonable in view of the expense or inconvenience that would thereby be involved, the court may order such property to be destroyed or otherwise disposed of, either on the expiration of such period after the publication of the said notice as it may determine, or forthwith, as it thinks fit.

(5) If, within six months from the publication of a notice under the provisions of subsection (4), no person has established a claim to such property and the person in whose possession such property was found is unable to show that it was legally acquired by him, such property may be sold on the order of the Commissioner of Police.

(6) If, within three months from the publication of a notice under the provisions of subsection (3), no person has taken delivery of the property, the ownership in such property or, if sold, in the net proceeds thereof, shall thereupon pass to and be vested in the Crown.

(7) Where any property detained in police custody on the direction of a court made under the provisions of subsection (4) is subject to deterioration or decay or is, in the opinion of the Commissioner of Police, of less value than ten dollars, or where its custody involves unreasonable expense or inconvenience, such property may be sold at any time, and the provisions of this section shall, as nearly as may be practicable, apply to the net proceeds of such sale.

(8) If the person entitled to the possession of such property is absent from Fiji and the property is subject to deterioration or decay, or the court to which its seizure is reported is of opinion that its sale would be for the benefit of the owner, or that the value of such property is less than ten dollars, the court may, at any time, direct it to be sold and the provisions of subsection (6) shall apply to the net proceeds of such sale.

(9) If the person to whom property has been ordered to be delivered under the provisions of subsection (2) neglects or omits to take delivery of such property within the period prescribed, the court may, where such property is subject to deterioration or decay or where, in the opinion of the court, its value is less than ten

dollars, direct that such property be sold and the net proceeds of such sale shall, on demand, be paid over to the person entitled. (*Section inserted by 13 of 1969, s. 23*).

### CONVICTIONS FOR OFFENCES OTHER THAN THOSE CHARGED

#### *Conviction of minor offences included in offence charged*

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

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

#### *Conviction of attempt*

**170.** When a person is charged with an offence, he may be convicted of having attempted to commit that offence, although he was not charged with the attempt.

#### *Conviction of infanticide of woman charged with murder of child*

**171.** When a woman is charged with the murder of her child, being a child under the age of twelve months, and the court is of opinion that she by any wilful act or omission caused its death but at the time of the act or omission she had not fully recovered from the effect of giving birth to such child and that by reason thereof or by reason of the effect of lactation consequent upon the birth of the child, the balance of her mind was then disturbed, she may, notwithstanding that the circumstances were such that but for the provisions of section 205 of the Penal Code she might be convicted of murder, be convicted of the offence of infanticide although she was not charged with it.

(Cap. 17)

#### *Conviction of killing unborn child on charge of murder, etc.*

**172.** When a person is charged with the murder or manslaughter of any child or with infanticide, or with an offence under section 172 or 173 of the Penal Code (relating to the procuring of abortion), and the court is of opinion that he is not guilty of murder, manslaughter or infanticide or of an offence under section 172 or 173 of the Penal Code, but that he is guilty of the offence of killing an unborn child, he may be convicted of that offence although he was not charged with it.

(Cap. 17)

#### *Conviction of procuring abortion on charge of killing unborn child*

**173.** When a person is charged with killing an unborn child and the court is of opinion that he is not guilty of that offence but that he is guilty of an offence under one of the sections 172 and 173 of the Penal Code, he may be convicted of that offence although he was not charged with it.

(Cap. 17)

#### *Conviction of concealment of birth on charge of murder, etc.*

**174.** When a person is charged with the murder or infanticide of any child or with killing an unborn child and the court is of opinion that he is not guilty of any of

the said offences, and, if it appears in evidence that the child had recently been born and that such person did, by some secret disposition of the dead body of the child, endeavour to conceal the birth of that child, he may be convicted of the offence of endeavouring to conceal the birth of that child although he was not charged with it.

*Conviction of careless or dangerous driving on charge of manslaughter*

175. When a person is charged with manslaughter in connexion with the driving of a motor vehicle by him, or with an offence under section 237 of the Penal Code, and the court is of the opinion that he is not guilty of the offence charged, but that he is guilty of an offence under section 38 or section 39 of the Traffic Act, he may be convicted of that offence although he was not charged with it and whether or not the requirements of section 42 of the said Act have been satisfied as respects that offence. (*Substituted by 26 of 1957, s. 5.*) (Cap. 176)

*Conviction of kindred offence on charge of rape*

176. When a person is charged with rape and the court is of opinion that he is not guilty of that offence but that he is guilty of an offence under one of the sections 154 (1), 155, 156, 158 and 178 of the Penal Code, he may be convicted of that offence although he was not charged with it. (Cap. 17)

*Conviction of unlawful carnal knowledge on charge of incest*

177. When a person is charged with an offence under section 171 of the Penal Code and the court is of opinion that he is not guilty of that offence but that he is guilty of an offence under one of the sections 155 and 156 of the Penal Code, he may be convicted of that offence although he was not charged with it. (Cap. 17)

*Conviction of kindred offence on charge of defilement of girl under sixteen years of age*

178. When a person is charged with the defilement of a girl under the age of sixteen years and the court is of opinion that he is not guilty of that offence but that he is guilty of an offence under one of the sections 154 (1), 155 and 158 of the Penal Code, he may be convicted of that offence although he was not charged with it. (Cap. 17)

*Conviction of kindred offence on charge of defilement of girl under thirteen years of age*

179. When a person is charged with the defilement of a girl under the age of thirteen years and the court is of opinion that he is not guilty of that offence but that he is guilty of an offence under one of the sections 154 (1), 156 and 158 of the Penal Code, he may be convicted of that offence although he was not charged with it. (Cap. 17)

*Conviction of kindred offence on charge of burglary, etc.*

180. When a person is charged with any offence mentioned in Chapter XXXI of the Penal Code and the court is of opinion that he is not guilty of that offence but that he is guilty of any other offence mentioned in the said Chapter, he may be convicted of that other offence although he was not charged with it. (Cap. 17)

*Conviction of receiving, embezzlement, obtaining by false pretences or possessing or conveying stolen property on charge of stealing*

181. When a person is charged with stealing anything and—

- (a) it is proved that he received the thing knowing the same to have been stolen, he may be convicted of the offence of receiving although he was not charged with it;
- (b) it is proved that he committed an offence against section 274 of the Penal Code (relating to embezzlement), he may be convicted of embezzlement although he was not charged with it; (Cap. 17)
- (c) it is proved that he obtained the thing in any such manner as would amount, under the provisions of the Penal Code or of any other law for the time being in force, to obtaining it by false pretences with intent to defraud, he may be convicted of the offence of obtaining it by false pretences although he was not charged with it.

(Section amended by 4 of 1955, s. 4.)

*Conviction of stealing on charge of obtaining by false pretences*

182. When a person is charged with obtaining anything capable of being stolen by false pretences with intent to defraud, and it is proved that he stole the thing, he may be convicted of the offence of stealing although he was not charged with it.

*Conviction of assault with intent to rob on charge of robbery*

183. When a person is charged with robbery, and it is proved that he committed an assault with intent to rob, he may be convicted of that offence although he was not charged with it.

*Conviction of stealing on charge of embezzlement*

184. When a person is charged with any offence against section 274 of the Penal Code (relating to embezzlement), and it is proved that he stole the property in question, he may be convicted of the offence of stealing although he was not charged with it. (Cap. 17)

*Construction of sections 169 to 184, inclusive*

185. The provisions of sections 169 to 184, both inclusive, shall be construed as in addition to, and not in derogation of, the provisions of any other Act and the other provisions of this Code, and the provisions of sections 170 to 184, both inclusive, shall be construed as being without prejudice to the generality of the provisions of section 169.

## MISCELLANEOUS PROVISIONS

*Persons charged with jointly receiving property may be convicted on proof that property was received separately*

186. When any two or more persons are charged with jointly receiving any property knowing the same to have been stolen, and it is proved that one or more of such persons separately received any part of such property, such of the persons may be convicted as are proved to have received any part of such property.

*Conviction of felony on charge of misdemeanour*

187. If on any trial for misdemeanour the facts proved in evidence amount to a felony, the accused shall not be therefore acquitted of such misdemeanour; and no person tried for such misdemeanour shall be liable afterwards to be prosecuted for felony on the same facts, unless the court shall think fit, in its discretion, to refrain from giving a verdict and to direct such person to be prosecuted for felony, whereupon such person may be dealt with as if not previously put on trial for misdemeanour.

*Right of accused to be defended*

188. Any person accused of an offence before any criminal court, or against whom proceedings are instituted under this Code in any such court, may of right be defended by a barrister and solicitor.

PART V—MODE OF TAKING AND RECORDING EVIDENCE IN  
INQUIRIES AND TRIALS

*Evidence to be taken in presence of accused*

189. Except as otherwise expressly provided, all evidence taken in any inquiry or trial under this Code shall be taken in the presence of the accused, or, when his personal attendance has been dispensed with, in the presence of his barrister and solicitor (if any).

*Manner of recording evidence before magistrate*

190.—(1) In inquiries and trials by or before a magistrate, 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 in writing in English by the magistrate, or in his presence and hearing and under his personal direction and superintendence, and shall be signed by the magistrate, and shall form part of the record;

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

Provided that the magistrate may, in his discretion, take down or cause to be taken down any particular question and answer.

(2) If a witness asks that his evidence be read over to him the magistrate shall cause such evidence to be read over to him in a language which he understands.

*Admission of signed plan or report*

191.—(1) Any plan, report, photograph or document purporting to have been made or taken in the course of his office, appointment or profession by or under the hand of any of the persons mentioned in subsection (2) may be given in evidence in any inquiry, trial or other proceeding under the provisions of this Code unless such person shall be required to attend as a witness by—

(a) the court; or

(b) the accused, in which case the accused shall give notice to the prosecutor not less than three clear days before the inquiry, trial or other proceeding:

Provided that in any case in which the prosecutor intends to adduce in evidence such plan, report, photograph or document he shall deliver a copy of such

plan, report, photograph or document to the accused not less than ten clear days before the commencement of the inquiry, trial or other proceeding.

(2) The following persons shall be the persons to whom this section shall apply:—

- (a) medical practitioners and medical officers;
- (b) Government analysts and chemists and laboratory superintendents employed by the Government;
- (c) registered and Government land surveyors;
- (d) examiners of weights and measures;
- (e) veterinary officers, livestock officers and veterinary assistants;
- (f) the officer in charge of the Criminal Records Office;
- (g) Government mechanical engineers;
- (h) authorized examiners appointed under the provisions of the Traffic Act; (Cap. 176)
- (i) dental practitioners and dental officers;
- (j) survey technical assistants employed by the Government; and
- (k) police photographers.

(3) The court may presume that the signature to any such plan, report or document is genuine and that the person signing it held the qualification, appointment or office which he professed to hold at the time when such plan, report or document was signed by him. (*Section inserted by 13 of 1969, s. 24.*)

*Statements in criminal proceedings other than a preliminary enquiry*

192.—(1) In any criminal proceedings, other than a preliminary inquiry, a written statement by any person shall, if such of the conditions mentioned in subsection (2) as are applicable are satisfied, be admissible as evidence to the like extent as oral evidence to the like effect by that person.

(2) The conditions referred to in subsection (1) shall be that—

- (a) the statement purports to be signed by the person who made it;
- (b) the statement contains a declaration by that person to the effect that it is true to the best of his knowledge and belief and that he made the statement knowing that, if it were tendered in evidence, he would be liable to prosecution if he wilfully stated in it anything which he knew to be false or did not believe to be true;
- (c) at least fourteen clear days before the hearing at which the statement is tendered in evidence; a copy of the statement is served, by or on behalf of the party proposing to tender it, on each of the other parties to the proceedings;
- (d) none of the other parties or their barristers and solicitors within fourteen days from the service of the copy of the statement, serves a notice on the party so proposing objecting to the statement being tendered in evidence under this section:

Provided that the conditions mentioned in paragraphs (c) and (d) shall not apply if the parties agree before or during the hearing that the statement shall be so tendered.

(3) The following provisions shall also have effect in relation to any written statement tendered in evidence under this section:—

- (a) if the statement is made by a person under the age of twenty-one, it shall give his age;
- (b) if it is made by a person who cannot read it, it shall be read to him before



he signs it in a language he understands and shall be accompanied by a declaration by the person who so read the statement to the effect that it was so read; and

- (c) if it refers to any other document as an exhibit, the copy served on any other party to the proceedings under paragraph (c) of subsection (2) shall be accompanied by a copy of that document or by such information as may be necessary in order to enable the party on whom it is served to inspect that document or a copy thereof.

(4) Notwithstanding that a written statement made by any person may be admissible as evidence by virtue of this section—

- (a) the party by whom or on whose behalf a copy of the statement was served may call that person to give evidence; and  
(b) the court may, of its own motion or shall on the application of any party to the proceedings, require that person to attend before the court and give evidence or to submit to cross-examination.

(5) So much of any statement as is admitted in evidence by virtue of this section shall, unless the court otherwise directs, be read aloud at the hearing and where the court so directs an account shall be given orally of so much of any statement as is not read aloud.

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

(7) A document required by this section to be served on any person may be served—

- (a) by delivering it to him or to his barrister and solicitor; or  
(b) by addressing it to him and leaving it at his usual or last known place of abode or place of business or by addressing it to his barrister and solicitor and leaving it at his office; or  
(c) by sending it by registered post to him at his last known place of abode or place of business or addressed to his barrister and solicitor at his office; or  
(d) in the case of a body corporate, by delivering it to the secretary or clerk of the body at its registered or principal office or sending it by registered post addressed to the secretary or clerk of that body at that office. (*Section inserted by 18 of 1976, s. 6.*)

#### *False evidence*

193. If any person in a written statement tendered in evidence in criminal proceedings by virtue of section 192 wilfully makes a statement material in those proceedings which he knows to be false or does not believe to be true, he shall be liable on conviction to imprisonment for a term not exceeding two years or to a fine or both such imprisonment and fine. (*Inserted by 18 of 1976, s. 6.*)

#### *Language of the court*

194. The language of the court in the case of both the Supreme Court and magistrates' courts shall be English.

#### *Interpretation of evidence to accused*

195.—(1) Whenever any evidence is given in a language not understood by the

accused, and he is present in person, it shall be interpreted to him in open court in a language which he understands.

(2) When documents are put in for the purpose of formal proof it shall be in the discretion of the court to interpret as much thereof as appears necessary.

*Conviction or commitment on evidence partly recorded by one magistrate and partly by another*

196. Whenever any magistrate, after having heard and recorded the whole or any part of the evidence in an inquiry or trial, ceases to exercise jurisdiction therein and is succeeded, whether by virtue of an order of transfer under the provisions of this Code or otherwise, by another magistrate who has and who exercises such jurisdiction, the magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly by himself, or he may resummon the witnesses and recommence the inquiry or trial:

Provided that—

- (a) in any trial the accused may, when the second magistrate commences his proceedings, demand that the witnesses or any of them be resummoned and reheard and shall be informed of such right by the second magistrate when he commences his proceedings;
- (b) the Supreme Court may, on appeal, set aside any conviction passed on evidence not wholly recorded by the magistrate before whom the conviction was had, if it is of opinion that the accused has been materially prejudiced thereby, and may order a new inquiry or trial.

*Record of evidence in Supreme Court*

197. The Chief Justice may from time to time, by rules, prescribe the manner in which evidence shall be taken down in cases coming before the Supreme Court, and the judges of such court shall take down the evidence or the substance thereof in accordance with such rules.

## PART VI—PROCEDURE IN TRIALS BEFORE MAGISTRATES' COURTS

### PROVISIONS RELATING TO THE HEARING AND DETERMINATION OF CASES

*Non-appearance of complainant at hearing*

198.—(1) If, in any case which a magistrates' court has jurisdiction to hear and determine, the accused person appears in obedience to the summons served upon him at the time and place appointed in the summons for the hearing of the case, or is brought before the court under arrest, then, if the complainant, having had notice of the time and place appointed for the hearing of the charge, does not appear by himself or by his barrister and solicitor, the court shall dismiss the charge, unless for some reason it shall think it proper to adjourn the hearing of the case until some other date, upon such terms as it shall think fit, in which event it may, pending such adjourned hearing, either admit the accused to bail or remand him to prison, or take such security for his appearance as the court shall think fit.

*(Amended by 24 of 1950, s. 9.)*

(2) The expression "barrister and solicitor" in this section and in sections 200 and 202 shall in relation to a complaint include a public prosecutor.

*(Inserted by 24 of 1950, s. 9.)*

*Court may proceed with hearing in absence of accused in certain cases*

199. Notwithstanding the provisions of section 189, if an accused person charged with any offence punishable with imprisonment for a term not exceeding six months and/or a fine not exceeding one hundred dollars does not appear at the time and place appointed in and by the summons, or by any bond for his appearance that he may have entered into, and his personal attendance has not been dispensed with under section 88, the court may, on proof of the proper service of the summons a reasonable time before, or on production of the bond, as the case may be, proceed to hear and determine the case in the absence of the accused or may adjourn the case and issue a warrant for the arrest of the accused in accordance with the provisions of section 90.

*Appearance of both parties*

200. If at the time appointed for the hearing of the case both the complainant, by himself or by his barrister and solicitor, and the accused person appear before the court which is to hear and determine the charge, or if the complainant appears in the manner aforesaid and the personal attendance of the accused person has been dispensed with under section 88, the court shall proceed to hear the case.

*(Amended by 24 of 1950, s. 10.)*

*Withdrawal of complaint*

201.—(1) The prosecutor may with the consent of the court at any time before a final order is passed in any case under this Part 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 to make his defence, the court shall subject to the provisions of section 210, in its discretion make one or other of the following orders:—

(i) an order acquitting the accused;

(ii) an order discharging the accused.

(3) An order discharging the accused under paragraph (b) (ii) of subsection (2) shall not operate as a bar to subsequent proceedings against the accused person on account of the same facts. *(Section substituted by 24 of 1950, s. 11.)*

*Adjournment*

202. Before or during the hearing of any case, it shall be lawful for the court in its discretion to adjourn the hearing to a certain time and place to be then appointed and stated in the presence and hearing of the party or parties or their respective barristers and solicitors then present, and in the meantime the court may suffer the accused person to go at large, or may commit him to prison, or may release him upon his entering into a recognizance, with or without sureties at the discretion of the court, conditioned for his appearance at the time and place to which such hearing or further hearing is adjourned:

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

*(Proviso substituted by 18 of 1976, s. 7.)*

*Non-appearance of parties after adjournment*

**203.**—(1) If at the time or place to which the hearing or further hearing is adjourned, the accused person does not appear before the court which has made the order of adjournment, such court may, unless the accused person is charged with felony, proceed with the hearing or further hearing as if the accused were present, and if the complainant does not appear the court may dismiss the charge with or without costs as the court shall think fit.

(2) If the accused person who has not appeared as aforesaid is charged with felony, or if the court, in its discretion, refrains from convicting the accused in his absence, the court shall issue a warrant for the apprehension of the accused person and cause him to be brought before the court.

*Conviction in absence of accused may be set aside*

**204.** If the court convicts the accused person in his absence, it may set aside such conviction upon being satisfied that his absence was from causes over which he had no control, and that he had a probable defence on the merits.

*Commencement of sentence passed in absence of accused*

**205.** Any sentence passed under section 199 or 203 shall be deemed to commence from the date of apprehension, and the person effecting such apprehension shall endorse the date thereof on the back of the warrant of commitment.

*Accused to be called upon to plead*

**206.**—(1) The substance of the charge or complaint shall be stated to the accused person by the court, and he shall be asked whether he admits or denies the truth of the charge.

(2) If the accused person admits the truth of the charge, his admission shall be recorded as nearly as possible in the words used by him, and the court shall convict him and pass sentence upon or make an order against him, unless there shall appear to it sufficient cause to the contrary.

(3) If the accused person does not admit the truth of the charge, the court shall proceed to hear the case as hereinafter provided.

(4) If the accused person refuses to plead, the court shall order a plea of "not guilty" to be entered for him.

(5) When a corporation is charged with any offence before a magistrates' court, the corporation may enter in writing by its representative a plea of "guilty" or "not guilty"; and if either the corporation does not appear by representative or, though it does so appear, fails to enter any plea, the court shall cause a plea of "not guilty" to be entered and the trial shall proceed as though the corporation had duly entered a plea of "not guilty".

Where a charge against a corporation is one which may, with the consent of the accused, be tried by a magistrates' court, and the corporation does not appear by representative or if it does so appear, consents that the offence should be so dealt with, the magistrates' court may proceed to try such charge summarily in accordance with the provisions of this Code. A representative for the purposes of this section need not be appointed under the seal of the corporation, and a statement in writing purporting to be signed by a managing director of the corporation, or by any person (by whatsoever 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 that person has been so appointed.

*Procedure in case of previous convictions*

**207.** Where a charge contains a count charging an accused person with having been previously convicted of any offence the procedure shall be the same as the procedure prescribed for the Supreme Court by section 276, with such alterations as may be necessary to make such procedure applicable to the mode of trial in a magistrates' court. (*Inserted by 26 of 1957, s. 6.*)

*Plea of guilty to other offence*

**208.** Where a person is charged with any offence and can lawfully be convicted on such charge of some other offence not included in the charge, he may plead not guilty of the offence charged, but guilty of such other offence.  
(*Inserted by 13 of 1969, s. 25.*)

*Procedure on plea of not guilty*

**209.** If the accused person does not admit the truth of the charge, the court shall proceed to hear the witnesses for the prosecution and other evidence (if any).

The accused person or his barrister and solicitor may put questions to each witness produced against him.

If the accused person does not employ a barrister and solicitor, the court shall, at the close of the examination of each witness for the prosecution, ask the accused person whether he wishes to put any questions to that witness and shall record his answer. (*Amended by 24 of 1950, s. 12.*)

*Acquittal of accused person where no case to answer*

**210.** If at the close of the evidence in support of the charge it appears to the court that a case is not made out against the accused person sufficiently to require him to make a defence, the court shall dismiss the case and shall forthwith acquit the accused. (*Substituted by 24 of 1950, s. 13.*)

*The defence*

**211.—(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, and shall ask him whether he has any witnesses to examine or other evidence to adduce in his defence, and the court shall then hear the accused and his witnesses and other evidence (if any).

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

*Evidence in reply*

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

*Opening and closing of case for prosecution and defence*

213.—(1) The prosecutor shall be entitled to address the court at the commencement of his case and the accused person or his barrister and solicitor shall be entitled to address the court at the commencement of the case for the defence.

(2) If the accused person, whether or not he gives evidence himself, does not call any witness other than himself to give evidence on his behalf, the prosecutor shall, after all the evidence has been given, have the right to address the court first and the accused person may then, either personally or by his barrister and solicitor, make the final address to the court, whether or not the prosecutor has exercised his right to address the court.

(3) If the accused person calls any witness other than himself to give evidence on his behalf, he shall, either personally or by his barrister and solicitor, after all the evidence has been given, have the right to address the court first and the prosecutor may then make the final address to the court, whether or not the right to address the court has been exercised by or on behalf of the accused person.

(Section inserted by 12 of 1971 and amended by 11 of 1974, s. 6.)

*Variance between charge and evidence and amendment of charge*

214.—(1) Where, at any stage of the 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 of the charge, either by way of amendment of the charge or by the substitution or addition of a new charge, as the court thinks necessary to meet the circumstances of the case:

Provided that —

(a) where a charge is altered as aforesaid, the court shall thereupon call upon the accused person to plead to the altered charge;

(b) where a charge is altered under this subsection the accused may demand that the witnesses or any of them be recalled and give their evidence afresh or be further cross-examined by the accused or his barrister and solicitor 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 the charge and the evidence produced in support of it with respect to the date or time at which the alleged offence was committed or with respect to the description, value or ownership of any property or thing the subject of the charge is not material and the charge need not be amended for such variation:

Provided that where the variation is with respect to the date or time at which the alleged offence was committed, the proceedings have in fact been instituted within the time, if any, limited by law for the institution thereof.

(Substituted by 13 of 1969, s. 26.)

(3) Where an alteration of a charge is made under subsection (1) or there is a variance between the charge and the evidence as described in subsection (2), 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.

*The decision*

215. The court having heard both the prosecutor and the accused person and their witnesses and evidence shall either convict the accused and pass sentence upon or make an order against him according to law or shall acquit him or make an order under the provisions of section 44 of the Penal Code. (Cap. 17)

(Substituted by 24 of 1950, s. 14.)

*Consideration of other offences admitted by accused*

216.—(1) Upon a person being convicted of any offence, the court may, if it thinks fit, with his consent and the consent of the prosecutor take into consideration in deciding the sentence to be imposed on such person any other untried offence of a like character which he admits in writing to have committed.

(2) (a) Where it is proposed to proceed under the provisions of subsection (1), particulars of untried offences, within the jurisdiction of the court, shall be set out on the prescribed form and tendered thereto;

(b) The court may then sentence the accused person taking into consideration such admitted offences, whereupon the accused person shall not be tried in respect of them and such admissions shall be an absolute bar to any criminal proceedings in respect thereof. (Section inserted by 13 of 1969, s. 28.)

*Drawing up of conviction or order*

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

*Order of acquittal bar to further procedure*

218. The production of a copy of the order of acquittal, certified by the clerk or other officer of the court, shall, without other proof, be a bar to any subsequent information or complaint for the same matter against the same accused person.

## LIMITATIONS AND EXCEPTIONS RELATING TO TRIALS BEFORE MAGISTRATES' COURTS

*Limitation of time for summary trials in certain cases*

219. Except where a longer time is specially allowed by law, no offence, the maximum punishment for which does not exceed imprisonment for six months or a fine of one hundred dollars or both, shall be triable by a magistrates' court, unless the charge or complaint relating to it is laid within six months from the time when the matter of such charge or complaint arose. (Amended by 26 of 1957, s. 7.)

*Power to stop summary trial and hold preliminary inquiry in lieu*

220. If before or during the course of a trial before a magistrates' court it appears to the magistrate that the case is one which ought to be tried by the Supreme Court or if before the commencement of the trial an application in that behalf is made by a public prosecutor that it shall be so tried, the magistrate shall not proceed with the trial but in lieu thereof he shall hold a preliminary inquiry in

accordance with the provisions hereinafter contained, and in such case the provisions of section 235 shall not apply. (*Substituted by 26 of 1945, s. 3.*)

*Special procedure in minor cases*

**221.**—(1) Notwithstanding any of the other provisions of this Code, a resident magistrate may, if so requested by the public prosecutor—

- (a) try any offence of which the maximum penalty does not exceed a fine of one hundred dollars or imprisonment for six months or both such fine and imprisonment;
  - (b) try any offence under the provisions of the Traffic Act, whereunder the endorsement of, or disqualification from holding, a driving licence may be ordered either with or without a fine not exceeding one hundred dollars or imprisonment not exceeding six months or both such fine and imprisonment; (*Cap. 176*)
  - (c) hear any proceedings under the provisions of sections 32, 33, 34, 35 or 41;
  - (d) try any offence under the provisions of sections 244, 262, 281, 282, 283 or subsection (1) of section 324 of the Penal Code; (*Cap. 17*)
  - (e) try any offence under the provisions of the Minor Offences Act, (*Cap. 18*)
- in the manner provided in this section: (*Inserted by 18 of 1976, s. 8.*)

Provided that no person may be so tried if in the opinion of the court he is under the age of seventeen years. (*Substituted by 13 of 1969, s. 29.*)

(2) Upon the trial or hearing of any offence or proceedings to which the provisions of this section apply, the provisions of this Code shall be modified as hereinafter set out. (*Amended by 13 of 1969, s. 29.*)

(3) It shall be sufficient for the purposes of section 190 relating to the manner of recording evidence if the magistrate records the names of the witnesses and such notes, if any, on the evidence as he considers desirable.

(4) Where the accused being charged in terms of section 206 makes a statement admitting the truth of the charge, the magistrate may, instead of recording the accused's statement in full, enter in the record a plea of guilty.

(5) It shall be sufficient compliance with the provisions of section 155 relating to the contents of the judgment if the magistrate's judgment consists only of his finding and sentence or other final order:

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

(6) The magistrate shall if requested by the accused or his barrister and solicitor or by the public prosecutor record a sufficient note of any question of law and of any relevant evidence relating thereto, which may arise during the trial or hearing of any offence or proceedings under the provisions of this section.

(7) The maximum penalty which may be imposed on the trial of an offence under the provisions of this section shall be a fine of sixty dollars or three month's imprisonment in lieu thereof.

(8) A magistrate trying any offence under the provisions of this section shall have power—

- (a) to order the endorsement of a driving licence; or
- (b) to make an order under the provisions of section 41 or 42 of the Penal Code or of section 36 or 41, (*Cap. 17*)



in any case where such an order could have been made if the case had been heard otherwise than under the provisions of this section.

(Section inserted by 24 of 1950, s. 15, and amended by 26 of 1957, s. 8 and 13 of 1969, s. 29 and 16 of 1973, s. 7.)

*Committal by resident magistrate to Supreme Court for sentence.*

222.—(1) Where a person, being not less than seventeen years of age, is tried by a resident magistrate for any offence, and such person is convicted by such magistrate of that offence, or of any other offence of which he is liable to conviction under the provisions of this Code then, if, on obtaining information as to his character and antecedents, the magistrate is of opinion that they are such that greater punishment should be inflicted in respect of the offence than the magistrate has power to inflict, the magistrate may, in lieu of dealing with him in any manner in which the magistrate has power to deal with him, commit him in custody or on bail to the Supreme Court for sentence in accordance with the following provisions of this section. (Amended by 16 of 1973, s. 8.)

(2) Where the offender is so committed for sentence as aforesaid the following provisions shall have effect, that is to say:—

(a) the Supreme Court shall enquire into the circumstances of the case, and shall have power to deal with the offender in any manner in which he could be dealt with if he had been convicted by the Supreme Court; and

(b) if dealt with by the Supreme Court the offender shall have the same right of appeal to the Fiji Court of Appeal as if he had been convicted and sentenced by the Supreme Court;

(Amended by 37 of 1959, s. 5.)

(c) the Supreme Court, after hearing counsel for the Crown if he desires to be heard, may remit the accused for sentence, in custody or on bail, to the magistrate which originally committed the accused for sentence, and thereafter the accused shall be dealt with by such court and shall have the same right of appeal as if no such committal to the Supreme Court had been made. (Inserted by 37 of 1959, s. 5.)

## PART VII—PROVISIONS RELATING TO THE COMMITAL OF ACCUSED PERSONS FOR TRIAL BEFORE THE SUPREME COURT

### PRELIMINARY INQUIRY BY MAGISTRATES' COURTS

*Power to commit for trial*

223. Any magistrate may commit any person for trial to the Supreme Court. (Amended by Order, 4th November, 1970.)

*Court to hold preliminary inquiry*

224. Whenever any charge has been brought against any person of an offence not triable by a magistrates' court or as to which the magistrate is of opinion that it ought to be tried by the Supreme Court or where an application in that behalf has been made by a public prosecutor a preliminary inquiry shall be held, according to the provisions hereinafter contained, by a magistrates' court, locally and otherwise competent. (Substituted by 26 of 1945, s. 4.)

*Charge to be read over to accused*

225. 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 that he will have an opportunity later on in the inquiry of making a statement if he so desires, and shall further explain to the accused the purpose of the proceedings, namely to determine whether there is sufficient evidence to put him on his trial by the Supreme Court. (*Amended by 24 of 1950, s. 16.*)

*Depositions*

226.—(1) When the accused person charged with such an offence comes before a magistrates' court, on summons or warrant or otherwise, the court shall, in his presence, take down in writing, or cause to be so taken down, the statements on oath of those who are competent to be sworn and the statements of any other witnesses whose evidence may lawfully be received.

Statements of witnesses so taken down in writing are termed depositions.

(2) The accused person may put questions to each witness produced against him, and the answer of the witness thereto shall form part of such witness's depositions.

(3) If the accused person does not employ a barrister and solicitor, the court shall, at the close of the examination of each witness for the prosecution, ask the accused person whether he wishes to put any questions to that witness.

(4) As the statement of each witness taken down under this section is completed, it shall be read over to him in the presence of the accused and shall, if necessary, be corrected.

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

(6) If the statement is taken down in a language different from that in which it has been given, and the witness does not understand the language in which it is taken down, the statement shall be interpreted to him in a language which he understands.

(7) The depositions of each witness shall then be signed by him and by the magistrate holding the inquiry.

*Variance between evidence and charge*

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

*Remand*

228. If, from the absence of witnesses or any other reasonable cause to be recorded in the proceedings, the court considers it necessary or advisable to adjourn the inquiry, the court may from time to time by warrant remand the accused for a reasonable time, not exceeding fifteen clear days at any one time, to

some prison or other place of security. Or, if the remand is for not more than three days, the court may by word of mouth order the officer or person in whose custody the accused person is, or any other fit officer or person, to continue to keep the accused in his custody, and to bring him up at the time appointed for the commencement or continuance of the inquiry.

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

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

*Provisions as to taking statement or evidence of accused person*

**229.**—If, after 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.

*(Amended by 24 of 1950, s.17.)*

(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.

*Evidence and address in defence*

**230.**—(1) Immediately after complying with the requirements of section 229 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 court shall ask him whether he desires to call witnesses on his own behalf.

(2) The court 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 recognizance 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 court is satisfied that the absence of such witnesses is not due to any fault or neglect of the accused person, and that there is a likelihood that they could, if present, give material evidence on behalf of the accused person, the court may adjourn the inquiry and issue process, or take other steps, to compel the attendance of such witnesses, and on their attendance shall take their depositions and bind them by recognizance in the same manner as witnesses under subsection (2).

(4) In any preliminary inquiry under this Part, the accused person or his barrister and solicitor shall be at liberty to address the court—

- (a) after the examination of the witnesses called on behalf of the prosecution;
- (b) if no witnesses for the defence are to be called, immediately after the statement or evidence of the accused person;
- (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 barrister and solicitor addresses the court in accordance with the provisions of paragraph (a) or (c) of subsection (4) 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 court shall ask him whether he intends to call 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 court shall thereupon record the names and addresses of any such witnesses whom he may mention.

*Discharge of accused person*

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

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

*Power to apply to Supreme Court for committal in certain cases where accused person discharged*

232.—(1) In any case where a magistrates' court shall discharge an accused person on a preliminary inquiry, the court shall, if required so to do by the Director of Public Prosecutions, transmit forthwith to him the record of the proceedings and if the Director of Public Prosecutions on considering the evidence shall be of opinion that the accused person ought not to have been discharged, it shall be lawful for him to apply to a judge of the Supreme Court for a warrant for the arrest and committal for trial of the accused person; and if the judge shall be of opinion that the evidence, as given before the magistrates' court, was sufficient to put the accused person on his trial, it shall be lawful for him to issue a warrant for the arrest of the accused person and for his committal to prison for trial, there to be kept until discharge in due course of law or admitted to bail and any person so proceeded against shall be further prosecuted in the same manner as if he had been committed for trial by the magistrates' court which discharged him and for the purposes of the other provisions of this Code the said magistrates' court shall be deemed to have committed him for trial.

(2) An application under subsection (1) may not be made after the expiry of six months from the date of discharge.

(3) For the purpose of taking recognizances under section 236 the magistrates' court shall have in relation to any person required to be bound over under the section aforesaid all the powers vested in the court for compelling the attendance of witnesses.

(4) The officer in charge of a prison shall inform any person committed to such prison under the provisions of subsection (1) of his rights under sections 238 and 239, and notwithstanding the other provisions of this Code, the magistrates' court shall not be required so to inform him. (*Inserted by 27 of 1953, s. 2.*)

*Commitment for trial*

233.—(1) If the court considers the evidence sufficient to put the accused person on his trial, the court shall commit him for trial to the Supreme Court and shall, until the trial, either admit him to bail or send him to prison for safe-keeping. The warrant of such first-named court shall be sufficient authority to the officer in charge of any prison appointed for the custody of prisoners committed for trial.

(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 Director of Public Prosecutions 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.

*Rules as to alibi*

234. (1) On a trial before the Supreme Court the defendant 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 defendant shall not without the leave of the Court call any other person to give such evidence unless—

- (a) the notice under that subsection includes the name and address of the witness, or, if the name or address is not known to the defendant 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 or the address is not included in that notice, the Court is satisfied that the defendant, before giving the notice, took and thereafter continued to take all reasonable steps to secure that the name or address would be ascertained;
- (c) if the name or the address is not included in that notice, but the defendant 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; and
- (d) if the defendant 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 defendant was not informed 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 defendant by his barrister and solicitor shall, unless the contrary is proved, be deemed to be given with the authority of the defendant.

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

(7) In this section—

“evidence in support of an alibi” means evidence tending to show that by reason of the presence of the defendant 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 fourteen days from the end of the preliminary inquiry before the magistrate.

(Section inserted by 18 of 1976, s. 9)

*Summary adjudication*

235.—(1) If, at the close of or during the inquiry, it shall appear to the magistrates' court that the offence charged or, where the evidence discloses some offence other than that charged, any such other offence disclosed, is of such a nature that it may suitably be dealt with under the powers possessed by the court, the court may, subject to the provisions of section 4 and Part VI, hear and finally determine the matter.

(2) The powers conferred on a court by subsection (1) shall, in the event of any offence having been disclosed other than the offence charged, include the power to draw up and sign a formal charge as if a complaint had been made under section 78.

(3) A court dealing with a case under the provisions of this section may act on the evidence which has already been recorded before it or may recall all or any of the witnesses for further examination:

Provided that in every 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.

(Substituted by 26 of 1957, s. 10.)

*Complainant and witnesses to be bound over*

236. When the accused person is committed for trial before the Supreme Court, the magistrates' court committing him shall bind by recognizance, with or without surety or sureties, as it may deem requisite, the complainant and every witness to appear at the trial to give evidence, and also to appear and give evidence if required, at any further examination concerning the charge which may be held by direction of the Director of Public Prosecutions.

*Refusal to be bound over*

237. If a person refuses to enter into such recognizance, the court may commit him to prison or into the custody of any officer of the court, there to remain until

after the trial, unless in the meantime he enters into a recognizance. But if afterwards, from want of sufficient evidence or other cause, the accused is discharged, the court shall order that the person imprisoned for so refusing be also discharged.

*Accused entitled to copy of depositions*

238. A person who has been committed for trial before the Supreme Court shall be entitled at any time before the trial to have a copy of the depositions on payment of such fee as may be determined by the Chief Justice or, if the court thinks fit, without payment.

When such person is not represented by a barrister and solicitor, the court shall at the time of committing him for trial inform him of his rights under the provisions of this section. (*Substituted by 11 of 1972, s. 5.*)

*Binding over of witnesses conditionally*

239.—(1) Where any person charged before a magistrates' court with an offence triable upon information before the Supreme Court is committed for trial, and it appears to such magistrates' 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 magistrates' 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 Director of Public Prosecutions or the person committed for trial may give notice at any time before the opening of the sessions of the Supreme Court to the committing magistrates' court and at any time thereafter to the Chief Registrar of the Supreme Court that he desires the witness to attend at the trial, and any such court or Chief Registrar to whom any such notice is given shall forthwith notify the witness that he is required so to attend in pursuance of his recognizance.

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

(3) Any documents or articles produced in evidence before the magistrates' 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 magistrates' court otherwise orders, be retained by the magistrates' court and forwarded with the depositions to the Chief Registrar of the Supreme Court.

## PRESERVATION OF TESTIMONY IN CERTAIN CASES

*Taking the depositions of persons dangerously ill*

**240.** Whenever it appears to any magistrate that any person dangerously ill or hurt and not likely to recover is able and willing to give material evidence relating to any offence triable by the Supreme Court, and it shall not be practicable to take the deposition in accordance with the provisions of this Code of the person so ill or hurt, such magistrate may take in writing the statement on oath or affirmation of such person, and shall subscribe the same, and certify that it contains accurately the whole of the statement made by such person, and shall add a statement of his reason for taking the same, and of the date and place when and where the same was taken, and shall preserve such statement and file it for record.

*Notice to be given*

**241.** If the statement relates or is expected to relate to an offence for which any person is under a charge or committal for trial, reasonable notice of the intention to take the same shall be served upon the prosecutor and the accused person, and if the accused person is in custody he shall be brought by the person in whose charge he is, under an order in writing of the magistrate, to the place where the statement is to be taken.

*Transmission of statements*

**242.** If the statement relates to an offence for which any person is then or subsequently committed for trial, it shall be transmitted to the Chief Registrar of the Supreme Court, and a copy thereof shall be transmitted to the Director of Public Prosecutions.

*Use of statement in evidence*

**243.** Such statement so taken may afterwards be used in evidence on the trial of any person accused of an offence to which the same relates, if the person who made the statement be dead, or if the court is satisfied that for any sufficient cause his attendance cannot be procured, and if reasonable notice of the intention to take such statement was served upon the person (whether prosecutor or accused person) against whom it is proposed to be read in evidence, and he had or might have had, if he had chosen to be present, full opportunity of cross-examining the person making same.

## PROCEEDINGS AFTER COMMITTAL FOR TRIAL

*Transmission of records to Supreme Court and Director of Public Prosecutions*

**244.** In the event of a committal for trial the written charge (if any), the depositions, the statement of the accused person, the recognizances of the complainant and of the witnesses, the recognizances of bail (if any), and any documents or things which have been put in evidence, shall be transmitted without delay by the committing court to the Chief Registrar of the Supreme Court, and an authenticated copy of the depositions and statement aforesaid shall be supplied to the Director of Public Prosecutions by the Chief Registrar.

*Power of Director of Public Prosecutions to direct further investigation*

**245.** If, after receipt of the authenticated copy of the depositions and statement provided for by section 244 and before the trial before the Supreme



Court, the Director of Public Prosecutions is of opinion that further investigation is required before such trial, it shall be lawful for the Director of Public Prosecutions to direct that the original depositions be remitted to the court which committed the accused person for trial, and such court may thereupon reopen the case and deal with it in all respects as if such person had not been committed for trial as aforesaid; and if the case be one which may suitably be dealt with under the powers possessed by such court, it may, if thought expedient by the court, be so tried and determined accordingly.

*Powers of Director of Public Prosecutions as to additional witnesses*

246. If, after receipt of the authenticated copy of the depositions and statement as aforesaid and prior to the trial before the Supreme Court, the Director of Public Prosecutions is of the opinion that there is, in any case committed for trial, any material or necessary witness for the prosecution or the defence who has not been bound over to give evidence on the trial of the case, the Director of Public Prosecutions may require the magistrates' court which committed the accused person for trial to take the depositions of such witness and compel his attendance either by summons or by warrant as hereinbefore provided.

*Return of depositions with a view to summary trial*

247. If, prior to the trial before the Supreme Court, the Director of Public Prosecutions is of the opinion, upon perusing the record of the depositions received by him, that the case is one which may be suitably tried by a magistrates' court on a charge of any offence disclosed by such depositions, he may cause the depositions to be returned to the court which committed the accused person for trial. The Director of Public Prosecutions when causing the depositions to be returned as aforesaid may direct that the accused be tried on any charge which in his opinion is disclosed by the depositions either in addition to or in substitution for the offence upon which the accused was originally committed for trial, and upon receipt of such direction the magistrate shall try the accused accordingly, as if he had not been committed for trial:

Provided that where the charge upon which the accused is so directed to be tried by the committing court is the same as the charge upon which he was committed for trial and the magistrate who takes cognizance of such case after the return of the depositions to the Court is the same as the magistrate who committed the accused for trial, the provisions of subsection (3) of section 235 shall apply.

*(Substituted by 37 of 1959, s. 6.)*

*Filing of an information*

248.—(1) If, after the receipt of the authenticated copy of the depositions as aforesaid, the Director of Public Prosecutions is of the opinion that the case is one which should be tried upon information before the Supreme Court, an information shall be drawn up in accordance with the provisions of this Code, and when signed by the Director of Public Prosecutions shall be filed in the registry of the Supreme Court.

(2) In any such information the Director of Public Prosecutions 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*

249. The Chief Registrar or his deputy shall endorse on or annex to every information filed as aforesaid, and to every copy thereof delivered to the officer of the court or police officer for service thereof, a notice of trial, which notice shall specify the particular sessions of the Supreme Court at which the accused person is to be tried on the said information, and shall be in the following form, or as near thereto as may be:

"A.B.

Take notice that you will be tried on the information whereof this is a true copy at the sessions of the Supreme Court to be held at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_."

*Copy of information and notice of trial to be served*

250. The Chief Registrar shall deliver or cause to be delivered to the officer of the court or police officer serving the information a copy thereof with the notice of trial 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 police officer aforesaid shall, as soon as may be after having received the copy or copies of the information and notice or notices of trial, and three days at least before the day specified therein for trial, by himself or his deputy or other officer, deliver to the accused person or persons committed for trial the said copy or copies of the information and notice or notices, and explain to him or them the nature and exigency thereof; and when any accused person shall have been admitted to bail and cannot readily be found, he shall leave a copy of the said information and notice of trial with someone of his household for him at his dwelling-house or with someone of his bail for him, and if none such can be found, shall affix the said copy and notice to the outer or principal door of the dwelling-house or dwelling-houses of the accused person or of any of his bail:

Provided always that nothing herein contained shall prevent any person committed for trial, and in custody at the opening of or during any sessions of the Supreme Court, from being tried thereat, if he shall express his assent to be so tried and no special objection be made thereto on the part of the Crown.

*Return of service*

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

*Postponement of trial*

252.—(1) It shall be lawful for the Supreme Court upon the application of the prosecutor or the accused person, if the court considers that there is sufficient cause for the delay, to postpone the trial of any accused person to the next sessions of the court held in the Division or some other convenient place, or to a subsequent session, and to respite the recognizances of the complainant and witnesses, in which case the respited recognizances shall have the same force and effect as fresh recognizances 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 the last preceding subsection.

*Information by Director of Public Prosecutions*

253. All informations drawn up in pursuance of section 248 shall be in the name of and (subject to the provisions of section 72) signed by the Director of Public Prosecutions and when so signed shall be as valid and effectual in all respects as an indictment in England which has been signed by the proper officer of the court in accordance with the Administration of Justice (Miscellaneous Provisions) Act, 1933 of the United Kingdom.

*Form of information*

254. Every information shall bear date of the day when the same is signed, and, with such modifications as shall be necessary to adapt it to the circumstances of each case, may commence in the following form:—

THE QUEEN v. A. B.  
In the Supreme Court of Fiji.  
At the Sessions holden at  
on the                      day of                      , 19                      .

INFORMATION BY THE DIRECTOR OF PUBLIC PROSECUTIONS  
A. B. is charged with the following offence (or offences):—

## PART—VIII

(Inserted by 11 of 1972, s. 6.)

## COMMITTAL PROCEEDINGS

*Committal for trial without oral evidence*

255.—(1) A magistrate conducting a preliminary inquiry, in this Part hereinafter referred to as committal proceedings, may, notwithstanding the provisions of section 224, if satisfied that all the evidence before the court (whether for the prosecution or the defence) consists of written statements tendered to the court under section 256, with or without exhibits, commit the defendant for trial for the offence without consideration of the contents of those statements, unless—

- (a) the defendant or one of the defendants is not represented by a barrister and solicitor;
- (b) a barrister and solicitor for the defendant or one of the defendants, as the case may be, has requested the court to consider a submission that the statements disclose insufficient evidence to put that defendant on trial for the offence.

(2) Sections 225, 226, 227, 229 and 230 shall not apply to a committal for trial under this section.

*Requirements for the admissibility of written statements*

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

(2) The conditions referred to in subsection (1) shall be as follows:—

- (a) the statement purports to be signed by the person who made it;
- (b) the statement contains a declaration by that person to the effect that it is

true to the best of his knowledge and belief and that he made the statement knowing that, if it were tendered in evidence, he would be liable to prosecution if he wilfully stated in it anything which he knew to be false or did not believe to be true;

- (c) before the hearing at which the statement is tendered in evidence, a copy of the statement is given, by or on behalf of the party proposing to tender it, to each of the other parties to the proceedings; and
- (d) none of the other parties, before the statement is tendered in evidence at the committal proceedings, objects to the statement being so tendered under this section.

(3) The following provisions shall also have effect in relation to any written statement tendered in evidence under this section:—

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

(4) Notwithstanding that a written statement made by any person may be admissible in committal proceedings by virtue of this section, the court before which the proceedings are held may, of its own motion and shall, on the application of any party to the proceedings, require that person to attend before the court and give evidence.

(5) So much of any statement as is admitted in evidence by virtue of this section shall, unless the court commits the defendant for trial by virtue of section 255 or the court otherwise directs, be read aloud at the hearing, and where the court so directs an account shall be given orally of so much of any statements as is not read aloud.

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

(7) Section 290 shall apply to any written statement tendered in evidence in committal proceedings, as it applies to a deposition taken in such proceedings, but in its application to any such statement that subsection shall have effect as if paragraph (b) thereof were omitted.

(8) Subsection (3) of section 235 shall not apply to any such statement as aforesaid.

(9) A person whose written statement is tendered in evidence in committal proceedings under this section shall be treated for the purposes of sections 236 and 239 as a witness who has been examined by the court.

#### *Reports of committal proceedings*

257.—(1) Except as provided by subsections (2) and (3), it shall not be lawful to publish in Fiji a written report, or to broadcast in Fiji a report, of any committal

proceedings in Fiji containing any matter other than that permitted by subsection (4).

(2) A magistrates' court shall, on an application for the purpose made with reference to any committal proceedings by the defendant or one of the defendants, as the case may be, order that subsection (1), shall not apply to reports of those proceedings.

(3) It shall not be unlawful under this section to publish or broadcast a report of committal proceedings containing any matter other than that permitted by subsection (4)—

(a) where the magistrates' court determines not to commit the defendant or the defendants for trial, after it so determines;

(b) where the court commits the defendant or any of the defendants for trial, after the conclusion of his trial or, as the case may be, the trial of the last to be tried.

(4) The following matters may be contained in a report of committal proceedings published or broadcast without an order under subsection (2) before the time authorised by the last foregoing subsection, that is to say—

(a) the identity of the court and the name of the magistrate;

(b) the names, addresses and occupations of the parties and witnesses and the ages of the defendant or defendants and witnesses;

(c) the offence or offences, or a summary of them, with which the defendant or defendants is or are charged;

(d) the names of barristers and solicitors engaged in the proceedings;

(e) any decision of the court to commit the defendant or any of the defendants for trial, and any decision of the court on the disposal of the case of any defendants not committed;

(f) where the court commits the defendants or any of the defendants for trial, the charge or charges, or a summary of them, on which he is committed and the court to which he is committed;

(g) where the committal proceedings are adjourned, the date and place to which they are adjourned;

(h) any arrangements as to bail on committal or adjournment;

(i) whether legal aid was granted to the defendant or any of the defendants.

(5) If a report is published or broadcast in contravention of this section, the following persons, that is to say—

(a) in the case of a publication of a written report as part of a newspaper or periodical, any proprietor, editor or publisher of the newspaper or periodical;

(b) in the case of a publication of a written report otherwise than as part of a newspaper or periodical, the person who publishes it;

(c) in the case of a broadcast of a report, any body corporate which transmits or provides the programme in which the report is broadcast and any person having functions in relation to the programme corresponding to those of the editor of a newspaper or periodical;

shall be liable on conviction to a fine not exceeding one thousand dollars.

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

(7) Subsection (1) shall be in addition to, and not in derogation from the provisions of any other written law with respect to the publication of reports and proceedings of magistrates' and other courts.

*Clerk to display notice*

258. Where a magistrates' court conducting committal proceedings commits any person for trial or determines to discharge him, the clerk of the court shall, on the day on which the committal proceedings are concluded or the next day, cause to be displayed in a part of the court house to which the public have access a notice—

- (a) in either case giving that person's name, address, and age (if known);
- (b) in a case where the court so commits him, stating the charge or charges on which he is committed and the court to which he is committed;
- (c) in a case where the court determines to discharge him, describing the offence charged and stating that it has so determined.

*Reporting*

259. Any report in a newspaper, and any broadcast report, of committal proceedings in a case where publication is permitted by virtue only of subsection (3) of section 257, published as soon as practicable after it is so permitted, shall be treated for the purposes of section 13 of the Defamation Act as having been published or broadcast contemporaneously with the committal proceedings.

(Cap. 34)

*Signing of depositions by magistrate*

260. A magistrate who signs a certificate authenticating one or more depositions or statements tendered under section 256 shall be treated for the purposes of paragraph (b) of section 290 as signing that deposition or statement or each of those depositions and statements.

*False evidence*

261. If any person in a written statement tendered in evidence in criminal proceedings by virtue of section 256 wilfully makes a statement material in those proceedings which he knows to be false or does not believe to be true, he shall be liable on conviction to imprisonment for a term not exceeding two years or to a fine or both such imprisonment and fine.

## PART IX—PROCEDURE IN TRIALS BEFORE THE SUPREME COURT

### GENERAL

*Practice of Supreme Court in its criminal jurisdiction*

262. The practice of the Supreme Court in its criminal jurisdiction shall be assimilated as nearly as circumstances will admit to the practice of Her Majesty's High Court of Justice in its criminal jurisdiction and of Courts of Oyer and Terminer and General Gaol Delivery in England.

### MODE OF TRIAL

*Trials before Supreme Court to be with assessors*

263.—(1) Trials before the Supreme Court shall be by a judge sitting with assessors as hereinafter prescribed.

(2) The number of assessors shall be not less than two, and in capital cases not less than four. (Section amended by 35 of 1961, s. 6.)

## LIST OF ASSESSORS

*Preparation of Lists of Assessors*

264.—(1) The Chief Justice shall designate a magistrate at each place at which sessions of the Supreme Court are ordinarily held who shall, during the month of May, 1951, and at intervals of two years thereafter or at such other times as the Chief Justice may direct, prepare a list of persons ordinarily resident within ten miles of the court house who are liable to serve as assessors setting out the name and surname and the occupation and place of abode of each person, and shall cause a copy to be posted on the court house for a period of not less than three weeks and to be published in two issues of the Gazette.

(2) After the posting and publication of the list referred to in subsection (1) the magistrate shall send the list to the Chief Justice or to such other judge as the Chief Justice may direct who shall revise the list and shall, upon any evidence which may be adduced before him or of his own knowledge, information and belief, strike out from the list the name of any person therein included who is not liable to serve, or add to the list the name of any person who is liable to serve, as an assessor.

(3) The revision of the lists shall take place on a date to be notified in the Gazette, and any person may appear at the revision either personally or by his barrister and solicitor and claim that his name should be added to or excluded from a list.

(4) Each list when revised shall be signed by the Chief Justice or other judge referred to in subsection (2) and shall be published in the Gazette and shall be used as the list of assessors for the purposes of any trial by the Supreme Court at the place in respect of which it was prepared from the date of such publication until the date of publication of the next list for such place.

(5) A judge of the Supreme Court may at any time on being satisfied that any person on the list is not liable to serve as an assessor cause the name of such person to be removed from the List of Assessors.

(6) In the event of a sessions of the Supreme Court being held at any place where such sessions are not ordinarily held, the Chief Justice shall give such directions as he may consider to be necessary and desirable for the preparation and publication of a list of persons liable to serve as assessors for the purpose of the sessions.

(7) A list prepared in accordance with the foregoing provisions of this section is referred to as a List of Assessors.

*(Substituted by 24 of 1950, s. 18, and amended by 25 of 1961, s. 9 and 13 of 1969, s. 2.)*

*Liability to service*

265. Subject to the exemptions and disqualifications hereinafter contained every person, male or female, between the ages of twenty-one and sixty years resident in Fiji having a competent knowledge of the English language shall be liable to serve as an assessor at any trial held by the Supreme Court within Fiji:

Provided that the Chief Justice may from time to time make rules regulating the area within which a person may be summoned to serve as an assessor.

*(Amended by 35 of 1961, s. 10.)*

*Exemptions*

**266.** The following persons shall be exempted from liability to serve as assessors:—

- (a) the Governor-General;
- (b) the Chief Justice and the Puisne Judges of the Supreme Court;
- (c) the Speaker of the House of Representatives and the President of the Senate;
- (d) the Prime Minister, Minister, and members of the House of Representatives and the Senate;
- (e) the Secretary to the Cabinet and the Clerks to the House of Representatives and the Senate;
- (f) the mayor of any city or town;
- (g) persons exempted under the provisions of any other written law;
- (h) magistrates, all officers and staff of the Judicial Department, the Director of Public Prosecutions and the Crown Law Office of the Government of Fiji;
- (i) persons registered in any register kept under the provisions of the Medical and Dental Practitioners Act or any Act amending or replacing the same; (Cap. 255)
- (j) any veterinary surgeon registered under the provisions of the Veterinary Surgeons Act or any Act amending or replacing the same; (Cap. 257)
- (k) barristers and solicitors in actual practice and their clerks;
- (l) members of Her Majesty's military or air forces;
- (m) members and civilian staff of the Royal Fiji Police Force, the Prisons Service and the Aerodromes Fire Service;
- (n) such other persons as may be exempted by the Minister by notice in the Gazette.

(Substituted by 13 of 1966 s. 33 and amended by Orders 7th October, 1970 and 4th November, 1970 and by 18 of 1976 s. 10.)

*Disqualifications*

**267.** Each of the following persons shall be disqualified from serving as an assessor:—

- (a) persons disabled by mental or physical infirmity;
- (b) persons who have been convicted of any offence punishable with imprisonment for more than five years and have not received a free pardon. (Substituted by 13 of 1969 s. 34.)

## ATTENDANCE OF ASSESSORS

*Summoning of assessors*

**268.**—(1) The Chief Registrar of the Supreme Court shall ordinarily, at least seven days before the trial of any criminal case by the Supreme Court or before the first trial of two or more cases to be tried consecutively, summon from among the persons whose names appear on the List of Assessors for the place at which the trial or trials are to be held as many persons as he shall consider necessary to sit as assessors. Such persons shall, subject to the directions of the Chief Justice, be summoned in rotation in the order in which their names appear in the said list.

(Substituted by 16 of 1973 s. 9.)



(2) Upon every assessor summons served upon a woman there shall appear a notice that she may apply to the Chief Registrar of the Supreme Court for exemption from attendance as an assessor on account of pregnancy or other feminine condition or ailment provided that such application is received by the Chief Registrar within 3 days of the receipt of the assessor summons by the applicant. (*Inserted by 35 of 1961, s. 14.*)

*Form of summons*

**269.**—(1) Every summons to an assessor shall be in writing, and shall require his attendance as an assessor, at a time and place to be therein specified.

(2) The Supreme Court or the Chief Registrar of the Supreme Court may in its or his discretion exempt from attendance any woman who has been summoned to serve as an assessor, if it or he is satisfied by medical certificate or otherwise that on account of pregnancy or some other feminine condition or ailment she is, or will be, unfit to serve. (*Substituted by 16 of 1973 s. 10.*)

*Excuses*

**270.** The Supreme Court or the Chief Registrar of the Supreme Court may for reasonable cause excuse any assessor from attendance at any particular sessions, and the Supreme Court may, if it thinks fit, at the conclusion of any trial, direct that the assessors who have served at such trial shall not be summoned to serve again as assessors for a period of twelve months or for such longer period as the court may allow.

(*Amended by 35 of 1961, s. 16 and 16 of 1973 s. 11.*)

*List of assessors attending*

**271.**—(1) At each sessions the Supreme Court shall cause to be made a list of the names of those who have attended as assessors at such sessions, and such list shall be kept with the list of the assessors as revised under section **264**.

(*Amended by 35 of 1961, s. 17.*)

(2) A reference shall be made in the margin of the said revised list to each of the names which are mentioned in the list prepared under this section.

*Penalty for non-attendance of assessor*

**272.**—(1) Any person summoned to attend as an assessor who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Supreme Court, or fails to attend after adjournment of the court after being ordered to attend, shall be liable by order of the Supreme Court to a fine not exceeding forty dollars.

(2) Such fine unless paid shall be levied by a resident or second class magistrate by attachment and sale of any movable property belonging to such assessor within the local limits of the jurisdiction of such magistrate.

(*Amended by 35 of 1961, s. 18.*)

(3) For good cause shown, the Supreme Court may remit or reduce any fine so imposed.

(4) In default of recovery of the fine by attachment and sale an assessor may, by order of the Supreme Court, be imprisoned as a civil prisoner for a term of fifteen days unless such fine is paid before the end of the said term.

(*Amended by 35 of 1961, s. 18.*)

## ARRAIGNMENT

*Pleading to information*

273.—(1) The accused person to be tried before the Supreme Court upon an information shall be placed at the bar unfettered, unless the court shall see cause otherwise to order, and the information shall be read over to him by the Chief Registrar or other officer of the court, and explained if need be by that officer or interpreted by the interpreter of the court, and such accused person shall be required to plead instantly thereto, unless, where the accused person is entitled to service of a copy of the information, he shall object to the want of such service, and the court shall find that he has not been duly served therewith.

(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 representative or, though it does so appear, fails to enter any plea, the court shall cause a plea of "not guilty" to be entered.

A representative for the purposes of this section need not be appointed under the seal of the corporation, and a statement in writing purporting to be signed by a managing director of the corporation, or by any person (by whatsoever 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 that person has been so appointed.

*Orders for amendment of information, separate trial, and postponement of trial*

274.—(1) Every objection to any information for any formal defect on the face thereof shall be taken immediately after the information has been read over to the accused person and not later.

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

(3) Where an information is so amended, a note of the order for amendment shall be endorsed on the information, and the information shall be treated for the purposes of all proceedings in connexion therewith as having been filed in the amended form.

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

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

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

- (a) if such order is made during a trial the court may order that the assessors are to be discharged from giving opinions on the count or counts the trial of which is postponed, or on the information, as the case may be; and (*Substituted by 35 of 1961, s. 19.*)
  - (b) the procedure on the separate trial of a count shall be the same in all respects as if the count had been found in a separate information, and the procedure on the postponed trial shall be the same in all respects (provided that the assessors, if any, have been discharged) as if the trial had not commenced; and
  - (c) the court may make such order as to admitting the accused to bail, and as to the enlargement of recognizances and otherwise as the court thinks fit.
- (7) Any power of the court under this section shall be in addition to and not in derogation of any other power of the court for the same or similar purposes.

*Quashing of information*

275. If any information does not state, and cannot by any amendment authorised by section 274 be made to state, any offence of which the accused has had notice, it shall be quashed either on a motion made before the accused pleads or on a motion made in arrest of judgment.

A written statement of every such motion shall be delivered to the Chief Registrar or other officer of the court by or on behalf of the accused and shall be entered upon the record.

*Procedure in case of previous convictions*

276. Where an information contains a count charging an accused person with having been previously convicted of any offence, the procedure shall be as follows:—

- (a) the part of the information stating the previous conviction shall not be read out in court, nor shall the accused be asked whether he has been previously convicted as alleged in the information, unless and until he has either pleaded guilty to or been convicted of the subsequent offence;
- (b) if he pleads guilty to or is convicted of the subsequent offence, he shall then be asked whether he has been previously convicted as alleged in the information;
- (c) if he answers that he has been so previously convicted, the judge may proceed to pass sentence on him accordingly; but if he denies that he has been so previously convicted, or refuses to or does not answer such question, the court and the assessors shall then hear evidence concerning such previous conviction:

*(Substituted by 35 of 1961, s. 20.)*

Provided, however, that if upon the trial of any person for any such subsequent offence such person shall give evidence of his own good character, it shall be lawful for the barrister and solicitor for the prosecution, in answer thereto, to give evidence of the conviction of such person for the previous offence or offences before a verdict is returned, and the court and assessors, shall inquire concerning such previous conviction or convictions at the same time that they inquire concerning such subsequent offence. (*Amended by 35 of 1961, s. 20.*)

*Plea of "not guilty"*

277. Every accused person, upon being arraigned upon any information, by pleading generally thereto the plea of "not guilty" shall, without further form, be deemed to have put himself upon the country for trial.

*Plea of guilty to other offence*

278. Where a prisoner is arraigned on an information for any offence, and can lawfully be convicted on such information of some other offence not charged in such information, he may plead not guilty of the offence charged in the information, but guilty of such other offence.

*(Inserted by 13 of 1969 s.35.)*

*Plea of autrefois acquit and autrefois convict*

279. Any accused person against whom an information is filed may plead—

(a) that he has been previously convicted or acquitted, as the case may be, of the same offence; or

(b) that he has obtained the Queen's pardon for his offence.

If either of such pleas are pleaded in any case and denied to be true in fact, the court shall try whether such plea is true in fact or not.

If the court holds that the facts alleged by the accused do not prove the plea, or if it finds that it is false in fact, the accused shall be required to plead to the information.

*Refusal to plead*

280. If any accused person being arraigned upon any information stands mute of malice, or neither will, nor by reason of infirmity can, answer directly to the information, the court, if it thinks fit, shall order the Chief Registrar or other officer of the court to enter a plea of "not guilty" on behalf of such accused person, and the plea so entered shall have the same force and effect as if such accused person had actually pleaded the same; or else the court shall thereupon proceed to try whether the accused person be of sound or unsound mind, and, if he shall be found of sound mind, shall proceed with the trial, and if he shall be found of unsound mind, and consequently incapable of making his defence, shall order the trial to be postponed and the accused person to be kept meanwhile in safe custody in such place and manner as the court thinks fit, and shall report the case for the order of the Governor-General.

The Governor-General may order such accused person to be confined in a mental hospital, prison, or other suitable place for safe custody.

*Plea of "guilty"*

281. If the accused pleads "guilty" the plea shall be recorded and he may be convicted thereon.

*Proceedings after plea of "not guilty"*

282. If the accused pleads "not guilty", or if a plea of "not guilty" is entered in accordance with the provisions of section 273 or 280, the court shall proceed to choose assessors, as hereinafter directed, and to try the case:

Provided that, subject to the right of objection hereinafter mentioned, the same assessors may aid in the trial of as many accused persons successively as the court thinks fit.

*(Amended by 35 of 1961, s. 21.)*

*Power to postpone or adjourn proceedings*

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

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

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

## ASSESSORS

*Selection of assessors*

284.—(1) In each trial the court shall select two or more, and in capital cases not less than four, persons from the list of those summoned to serve as assessors at the sessions.

(2) The court before which a case is or may be heard may, in its discretion on an application made by or on behalf of the prosecution or the accused, or at its own instance, make an order that the assessors shall consist of men only or of women only as the case may require or may, on an application made by a woman to be exempted from service as an assessor in respect of any case by reason of the nature of the evidence to be given, grant such exemption.

(Inserted by 35 of 1961, s. 24.)

*Absence of an assessor*

285. If, at any time before the finding, any assessor is from any sufficient cause prevented from attending throughout the trial, or absents himself, and it is not practicable immediately to enforce his attendance, the trial shall proceed with the aid of the other assessors:

Provided that the proceedings shall be stayed and a new trial shall be held with the aid of fresh assessors unless at least two, and in capital cases at least four, assessors remain in attendance after an assessor has absented himself or been prevented from attending or has for any reason been discharged by the court.

(Amended by 13 of 1969, s. 36.)

*Assessors to attend at adjourned sittings*

286. If the trial is adjourned, the assessors shall be required to attend at the adjourned sitting, and at any subsequent sitting until the conclusion of the trial.

## CASE FOR THE PROSECUTION

*Opening of case for prosecution*

287. When the assessors have been chosen and sworn, the barrister and solicitor for the prosecution shall open the case against the accused person, and shall call witnesses and adduce evidence in support of the charge.

(Amended by 35 of 1961, s. 26.)

*Additional witnesses for prosecution*

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

The notice must state the witness's name and address and the substance of the evidence which he intends to give. The court shall determine what notice is reasonable, regard being had to the time when and the circumstances under which the prosecution became acquainted with the nature of the witness's evidence and determined to call him as a witness:

Provided that when the plan of a surveyor or the report of a medical officer or other witness has been put in during the proceedings at the preliminary inquiry, and the surveyor, medical officer or other witness himself is called at the Supreme Court trial, notice of the evidence of such surveyor, medical officer or other witness shall not be required to be given to the accused person.

*Cross-examination of witnesses for the prosecution*

**289.** The witnesses called for the prosecution shall be subject to cross-examination by the accused person or his barrister and solicitor, and to re-examination by the barrister and solicitor for the prosecution.

*Depositions may be read as evidence in certain cases*

**290.** Where any person has been committed for trial for any offence, the deposition of any person taken before the committing magistrates' court may, if the conditions hereinafter set out are satisfied, without further proof be read as evidence on the trial of that person, whether for that offence or for any other offence arising out of the same transaction, or set of circumstances, as that offence.

The conditions hereinbefore referred to are the following:—

- (a) the deposition must be the deposition either of a witness whose attendance at the trial is stated to be unnecessary in accordance with the provisions of section 239, or of a witness who is proved at the trial by oath of a creditable witness to be absent from Fiji or dead or insane, or so ill as not to be able to travel, or to be kept out of the way by means of the procurement of the accused or on his behalf, or to be unable to attend for any other sufficient cause;
- (b) the deposition must purport to be signed by the magistrate before whom it purports to have been taken:

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

- (i) that the deposition was not in fact signed by the magistrate by whom it purports to have been signed; or
- (ii) where the deposition is that of a witness whose attendance at the trial is stated to be unnecessary as aforesaid, that the witness has been duly notified that he is required to attend the trial.

*Deposition of medical witness may be read as evidence*

**291.** The deposition of a Government analyst or of a medical practitioner, taken and attested by a magistrate in the presence of the accused person, may, with the consent of the accused person or his barrister and solicitor, be read as evidence although the deponent is not called as a witness:

Provided that the court may, if it thinks fit, summon and examine such deponent as to the subject-matter of his deposition.

(Amended by 27 of 1953, s. 3, and 4 of 1955, s. 6.)

*Statement of accused*

**292.** The statement or evidence (if any) of the accused person duly recorded by or before the committing magistrate, 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*

**293.**—(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, if necessary, any arguments which the barrister and solicitor for the prosecution or the defence may desire to submit, record a finding of not guilty. (Amended by 35 of 1961, s. 27.)

(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 barrister and solicitor (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 barrister and solicitor (if any), 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. If such accused person says that he does not mean to give evidence or make an unsworn statement, or to adduce evidence, then the barrister and solicitor for the prosecution may sum up the case against such accused person. If such accused person says that he means to give evidence or make an unsworn statement, or to adduce evidence, the court shall call upon such accused person to enter upon his defence.

CASE FOR THE DEFENCE

*The defence*

**294.** The accused person or his barrister and solicitor 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 barrister and solicitor may examine his witnesses (if any), and after their cross-examination and re-examination (if any) may sum up his case.

*Additional witness for the defence*

**295.** 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.

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

*Evidence in reply*

**296.** If the accused person adduces evidence in his defence introducing new matter which the barrister and solicitor for the prosecution could not have foreseen, the court may allow the barrister and solicitor for the prosecution to adduce evidence in reply to rebut the said matter.

*Prosecutor's reply*

**297.** If the accused person, or any of several accused persons, adduces any evidence, the barrister and solicitor for the prosecution shall subject to the provisions of section 147 be entitled to reply.

*Where accused adduces no evidence*

**298.** If the accused person says that he does not mean to give or adduce evidence and the court considers that there is evidence that he committed the offence, the barrister and solicitor for the prosecution shall then, subject to the provisions of section 147, sum up the case against the accused person and the court shall then call on the accused person personally or by his barrister and solicitor to address the court on his own behalf.

*Delivery of opinions by assessors*

**299.**—(1) When the case on both sides is closed, the judge shall sum up and shall then require each of the assessors to state his opinion orally, and shall record such opinion. (*Amended by 35 of 1961, s. 31 and 16 of 1973, s. 12.*)

(2) The judge shall then give judgment, but in doing so shall not be bound to conform to the opinions of the assessors:

Provided that, notwithstanding the provisions of subsection (1) of section 155, where the judge's summing up of the evidence under the provisions of subsection (1) is on record, it shall not be necessary for any judgment, other than the decision of the court which shall be written down, to be given, nor for any such judgment, if given, to be written down or to follow any of the procedure laid down in section 154 or to contain or include any of the matters prescribed by section 155, except that, when the judge does not agree with the majority opinion of the assessors, he shall give his reasons, which shall be written down and be pronounced in open court, for differing with such majority opinion and in every such case the judge's summing up and the decision of the court together with, where appropriate, the judge's reasons for differing with the majority opinion of the assessors, shall collectively be deemed to be the judgment of the court for the purposes of this subsection and of section 157. (*Proviso inserted by 16 of 1973, s. 12.*)

(3) If the accused person is convicted, the judge shall pass sentence on him according to law.

(4) Nothing in this section shall be read as prohibiting the assessors, or any of them, from retiring to consider their opinions if they so wish, or, during any such retirement or at any time during the trial, from consultation with one another.



## PASSING SENTENCE

*Calling upon the accused*

**300.** If the judge convicts the accused person, or if the accused person pleads guilty, it shall be the duty of the Chief Registrar or other officer of the court to ask him whether he has anything to say why sentence should not be passed upon him according to law, but the omission so to ask him shall have no effect on the validity of the proceedings. (*Amended by 35 of 1961, s. 33.*)

*Motion in arrest of judgment*

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

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

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

*Sentence*

**302.** If no motion in arrest of judgment is made, or if the court decides against the accused person upon such motion, the court may sentence the accused person at any time during the session.

*Power to reserve decision on question raised at trial*

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

*Power to reserve decision on questions arising in the course of trial*

**304.**—(1) When any person has, in a trial before the Supreme Court, been convicted of an offence, the judge may reserve for further consideration any question which has arisen in the course of the trial, and the determination of which would affect the event of the trial.

(2) If the judge reserves any such question, the person convicted shall, pending the decision thereon, be remanded to prison or, if the judge thinks fit, be admitted to bail; and upon such further consideration of the question so reserved the judge may affirm or quash the conviction.

*Objections cured by verdict*

**305.** No judgment shall be stayed or reserved on the ground of any objection, which if stated after the information was read over to the accused person, or during the progress of the trial, might have been amended by the court, nor because of any error committed in summoning or swearing the assessors or any of them; nor because any person who has served as an assessor was not qualified to sit as an assessor, nor because of any objection which might have been stated as a ground of challenge of any of the assessors, nor for any informality in swearing the witnesses or any of them.

*Evidence for arriving at proper sentence*

306. 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.

*Consideration of other offence admitted by accused*

307. Upon a person being convicted of any offence the court may, if it thinks fit, with his consent and the consent of the prosecutor take into consideration in deciding the sentence to be imposed on such person any other untried offence of a like character which the accused admits having committed.

(Inserted by 13 of 1969, s. 37.)

## PART X—APPEALS FROM MAGISTRATES' COURTS

*Appeals.**Appeal to Supreme Court*

308.—(1) Save as hereinafter provided, any person who is dissatisfied with any judgment, sentence or order of a magistrates' court in any criminal cause or matter to which he is a party may appeal to the Supreme Court against such judgment, sentence or order:

Provided that no appeal shall lie against an order of acquittal except by, or with the sanction in writing of, the Director of Public Prosecutions.

(2) Where any sentence is passed or order made by a magistrate's court in respect of any person who is not represented by a barrister and solicitor he shall be informed by the magistrate of his right of appeal at the time when sentence is passed or the order made. (Substituted by 13 of 1969, s. 38.)

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

(4) For the purposes of this Part the extent of a sentence shall be deemed to be a matter of law.

(5) The Director of Public Prosecutions shall be deemed to be a party to any criminal cause or matter in which the proceedings were instituted and carried on by a public prosecutor. (Subsections (4) and (5) inserted by 11 of 1952, s. 2.)

*Limitation of appeal on plea of guilty and in petty cases*

309.—(1) No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on such plea by a magistrates' court, except as to the extent or legality of the sentence.

(2) Save with the leave of the Supreme Court, no appeal shall be allowed in a case in which a magistrates' court has passed a sentence of a fine not exceeding ten dollars only, notwithstanding that a sentence of imprisonment has been passed by such court in default of the payment of such fine, if no substantive sentence of imprisonment has also been passed.

(3) No conviction or sentence, which would not otherwise be liable to appeal, shall be appealable merely on the ground that the person convicted is ordered to find security to keep the peace. (Amended by 24 of 1950, s. 22.)

*Appeal to be by way of petition*

**310.**—(1) Every appeal shall be in the form of a petition in writing signed by the appellant or his barrister and solicitor and shall be presented to the magistrates' court from the decision of which the appeal is lodged within twenty-eight days of the date of the decision appealed against:

Provided that the magistrates' court or the Supreme Court may, at any time, for good cause, enlarge the period of limitation prescribed by this section.

(2) For the purposes of this section and without prejudice to its generality "good cause" shall be deemed to include—

- (a) a case where the barrister and solicitor engaged by the appellant was not present at the hearing before the magistrates' court and for that reason requires further time for the preparation of the petition;
- (b) any case in which a question of law of unusual difficulty is involved;
- (c) a case in which the sanction of the Director of Public Prosecutions is required by virtue of section 308;
- (d) the inability of the appellant or his barrister and solicitor to obtain a copy of the judgment or order appealed against, and a copy of the record, within a reasonable time of applying to the court therefor.

(Section substituted by 11 of 1952, s. 3 and enacted by 27 of 1953, s. 4 and 18 of 1976, s. 11.)

*Form and contents of petition*

**311.**—(1) Every petition shall contain in a concise form the grounds upon which it is alleged that the magistrates' court from the decision of which the appeal is lodged has erred.

(2) If the appellant is not represented by a barrister and solicitor the petition may be prepared by or under the directions of the magistrates' court.

(3) If the appellant is in prison custody and is not represented by a barrister and solicitor the petition may be prepared by the officer in charge of the prison and forwarded by him to the magistrate.

(4) Additional grounds of appeal may be filed by leave of the Supreme Court at any time not later than three days before the date fixed for the hearing of the appeal in accordance with section 314.

(5) Where two or more persons have been jointly tried and convicted and their interests do not conflict one petition of appeal may be presented on behalf of all of them:

Provided that in such a case the Supreme Court may hear the appeals separately or together as seems just.

(6) Except by leave of the Supreme Court it shall not be lawful for the appellant on the hearing of the appeal to allege or give evidence on any ground of appeal not included in the petition or in the additional grounds, if any, filed under subsection (4).

(7) If the case is one which requires the leave of the Supreme Court under section 309 the application for leave to appeal shall be endorsed on the petition.

(8) For the purpose of considering or preparing a petition of appeal a person entitled to appeal or his barrister and solicitor or an officer in charge of a prison shall be entitled to peruse the original record of the proceedings at such time as the Chief Registrar or the magistrates' court may allow.

(Section substituted by 11 of 1952, s. 3 and amended by 27 of 1953, s. 5.)

*Petition to be forwarded to the Supreme Court*

**312.** Upon receiving a petition of appeal the magistrate shall forthwith forward the petition of appeal together with the record of the proceedings to the Chief Registrar of the Supreme Court. (*Substituted by 11 of 1952, s. 3.*)

*Summary dismissal of appeal*

**313.**—(1) When the Supreme Court has received the petition of appeal and the record of proceedings a judge shall peruse the same.

(2) Where an appeal is brought on the grounds that the decision is unreasonable or cannot be supported having regard to the evidence or that the sentence is excessive and it appears to the judge that the evidence is sufficient to support the conviction and that there is no material in the circumstances of the case which could raise a reasonable doubt whether the conviction was right or lead him to the opinion that the sentence ought to be reduced, the appeal may, without being set down for hearing be summarily dismissed by an order of the judge certifying that he has perused the record and is satisfied that the appeal has been lodged without any sufficient ground of complaint.

(3) Whenever an appeal is summarily dismissed notice of such dismissal shall forthwith be given by the Chief Registrar of the Supreme Court to the appellant or his advocate.

(*Section substituted by 11 of 1952, s. 3 and amended by 27 of 1953, s. 6.*)

*Notice of hearing*

**314.** If the Supreme Court does not dismiss the appeal summarily the Chief Registrar shall—

- (a) enter the appeal for hearing;
- (b) serve a notice of hearing on the parties;
- (c) supply the respondent with a copy of the petition and a copy of the judgement or order appealed against;
- (d) except when the appeal is against sentence only, supply the respondent with a copy of the proceedings;
- (e) where additional grounds of appeal are filed by the appellant under the provisions of subsection (4) of section 311, serve notice on the respondent of such filing and supply the respondent with a copy of the document containing such additional grounds of appeal.

(*Section substituted by 11 of 1952, s. 3 and amended by 27 of 1953, s. 7.*)

*Admission to bail or suspension of sentence pending appeal*

**315.**—(1) Where a convicted person presents or declares his intention of presenting a petition of appeal the Supreme Court or the court which convicted such person may if in the circumstances of the case it thinks fit, order that he be released on bail, with or without sureties, or if such person is not released on bail shall, at the request of such person, order that the execution of the sentence or order against which the appeal is pending be suspended pending the determination of the appeal. If such order be made before the petition of appeal is presented and no petition is presented within the time allowed the order for bail or suspension shall forthwith be cancelled.

(2) Where the appellant is released on bail or the sentence is suspended, the time during which he is at large after being so released or during which the sentence

has been suspended shall be excluded in computing the term of any sentence to which he is for the time being subject.

(3) An appellant whose sentence is suspended but who is not admitted to bail shall during the period of such suspension be treated in like manner as a prisoner awaiting trial. (*Substituted by 27 of 1953, s. 8.*)

*Suspension of sentence of corporal punishment*

316. If a person sentenced to corporal punishment signs a statement that he does not intend to appeal against his conviction or sentence, his right to appeal shall be deemed to have been abandoned and shall, notwithstanding the provisions of any other written law thereupon cease, and the sentence may, if duly confirmed by the Supreme Court under section 34 of the Penal Code, be carried out forthwith, but otherwise shall be suspended until the time for presenting an appeal under section 310 has elapsed, or if an appeal is lodged until the appeal has been finally determined. (Cap. 17)

(*Substituted by 11 of 1952, s. 3 and amended by 16 of 1973, s. 13.*)

*Costs*

317.—(1) The Supreme Court may make such order as to the costs to be paid by either party to an appeal as may seem just.

(2) Such costs shall be recoverable in the manner provided by section 36 of the Penal Code. (*Substituted by 11 of 1952, s. 3.*) (Cap. 17)

*Discontinuance of appeal*

318.—(1) An appellant may by giving notice in writing to the Chief Registrar discontinue his appeal at any time before the date of hearing and, upon such discontinuance and without prejudice to the power of the Supreme Court to make an order for costs, no further steps shall be taken in the appeal, and the magistrates' court may proceed to enforce the decision appealed from.

(2) The Chief Registrar shall send to the respondent a copy of the notice of discontinuance. (*Substituted by 11 of 1952, s. 3.*)

*Powers of Supreme Court*

319.—(1) At the hearing of an appeal, the Supreme Court shall hear the appellant or his barrister and solicitor, if he appears, and the respondent or his barrister and solicitor, if he appears, and the Director of Public Prosecutions or his representative, if he appears, and the Supreme Court may thereupon confirm, reverse or vary the decision of the magistrate's court, or may remit the matter with the opinion of the Supreme Court thereon to the magistrate's court, or may order a new trial, or may order trial by a court of competent jurisdiction, or may make such other order in the matter as to it may seem just, and may by such order exercise any power which the magistrate's court might have exercised:

Provided that—

(a) the Supreme Court may, notwithstanding that it is of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred;

(b) the Supreme Court shall not order a new trial in any appeal against an order of acquittal.

(2) At the hearing of an appeal whether against conviction or against sentence, the Supreme Court may, if it thinks that a different sentence should have been passed, quash the sentence passed by the magistrate's court and pass such other sentence warranted in law, whether more or less severe, in substitution therefor as it thinks ought to have been passed.

*(Section substituted by 13 of 1969, s. 39.)*

*Further evidence*

**320.**—(1) In dealing with an appeal from a magistrates' court the Supreme Court, if it thinks additional evidence is necessary, may either take such evidence itself or direct it to be taken by a magistrates' court.

(2) When the additional evidence is taken by a magistrates' court, such court shall certify such evidence to the Supreme Court, which shall thereupon proceed to dispose of the appeal.

(3) Evidence taken in pursuance of this section shall be taken as if it were evidence taken at a trial before a magistrates' court.

*Order of the Supreme Court to be certified to lower court*

**321.**—(1) When a case is decided on appeal by the Supreme Court, it shall certify its judgment or order to the court by which the judgment, sentence or order appealed against was recorded or passed.

(2) The court to which the Supreme Court certifies its judgment or order shall thereupon make such orders as are conformable to the judgment or order of the Supreme Court, and shall take such steps as may be necessary to enforce such judgment or order.

*Right of appellant to be present*

**322.** An appellant, notwithstanding that he is in custody, shall be entitled to be present, if he desires it, at the hearing of the appeal.

*Revision*

*Power of Supreme Court to call for records*

**323.** The Supreme Court may call for and examine the record of any criminal proceedings before any magistrates' court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such magistrates' court.

*Power of magistrates to call for records of inferior courts and to report to the Supreme Court*

**324.**—(1) Any magistrate may call for and examine the record of any criminal proceedings before a court of a class inferior to the court which he is empowered to hold, and situate within the local limits of his jurisdiction, for the purpose of satisfying himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior magistrates' court.

(2) If any magistrate acting under subsection (1) considers that any finding, sentence or order of such inferior magistrates' court is illegal or improper, or that any such proceedings are irregular, he shall forward the record, with such remarks thereon as he thinks fit, to the Supreme Court.

*Powers of Supreme Court on revision*

**325.**—(1) In the case of any proceedings in a magistrates' court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the Supreme Court may—

(a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 319 and 320 and may enhance the sentence;

(b) in the case of any other order other than an order of acquittal, alter or reverse such order.

(2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by a barrister and solicitor in his own defence.

(3) The Supreme Court shall not inflict a greater punishment for the offence, which in the opinion of the Supreme Court the accused has committed, than might have been inflicted by the court which imposed the sentence.

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

(5) Where an appeal lies from any finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

*Discretion of court as to hearing parties*

**326.** No party has any right to be heard either personally or by barrister and solicitor 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 barrister and solicitor, and that nothing in this section shall be deemed to affect subsection (2) of section 325.

*Number of judges in revision*

**327.** All proceedings before the Supreme Court in the exercise of its revisional jurisdiction may be heard and any judgment or order thereon may be made or passed by one judge:

Provided that when such court is composed of more than one judge and the court is equally divided in opinion, the sentence or order of the magistrates' court shall be upheld.

*Supreme Court order to be certified to lower court*

**328.** When a case is revised by the Supreme Court it shall certify its decision or order to the court by which the sentence or order so revised was recorded or passed, and the court to which the decision or order is so certified shall thereupon make such orders as are conformable to the decision so certified, and shall take such steps as may be necessary to enforce such decision or order.

*Case Stated**Case stated by magistrates' court*

**329.**—(1) After the hearing and determination by any magistrates' court of any summons, charge or complaint, either party to the proceedings before the said magistrates' court may, if dissatisfied with the said determination as being erroneous in point of law, or as being in excess of jurisdiction, apply in writing

within one month from the date of the said determination, including the day of such date, to the said magistrates' court to state and sign a special case setting forth the facts and the grounds of such determination for the opinion thereon of the Supreme Court.

(2) Upon receiving any such application the magistrate shall forthwith draw up the special case and transmit the same to the Chief Registrar of the Supreme Court together with a certified copy of the conviction, order or judgment appealed from and all documents alluded to in the special case and the provisions of section 315 shall thereupon apply. (*Amended by 4 of 1955, s. 7.*)

*Appellant entitled to copy of stated case*

330. The appellant shall be entitled upon payment of such fee as may be determined by the Chief Justice to obtain from the Chief Registrar of the Supreme Court a copy of the stated case: (*Amended by 13 of 1969 s. 40.*)

Provided that no charge shall be made for a copy of the stated case supplied to the Director of Public Prosecutions under this section.

*Notice of time and place of hearing*

331. Upon receipt of the stated case the Chief Registrar of the Supreme Court shall set down the case for hearing and shall cause notice to be given to the appellant or his barrister and solicitor, and to the respondent or his barrister and solicitor, of the time and place at which such appeal will be heard, and shall furnish the respondent or his barrister and solicitor with a copy of the stated case.

*Magistrate may refuse case when he thinks application frivolous*

332. If the magistrate be of opinion that the application is merely frivolous, but not otherwise, he may refuse to state a case, and shall, on the request of the appellant, sign and deliver to him a certificate of such refusal:

Provided that the magistrate shall not refuse to state a case when the application for that purpose is made to him by or under the direction of the Director of Public Prosecutions who may require a case to be stated with reference to proceedings to which he was not a party.

*Procedure on refusal of magistrate to state case*

333. When a magistrate has refused to state a case as aforesaid it shall be lawful for the appellant to apply to the Supreme Court within one month of such refusal, upon an affidavit of the facts, for a rule calling upon such magistrate and also upon the respondent to show cause why such case should not be stated, and the Supreme Court may make the same absolute or discharge it, with or without payment of costs, as to the court shall seem fit, and the magistrate, upon being served with such rule absolute, shall state a case accordingly, upon the appellant entering into such recognizance as is hereinbefore provided.

*Supreme Court to determine the questions on the case; its decision to be final*

334.—(1) The Supreme Court shall (subject to the provisions of section 335) hear and determine the question or questions of law arising on the case stated, and shall thereupon reverse, affirm or amend the determination in respect of which the case has been stated, or remit the matter to the magistrates' court with the opinion of the Supreme Court thereon, or may make such other order in relation to the



matter, and may make such order as to costs, as to the court may seem fit, and all such orders shall be final and conclusive on all parties:

Provided always that no magistrate who shall state and deliver a case in pursuance of this Part or *bona fide* refuse to state one shall be liable to any costs in respect or by reason of such appeal against his determination or refusal.

(2) Any costs awarded under this section shall be recoverable in the manner provided by section 36 of the Penal Code. (Cap. 17)

(Amended by 4 of 1955, s. 9.)

*Case may be sent back for amendment or rehearing*

335. The Supreme Court shall have power, if it thinks fit—

- (a) to cause the case to be sent back for amendment or restatement, and thereupon the same shall be amended or restated accordingly, and judgment shall be delivered after it has been so amended or restated;
- (b) to remit the case to the magistrates' court for rehearing and determination with such directions as it may deem necessary.

*Orders of the Supreme Court to be certified to lower court*

336.—(1) When a stated case is decided by the Supreme Court it shall certify its judgment or order to the court in relation to whose determination the case has been stated.

(2) The court to which the Supreme Court certifies its judgment or order shall thereupon make such orders as are conformable to the judgment or order of the Supreme Court, and shall take such steps as may be necessary to comply with or enforce such judgment or order.

*Appellant may proceed both by case stated and by appeal*

337. No person who has appealed under section 308 shall be entitled to have a case stated, and no person who has applied to have a case stated shall be entitled to appeal under section 308.

*Contents of case stated*

338. A case stated by a magistrate shall set out—

- (a) the charge, summons, information or complaint;
- (b) the facts found by the magistrates' court to be admitted or proved, or where the question or one of the questions on which the opinion of the Supreme Court is sought is whether there was evidence on which the magistrates' court could come to its decision, a sufficient statement of the evidence;
- (c) any submission of law made by or on behalf of the complainant during the trial or inquiry;
- (d) any submission of law made by or on behalf of the accused during the trial or inquiry;
- (e) the finding and, in the case of conviction, the sentence of the magistrates' court;
- (f) any question or questions of law which the magistrate or any of the parties may desire to be submitted for the opinion of the Supreme Court;
- (g) any question of law which the Director of Public Prosecutions may require to be submitted for the opinion of the Supreme Court.

*Constitution of court hearing case stated*

339. A case stated for the opinion of the Supreme Court shall be heard by one judge unless the Chief Justice shall otherwise direct.

*Supreme Court may enlarge time*

340. The Supreme Court may, if it deems fit, enlarge any period of time prescribed by sections 329 or 333.

## PART XI—SUPPLEMENTARY PROVISIONS

### IRREGULAR PROCEEDINGS

*Proceedings in wrong place*

341. 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.

*No appeal on point of form or matter of variance*

342. No finding, sentence or order passed by a magistrates' court of competent jurisdiction shall be reserved or altered on appeal or revision on account of any objection to any information, complaint, summons or warrant for any alleged defect therein in matter of substance or form or for any variance between such information, complaint, summons or warrant and the evidence adduced in support thereof, unless it be found that such objection was raised before the magistrates' court whose decision is appealed from, nor unless it be found that, notwithstanding it was shown to the magistrates' court that by such variance the appellant had been deceived or misled, such magistrates' court refused to adjourn the hearing of the case to a future day:

Provided that if the appellant was not at the hearing before the magistrates' court represented by a barrister and solicitor, the Supreme Court may allow any such objection to be raised.

### DIRECTIONS IN THE NATURE OF HABEAS CORPUS AND WRITS

*Power to issue directions of the nature of habeas corpus*

343.—(1) The Supreme Court may whenever it thinks fit direct—

- (a) that any person within the limits of Fiji be brought up before the court to be dealt with according to law;
- (b) that any person illegally or improperly detained in public or private custody within such limits be set at liberty;
- (c) that any prisoner detained in any prison situate within such limits be brought before the court to be there examined as a witness in any matter pending or to be inquired into in such court;

- (d) that any prisoner detained as aforesaid be brought before a court-martial or any commissioners acting under the authority of any commission from the Governor-General for trial or to be examined touching any matter pending before such court-martial or commissioners respectively;
  - (e) that any prisoner within such limits be removed from one custody to another for the purpose of trial; and
  - (f) that the body of a defendant within such limits be brought in on a return of *cepi corpus* to writ of attachment.
- (2) The Chief Justice may from time to time frame rules to regulate the procedure in cases under this section.

*Power of the Supreme Court to issue writs*

344.—(1) The Supreme Court may in the exercise of its criminal jurisdiction issue any writ which may be issued by the High Court of Judicature in England.

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

MISCELLANEOUS

*Persons before whom affidavits may be sworn*

345. Affidavits and affirmations to be used before the Supreme Court may be sworn and affirmed before a judge of the Supreme Court or any magistrate or the Chief Registrar or Deputy Registrar of the Supreme Court or any commissioner for oaths.

*Shorthand notes and typewritten records of proceedings*

346. Shorthand notes may be taken of the proceedings at the trial of any person before the Supreme Court, or such proceedings may be recorded by means of a typewriter in court, and a transcript of such shorthand notes shall be made if the court so directs. Such transcript of shorthand notes or typewritten record shall for all purposes be deemed to be the official record of the proceedings of such trial:

Provided that—

- (a) where the trial judge has taken a verbatim note of any part of such proceedings, and such note conflicts with or is not included in the transcript or typewritten record, the judge's note shall to that extent be deemed to be the official record; and
- (b) when the trial judge has taken a note other than a verbatim note and there is any material conflict between such note and the transcript or typewritten record, the judge's note shall prevail in respect of the matter as to which there is such conflict.

(Substituted by 37 of 1959, s. 8.)

*Copies of proceedings*

347. If any person affected by any judgment or order passed in any proceedings under this Code desires to have a copy of the judgment or order or any deposition or other part of the record, he shall on applying for such copy be furnished therewith provided he pays for the same, unless the court for some special reason thinks fit to furnish it free of cost.

*Forms*

348. Such forms as the Chief Justice may from time to time prescribe by rules, with such variation as the circumstances of each case may require, may be used for the respective purposes therein mentioned, and if used shall be sufficient. In the absence of such rules the forms in use at the commencement of this Code may continue to be used until other provision is made by such rules.

*Expenses of assessors, witnesses, etc.*

349. Subject to any rules which may be made by the Chief Justice, any court may order payment on the part of the Government of the reasonable expenses of any assessor, complainant or witness attending before such court for the purposes of any inquiry, trial or other proceeding under this Code.

(Amended by 35 of 1961, s. 35.)

*Application of Code to Rotuma*

350. This Code shall, in its application to Rotuma, be subject to the provisions of the Rotuma Act.

(Cap. 122)

**FIRST SCHEDULE**

(Section 2)

(Substituted by 11 of 1974 s. 7.)

**OFFENCES UNDER THE PENAL CODE**

*Explanatory Note.*—The entries in the second and fourth columns of this Schedule, headed respectively “Offence” and “Punishment under the Penal Code”, are not intended as definitions of the offences and punishments described in the several corresponding sections of the Penal Code or even as abstracts of those sections, but merely as references to the subject of the section, the number of which is given in the first column.

1	2	3	4	5
Section	Offence	Whether the police may arrest without warrant or not	*Punishment under the Penal Code	Court by which or class of magistrate by whose court an offence is triable, in addition to the Supreme Court
21	Aiding, abetting, counselling or procuring the commission of an offence.	May arrest without warrant if arrest for the offence aided, abetted, counselled or procured may be made without warrant but not otherwise.	Same punishment as for the offence aided, abetted, counselled or procured.	Any court by which the offence aided, abetted, counselled or procured would be triable.

\* (N.B.—Under section 28 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment, vide also section 47 of the Penal Code.)

1	2	3	4	5
Section	Offence	Whether the police may arrest without warrant or not	*Punishment under the Penal Code	Court by which or class of magistrate by whose court an offence is triable, in addition to the Supreme Court

## DIVISION I—OFFENCES AGAINST PUBLIC ORDER

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

50	Treason.	May arrest without warrant.	Death.	
51	Instigating foreign invasion.	ditto	ditto	
52	Misprision of treason.	ditto	Imprisonment for life.	
53	Treasonable felony.	ditto	ditto	
55	Inciting to mutiny.	ditto	ditto	
56	Aiding in acts of mutiny.	Shall not arrest without warrant.	Imprisonment for two years.	Resident or second class magistrate.
57	Inducing desertion.	ditto	Imprisonment for six months.	Any court.
58 (a)	Aiding prisoner of war to escape.	May arrest without warrant.	Imprisonment for life.	
(b)	Permitting prisoner of war to escape.	Shall not arrest without warrant.	Imprisonment for two years.	Resident or second class magistrate.
62 (1)	Importing, etc., publication the importation of which is prohibited.	May arrest without warrant.	Imprisonment for two years and a fine of \$200.	Resident or second class magistrate.
(1)	Importing etc., publication the importation of which is prohibited (after previous conviction).	ditto	Imprisonment for three years.	Resident magistrate.
(2)	Possession of publication the importation of which is prohibited.	May arrest without warrant.	Imprisonment for one year and a fine of \$100.	Resident or second class magistrate.
(2)	Possession of publication the importation of which is prohibited (after previous conviction).	ditto	Imprisonment for two years.	Resident or second class magistrate.
63	Failure to deliver publication the importation of which is prohibited to police station.	ditto	Imprisonment for one year and a fine of \$100.	Resident or second class magistrate.
66 (1)	Sedition.	ditto	Imprisonment for two years and a fine of \$200.	With the consent of the accused, resident or second class magistrate.
(1)	Sedition (after previous conviction).	ditto	Imprisonment for three years.	With the consent of the accused, resident magistrate.
(2)	Possession of seditious publication.	ditto	Imprisonment for one year and a fine of \$100.	Resident or second class magistrate.

\* (N.B.—Under section 28 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment, vide also section 47 of the Penal Code.)

1	2	3	4	5
Section	Offence	Whether the police may arrest without warrant or not	*Punishment under the Penal Code	Court by which or class of magistrate by whose court an offence is triable, in addition to the Supreme Court
(2)	Possession of seditious publication (after previous conviction).	ditto	Imprisonment for two years.	Resident or second class magistrate.
67	Publishing, etc., prohibited newspaper.	Shall not arrest without warrant.	Imprisonment for six months and a fine of \$200.	Any court.
68	Failure to deliver prohibited publication to police officer.	May arrest without warrant.	Imprisonment for one year and a fine of \$200.	Resident or second class magistrate.

## CHAPTER VIII—GENOCIDE

69 (2)	Genocide.	May arrest without warrant.	(a) Death. (b) Imprisonment for fourteen years.
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## CHAPTER IX—OFFENCES AFFECTING RELATIONS WITH FOREIGN STATES AND EXTERNAL TRANQUILLITY

70	Defamation of foreign princes.	Shall not arrest without warrant.	Imprisonment for two years.	Resident or second class magistrate.
71	Foreign enlistment.	ditto	ditto	Resident or second class magistrate.
72	Piracy.	May arrest without warrant.	Imprisonment for life.	
73	Hijacking.	ditto	ditto	
76	Aircraft sabotage.	ditto	ditto	

## CHAPTER IX—UNLAWFUL ASSEMBLIES, RIOTS AND OTHER OFFENCES AGAINST PUBLIC TRANQUILLITY

80	Managing unlawful society.	May arrest without warrant.	Imprisonment for seven years.	Resident magistrate.
81	Being a member of unlawful society.	ditto	Imprisonment for three years.	Resident magistrate.
87	Unlawful assembly.	ditto	Imprisonment for one year.	Resident or second class magistrate.
88	Riot.	ditto	Imprisonment for two years.	Resident or second class magistrate.
91	Rioting after proclamation.	ditto	Imprisonment for five years.	Resident magistrate.
92	Obstructing proclamation.	ditto	Imprisonment for ten or five years.	Resident magistrate.
93	Rioters destroying buildings, etc.	ditto	Imprisonment for life.	With the consent of the accused, resident magistrate.
94	Rioters damaging buildings, etc.	ditto	Imprisonment for seven years.	Resident magistrate.
95	Riotously interfering with railway, vehicle or vessel.	ditto	Imprisonment for two years.	Resident or second class magistrate.
96	Carrying offensive weapons.	ditto	ditto	Resident or second class magistrate.

\* (N.B.—Under section 28 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment, *vide* also section 47 of the Penal Code.)

1	2	3	4	5
Section	Offence	Whether the police may arrest without warrant or not	*Punishment under the Penal Code	Court by which or class of magistrate by whose court an offence is triable, in addition to the Supreme Court
97	Manufacture, sale, etc., of flick knives, gravity knives, swordsticks and knuckle dusters.	ditto	Imprisonment for six months or fine of \$100 or both.	Any court.
98	Going armed in public.	ditto	Imprisonment for two years.	Resident or second class magistrate.
99	Forcible entry.	ditto	ditto	Resident or second class magistrate.
100	Forcible detainer.	ditto	ditto	Resident or second class magistrate.
101	Committing affray.	ditto	Imprisonment for one year.	Resident or second class magistrate.
102	Challenge to duel.	Shall not arrest without warrant.	Imprisonment for two years.	Resident or second class magistrate.
103	Threatening violence.	May arrest without warrant.	Imprisonment for three years with or without corporal punishment.	Resident magistrate.
104	Assembly for purpose of smuggling.	ditto	Fine of \$200 or imprisonment for six months.	Any court.
105	Throwing of or projecting objects, etc.	ditto	Imprisonment for three years, with or without corporal punishment.	Resident magistrate.

## DIVISION II—OFFENCES AGAINST THE ADMINISTRATION OF LAWFUL AUTHORITY

## CHAPTER XI—CORRUPTION AND ABUSE OF OFFICE

106	Official corruption.	Shall not arrest without warrant.	Imprisonment for seven years.	With the consent of the accused, resident magistrate.
107	Extortion by public officers.	ditto	Imprisonment for three years.	With the consent of the accused, resident magistrate.
108	Receiving property to show favour.	ditto	Imprisonment for six months.	Any court.
109	Officer discharging duties in respect of property in which he has a special interest.	ditto	Imprisonment for one year.	Resident or second class magistrate.
110	False claims by officials.	ditto	Imprisonment for two years.	Resident or second class magistrate.
111	Abuse of office.	ditto	ditto	Resident or second class magistrate.
	If for purposes of gain.	ditto	Imprisonment for three years.	Resident magistrate.
112	False certificates by public officers.	ditto	Imprisonment for two years.	Resident or second class magistrate.
113	Unauthorised administration of oaths.	ditto	ditto	Resident or second class magistrate.

\* (N.B.—Under section 28 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment, *vide* also section 47 of the Penal Code.)

1	2	3	4	5
Section	Offence	Whether the police may arrest without warrant or not	*Punishment under the Penal Code	Court by which or class of magistrate by whose court an offence is triable, in addition to the Supreme Court
114	False assumption of authority.	ditto	ditto	Resident or second class magistrate.
115	Personating public officers.	May arrest without warrant.	Imprisonment for three years.	Resident magistrate.
116	Threats of injury to public officers.	Shall not arrest without warrant.	Imprisonment for two years.	Resident or second class magistrate.

## CHAPTER XII—PERJURY AND FALSE STATEMENTS AND DECLARATIONS

117 (1)	Perjury.	Shall not arrest without warrant.	Imprisonment for seven years.	With the consent of the accused, resident magistrate.
117 (2)	Perjury (in course of duty).	ditto	ditto	With the consent of the accused, resident magistrate.
118	False statements on oath other than perjury.	ditto	ditto	With the consent of the accused, resident magistrate.
119	False statements with reference to marriage.	ditto	ditto	With the consent of the accused, resident magistrate.
120	False statements as to births, and deaths.	ditto	ditto	With the consent of the accused, resident magistrate.
121	False statutory declarations and other false statements not on oath.	ditto	Imprisonment for two years.	Resident or second class magistrate.
122	False declarations to obtain registration for carrying on vocation.	Shall not arrest without warrant.	Imprisonment for one year.	Resident or second class magistrate.
123 (1)	Subornation of perjury.	ditto	Same punishment as for a principal offender.	Same court by which principal offender is triable.
(2)	Inciting or attempting to procure subornation of perjury.	ditto	Imprisonment for two years.	Resident or second class magistrate.
125	Fabricating evidence.	ditto	Imprisonment for seven years.	With the consent of the accused, resident magistrate.
126	Making inconsistent statements on oath.	ditto	Imprisonment for six months.	Any court.

## CHAPTER XIII—OTHER OFFENCES RELATING TO THE ADMINISTRATION OF JUSTICE

129	Deceiving witnesses.	Shall not arrest without warrant.	Imprisonment for two years.	Resident or second class magistrate.
130	Destroying evidence.	ditto	ditto	Resident or second class magistrate.
131	Conspiracy to defeat justice and interference with witnesses.	ditto	ditto	Resident or second class magistrate.

\* (N.B.—Under section 28 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment, *vide* also section 47 of the Penal Code.)



1	2	3	4	5
Section	Offence	Whether the police may arrest without warrant or not	*Punishment under the Penal Code	Court by which or class of magistrate by whose court an offence is triable, in addition to the Supreme Court
132	Compounding felonies.	ditto	ditto	Resident or second class magistrate.
133	Compounding penal actions.	ditto	ditto	Resident or second class magistrate.
134	Advertising for stolen property.	ditto	ditto	Resident or second class magistrate.
135	Corruptly taking a reward.	May arrest without warrant.	Imprisonment for seven years.	With the consent of the accused, resident magistrate.
136	Contempt of court.	ditto	Imprisonment for three months.	Any court.

## CHAPTER XIV—RESCUES AND ESCAPES AND OBSTRUCTING OFFICERS OF COURT OF LAW

137	Rescue— (a) if person rescued is under sentence of death or imprisonment for life or charged with offence punishable with death or imprisonment for life;	May arrest without warrant.	Imprisonment for life.	With the consent of the accused, resident magistrate.
	(b) if person rescued is imprisoned on charge or under sentence for any other offence;	ditto	Imprisonment for seven years.	Resident magistrate.
	(c) in any other case.	ditto	Imprisonment for two years.	Resident or second class magistrate.
138	Escape.	May arrest without warrant.	Imprisonment for two years.	Resident or second class magistrate.
139	Aiding persons to escape.	ditto	Imprisonment for seven years.	Resident magistrate.
140	Removal, etc., of property under lawful seizure.	ditto	Imprisonment for three years.	Resident magistrate.
141	Obstructing court officers.	ditto	Imprisonment for one year.	Resident or second class magistrate.

## CHAPTER XV—MISCELLANEOUS OFFENCES AGAINST PUBLIC AUTHORITY

142	Frauds and breaches of trust by public officers.	Shall not arrest without warrant.	Imprisonment for two years.	Resident or second class magistrate.
143	Giving false information to public servant.	ditto	Imprisonment for twelve months.	Resident or second class magistrate.
144	Disobedience of lawful orders.	ditto	Imprisonment for two years.	Resident or second class magistrate.

\* (N.B.—Under section 28 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment, *vide* also section 47 of the Penal Code.)

1	2	3	4	5
Section	Offence	Whether the police may arrest without warrant or not	*Punishment under the Penal Code	Court by which or class of magistrate by whose court an offence is triable, in addition to the Supreme Court

## DIVISION III—OFFENCES INJURIOUS TO THE PUBLIC IN GENERAL

## CHAPTER XVI—OFFENCES RELATING TO RELIGION

145	Insult to religion of any class.	May arrest without warrant.	Imprisonment for two years.	Resident or second class magistrate.
146	Disturbing religious assemblies.	ditto	ditto	Resident or second class magistrate.
147	Trespass on burial places.	ditto	ditto	Resident or second class magistrate.
148	Uttering words with intent to wound religious feelings.	Shall not arrest without warrant.	Imprisonment for one year.	Resident or second class magistrate.

## CHAPTER XVII—OFFENCES AGAINST MORALITY

149	Rape.	May arrest without warrant.	Imprisonment for life, with or without corporal punishment.	With the consent of the accused, resident magistrate.
151	Attempted rape	ditto	Imprisonment for seven years, with or without corporal punishment.	Resident magistrate.
152	Abduction.	ditto	ditto	Resident magistrate.
153	Abduction of girl under eighteen.	ditto	Imprisonment for two years.	Resident or second class magistrate.
154 (1)	Indecent assault on females.	ditto	Imprisonment for five years, with or without corporal punishment.	Resident magistrate.
154 (4)	Indecently insulting or annoying females	May arrest without warrant.	Imprisonment for one year.	Resident or second class magistrate.
155 (1)	Defilement of girl under thirteen.	ditto	Imprisonment for life, with or without corporal punishment.	With the consent of the accused, resident magistrate.
(2)	Attempted defilement of girl under thirteen.	ditto	Imprisonment for five years, with or without corporal punishment.	Resident magistrate.
156	Defilement of girl under sixteen and of imbecile.	ditto	ditto	Resident magistrate.
157	Procuration.	ditto	Imprisonment for two years, with or without corporal punishment.	Resident or second class magistrate.
158	Procuring defilement of woman by threats, fraud or drugs.	ditto	ditto	Resident or second class magistrate.

\* (N.B.—Under section 28 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment, *vide* also section 47 of the Penal Code.)

1	2	3	4	5
Section	Offence	Whether the police may arrest without warrant or not	*Punishment under the Penal Code	Court by which or class of magistrate by whose court an offence is triable, in addition to the Supreme Court
159	Householder permitting defilement of girl under thirteen.	ditto	Imprisonment for five years, with or without corporal punishment.	Resident magistrate.
160	Householder permitting defilement of girl under sixteen.	ditto	Imprisonment for two years, with or without corporal punishment.	Resident or second class magistrate.
161	Detention of female in brothel or elsewhere.	ditto	ditto	Resident or second class magistrate.
162	Selling minors for immoral purposes.	ditto	ditto	Resident or second class magistrate.
163	Buying minors for immoral purposes.	ditto	ditto	Resident or second class magistrate.
166	Male person living on earnings of prostitution or persistently soliciting.	ditto	Imprisonment for two years.	Resident or second class magistrate.
	Male person living on earnings of prostitution or persistently soliciting (after previous conviction).	ditto	Imprisonment for two years, with or without corporal punishment.	Resident or second class magistrate.
167	Woman living on earnings of prostitution or abetting prostitutes.	ditto	Imprisonment for two years.	Resident or second class magistrate.
168	Loitering or soliciting for the purposes of prostitution.	ditto	Fine of \$50.	Any court.
	Loitering or soliciting for the purposes of prostitution (after previous conviction).	ditto	Fine of \$50 or imprisonment for three months.	Any court.
170	Keeping a brothel.	May arrest without warrant.	Imprisonment for two years.	Resident or second class magistrate.
171	Conspiracy to defile.	ditto	Imprisonment for three years, with or without corporal punishment.	Resident magistrate.
172	Attempting to procure abortion.	ditto	Imprisonment for fourteen years.	With the consent of the accused, resident magistrate.
173	Woman attempting to procure her own abortion.	ditto	Imprisonment for seven years.	With the consent of the accused, resident magistrate.
174	Supplying drugs or instruments to procure abortion.	ditto	Imprisonment for three years.	With the consent of the accused, resident magistrate.
175	Committing unnatural offence.	ditto	Imprisonment for fourteen years, with or without corporal punishment.	With the consent of the accused, resident magistrate.

\* (N.B.—Under section 28 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment, *vide* also section 47 of the Penal Code.)

1	2	3	4	5
Section	Offence	Whether the police may arrest without warrant or not	*Punishment under the Penal Code	Court by which or class of magistrate by whose court an offence is triable, in addition to the Supreme Court
176	Attempting to commit unnatural offence or indecent assault upon a male person.	ditto	Imprisonment for seven years, with or without corporal punishment.	With the consent of the accused, resident magistrate.
177	Indecent practices between males.	ditto	Imprisonment for five years, with or without corporal punishment.	Resident magistrate.
178 (1)	Incest by males.	ditto	Imprisonment for seven years.	With the consent of the accused, resident magistrate.
	If female person is under age of thirteen years.	ditto	Imprisonment for life.	With the consent of the accused, resident magistrate.
(3)	Attempt to commit incest.	ditto	Imprisonment for two years.	Resident or second class magistrate.
179	Incest by females.	ditto	Imprisonment for seven years.	With the consent of the accused, resident magistrate.

## CHAPTER XVIII—OFFENCES RELATING TO MARRIAGE

184	Fraudulent pretence of marriage.	May arrest without warrant.	Imprisonment for ten years.	Resident magistrate.
185	Bigamy.	ditto	Imprisonment for five years.	Resident magistrate.
186	Fraudulently going through ceremony of marriage.	ditto	ditto	Resident magistrate.

## CHAPTER XIX—NUISANCES AND OTHER MISCELLANEOUS OFFENCES

187	Committing common nuisance.	Shall not arrest without warrant.	Imprisonment for one year.	Resident or second class magistrate.
188	Traffic in obscene publications.	May arrest without warrant.	Imprisonment for two years or a fine of \$200.	Resident or second class magistrate.
189	Offences in connection with street and house to house collections.	May arrest without warrant for offences under subsections (3), (4), (5) and (8).	Fine of \$100 and imprisonment for six months.	Any court.
190	Using locomotive without authority.	ditto	Fine of \$10 or imprisonment for two months.	Any court.
191	Inciting dog to attack.	May arrest without warrant.	Imprisonment for two months or a fine of \$20.	Any court.
192 (1)	Wearing uniform without authority.	ditto	Imprisonment for one month or a fine of \$20	Any court.
(2)	Bringing contempt on uniform.	ditto	Imprisonment for three months or a fine of \$40.	Any court.

\* (N.B.—Under section 28 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment, *vide* also section 47 of the Penal Code.)

1	2	3	4	5
Section	Offence	Whether the police may arrest without warrant or not	*Punishment under the Penal Code	Court by which or class of magistrate by whose court an offence is triable, in addition to the Supreme Court
(3)	Importing or selling uniform without authority.	ditto	Imprisonment for six months or a fine of \$200.	Any court.
193	Doing any act likely to speed infection of dangerous disease.	ditto	Imprisonment for two years.	Resident or second class magistrate.
194	Adulteration of food or drink intended for sale.	Shall not arrest without warrant.	ditto	Resident or second class magistrate.
195	Selling or offering or exposing for sale noxious food or drink.	ditto	ditto	Resident or second class magistrate.
196	Making the atmosphere noxious to health.	ditto	ditto	Resident or second class magistrate.
197 (1)	Criminal trespass.	May arrest without warrant.	Imprisonment for three months.	Any court.
(1)	Criminal trespass (if property upon which offence committed is human dwelling, etc.).	ditto	Imprisonment for one year.	Resident or second class magistrate.
(2)	Entering dwelling-house, etc., by night.	ditto	Imprisonment for one year.	Resident or second class magistrate.

## DIVISION IV—OFFENCES AGAINST THE PERSON

## CHAPTER XX—MURDER AND MANSLAUGHTER

198	Manslaughter.	May arrest without warrant.	Imprisonment for life.
199	Murder.	ditto	Death.
205	Infanticide.	ditto	Imprisonment for life.

## CHAPTER XXII—OFFENCES CONNECTED WITH MURDER AND SUICIDE

214	Attempted murder.	May arrest without warrant.	Imprisonment for life.	
215	Attempted murder by convict.	ditto	Imprisonment for life, with or without corporal punishment.	
216	Being accessory after the fact to murder.	ditto	Imprisonment for seven years.	With the consent of the accused, resident magistrate.
217	Conspiracy to murder.	ditto	Imprisonment for fourteen years.	
219	Complicity in another's suicide.	ditto	Imprisonment for fourteen years.	With the consent of the accused, resident magistrate.
220	Concealing the birth of a child.	ditto	Imprisonment for two years.	Resident or second class magistrate.
221	Killing unborn child.	ditto	Imprisonment for life.	

\* (N.B.—Under section 28 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment, *vide* also section 47 of the Penal Code.)

1	2	3	4	5
Section	Offence	Whether the police may arrest without warrant or not	*Punishment under the Penal Code	Court by which or class of magistrate by whose court an offence is triable, in addition to the Supreme Court

## CHAPTER XXIII—OFFENCES ENDANGERING LIFE AND HEALTH

222	Disabling with intent to commit a crime.	May arrest without warrant.	Imprisonment for life, with or without corporal punishment.	With the consent of the accused, resident magistrate.
223	Stupefying with intent to commit a crime.	ditto	Imprisonment for life.	With the consent of the accused, resident magistrate.
224	Acts intended to cause grievous harm or prevent arrest.	ditto	Imprisonment for life, with or without corporal punishment.	With the consent of the accused, resident magistrate.
225	Preventing escape from wreck.	ditto	Imprisonment for life.	With the consent of the accused, resident magistrate.
226	Intentionally endangering safety of persons travelling by railway.	ditto	Imprisonment for life, with or without corporal punishment.	With the consent of the accused, resident magistrate.
227	Doing grievous harm.	ditto	Imprisonment for seven years, with or without corporal punishment.	With the consent of the accused, resident magistrate.
228	Attempting to injure by explosive substances.	ditto	Imprisonment for fourteen years, with or without corporal punishment.	With the consent of the accused, resident magistrate.
229	Administering poison with intent to harm.	ditto	Imprisonment for fourteen years.	With the consent of the accused, resident magistrate.
230	Unlawful wounding.	May arrest without warrant.	Imprisonment for two years, with or without corporal punishment.	Resident or second class magistrate.
231	Unlawful poisoning.	ditto	Imprisonment for three years, with or without corporal punishment.	Resident magistrate.
232	Witchcraft and sorcery.	ditto	Imprisonment for five years.	Resident magistrate.
233	Failing to provide necessities of life.	ditto	Imprisonment for three years.	Resident magistrate.

## CHAPTER XXIV—CRIMINAL RECKLESSNESS AND NEGLIGENCE

237	Rash and negligent acts.	May arrest without warrant.	Imprisonment for two years.	Resident or second class magistrate.
238	Causing death by reckless driving of motor vehicle.	ditto	Imprisonment for five years.	With the consent of the accused, resident magistrate.
239	Other negligent acts causing harm.	ditto	Imprisonment for six months.	Any court.
240	Negligent dealing with poisons.	ditto	Imprisonment for six months or a fine of \$200.	Any court.

\* (N.B.—Under section 28 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment, *vide* also section 47 of the Penal Code.)

1	2	3	4	5
Section	Offence	Whether the police may arrest without warrant or not	*Punishment under the Penal Code	Court by which or class of magistrate by whose court an offence is triable, in addition to the Supreme Court
241	Endangering safety of persons travelling by railway.	ditto	Imprisonment for two years.	Resident or second class magistrate.
242	Exhibiting false light, mark or buoy.	ditto	Imprisonment for seven years.	Resident magistrate.
243	Conveying person by water for hire in unsafe or overloaded vessel.	ditto	Imprisonment for two years.	Resident or second class magistrate.

## CHAPTER XXV—ASSAULTS

244	Common assault.	Shall not arrest without warrant.	Imprisonment for one year.	Resident or second class magistrate.
245	Assault causing actual bodily harm.	May arrest without warrant.	Imprisonment for five years, with or without corporal punishment.	Resident magistrate.
246	Assaulting person protecting wreck.	ditto	Imprisonment for seven years.	Resident magistrate.
247	Various assaults.	ditto	Imprisonment for five years.	Resident magistrate.

## CHAPTER XXVI—OFFENCES AGAINST LIBERTY

249	Kidnapping	May arrest without warrant.	Imprisonment for seven years.	With the consent of the accused, resident magistrate.
250	Kidnapping or abducting with intent to murder.	ditto	Imprisonment for ten years.	With the consent of the accused, resident magistrate.
251	Kidnapping or abducting with intent to confine a person.	May arrest without warrant.	Imprisonment for seven years.	With the consent of the accused, resident magistrate.
252	Kidnapping or abducting with intent to harm, etc.	ditto	Imprisonment for ten years.	With the consent of the accused, resident magistrate.
253	Wrongfully concealing or keeping in confinement kidnapped or abducted person.	ditto	Same punishment as for kidnapping or abduction.	With the consent of the accused, resident magistrate.
254	Child stealing.	ditto	Imprisonment for seven years.	With the consent of the accused, resident magistrate.
255	Abduction of girl under sixteen.	ditto	Imprisonment for two years.	Resident or second class magistrate.
256	Wrongfully confining person.	ditto	Imprisonment for one year or a fine of \$400.	Resident or second class magistrate.
257	Unlawful compulsory labour.	ditto	Imprisonment for two years.	Resident or second class magistrate.

\* (N.B.—Under section 28 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment, *vide* also section 47 of the Penal Code.)

1	2	3	4	5
Section	Offence	Whether the police may arrest without warrant or not	*Punishment under the Penal Code	Court by which or class of magistrate by whose court an offence is triable, in addition to the Supreme Court
DIVISION V—OFFENCES RELATING TO PROPERTY				
CHAPTER XXVII—LARCENY, EMBEZZLEMENT AND CONVERSION				
260	Stealing and embezzling by co-partners.	May arrest without warrant.	Same punishment as if offender had not been a co-partner.	Any court by which offence would be triable if offender had not been a co-partner.
261	Stealing by husband or wife.	ditto	Same punishment as if parties were unmarried.	Any court by which offence would be triable if parties were unmarried.
262 (1)	Simple larceny.	ditto	Imprisonment for five years.	Any court if the value of the property stolen does not exceed \$200. Otherwise resident magistrate.
(2)	Simple larceny (after previous conviction of felony).	ditto	Imprisonment for ten years.	With the consent of the accused, resident magistrate.
(3)	Simple larceny (after previous conviction of misdemeanour).	ditto	Imprisonment for seven years.	With the consent of the accused, resident magistrate.
263	Larceny of will.	ditto	Imprisonment for life.	With the consent of the accused, resident magistrate.
264	Larceny of documents of title, etc.	ditto	Imprisonment for five years.	Resident magistrate.
265	Larceny of electricity.	ditto	Same punishment as in the case of simple larceny.	Resident magistrate.
266	Larceny of ore.	ditto	Imprisonment for two years.	Resident or second class magistrate.
267	Larceny of postal packets.	May arrest without warrant.	Imprisonment for three years.	Resident magistrate.
268	Stealing and embezzlement by officer of post office—			
	(a) if packet contains money or valuable security;	ditto	Imprisonment for life.	With the consent of the accused, resident magistrate.
	(b) in all other cases.	ditto	Imprisonment for seven years.	With the consent of the accused, resident magistrate.
270	Larceny in dwelling house.	ditto	Imprisonment for fourteen years.	With the consent of the accused, resident magistrate.
271	Larceny from the person.	ditto	ditto	With the consent of the accused, resident magistrate.
272	Larceny from ship, dock, etc.	ditto	ditto	With the consent of the accused, resident magistrate.

\* (N.B.—Under section 28 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment, *vide* also section 47 of the Penal Code.)



1	2	3	4	5
Section	Offence	Whether the police may arrest without warrant or not	*Punishment under the Penal Code	Court by which or class of magistrate by whose court an offence is triable, in addition to the Supreme Court
273	Larceny by tenant or lodger— (a) if value of chattel exceeds the sum of \$10; (b) in all other cases.	ditto	Imprisonment for seven years.	With the consent of the accused, resident magistrate.
274	Larceny and embezzlement by clerks and servants.	ditto	Imprisonment for fourteen years.	Resident or second class magistrate.
275	Larceny of cattle.	ditto	ditto	With the consent of the accused, resident magistrate.
276	Larceny of dogs.	ditto	Imprisonment for six months or a fine of \$50.	Any court.
	Larceny of dogs (after previous conviction).	ditto	Imprisonment for eighteen months.	Resident or second class magistrate.
277	Larceny of creatures.	ditto	Imprisonment for six months or a fine of \$50.	Any court.
278 (1)	Larceny of fish by night— (a) from water running through land adjoining a dwelling house, etc.; (b) from any other water being private property.	ditto	Imprisonment for two years.	Resident or second class magistrate.
(2)	Larceny of fish during day time— (a) from water running through land adjoining a dwelling house; (b) from any other water being private property.	ditto	Fine of \$10.	Any court.
		May arrest without warrant.	Fine of \$4.	Any court.
279	Conversion.	ditto	Imprisonment for seven years.	With the consent of the accused, resident magistrate.

## CHAPTER XXVIII—STEALING AND DAMAGING TREES, FIXTURES, ETC.

280	Larceny of trees, etc.	May arrest without warrant.	Imprisonment for two years.	Resident or second class magistrate.
281	Larceny of fences, etc.	ditto	ditto	Resident or second class magistrate.

\* (N.B.—Under section 28 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment, *vide* also section 47 of the Penal Code.)

1	2	3	4	5
Section	Offence	Whether the police may arrest without warrant or not	*Punishment under the Penal Code	Court by which or class of magistrate by whose court an offence is triable, in addition to the Supreme Court
282	Larceny of fruit and vegetables, etc.	ditto	ditto	Resident or second class magistrate.
283 (a)	Larceny of fixtures, etc.	ditto	Imprisonment for five years.	Resident magistrate.
(b)	Larceny of trees, etc. (to value of two dollars in any park, etc., or to value of ten dollars in any other place or after two previous convictions).	ditto	ditto	Resident magistrate.
(c)	Larceny of fruit and vegetables (after a previous conviction).	ditto	ditto	Resident magistrate.

## CHAPTER XXIX—OTHER OFFENCES ALLIED TO STEALING

284	Fraudulent destruction of documents.	May arrest without warrant.	Same punishment as for larceny of chattel of like value with share, etc., to which document may relate.	Any court by which larceny of the chattel would be triable.
285	Fraudulent destruction of documents of title to lands.	ditto	Imprisonment for three years.	Resident magistrate.
286	Fraudulent destruction of wills.	ditto	Imprisonment for life.	With the consent of the accused, resident magistrate.
287	Fraudulent destruction of court records, etc.	ditto	Imprisonment for three years.	Resident magistrate.
288	Miners removing ore.	ditto	Imprisonment for two years.	Resident or second class magistrate.
289	Killing animals with intent to steal.	ditto	Same punishment as for larceny of the animal.	Any court by which larceny of the animal would be triable.
290	Larceny of or dredging for oysters.	ditto	Imprisonment for three months.	Any court.
291	Factors obtaining advances on the property of their principals.	ditto	Imprisonment for seven years.	Resident magistrate.
292	Unlawful use of vehicles, animals, etc.	May arrest without warrant.	Imprisonment for six months and a fine of \$100.	Any court.

## CHAPTER XXX—ROBBERY AND EXTORTION

293 (1)	Robbery with violence.	May arrest without warrant.	Imprisonment for life, with or without corporal punishment.	With the consent of the accused, resident magistrate.
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\* (N.B.—Under section 28 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment, *vide* also section 47 of the Penal Code.)

1	2	3	4	5
Section	Offence	Whether the police may arrest without warrant or not	*Punishment under the Penal Code	Court by which or class of magistrate by whose court an offence is triable, in addition to the Supreme Court
(2)	Robbery.	ditto	Imprisonment for fourteen years, with or without corporal punishment.	With the consent of the accused, resident magistrate.
(3)	Assault with intent to rob.	ditto	Imprisonment for five years, with or without corporal punishment.	Resident magistrate.
294 (1)	Demanding money with menaces.	ditto	Imprisonment for life, with or without corporal punishment.	With the consent of the accused, resident magistrate.
(2)	Compelling person to execute documents, etc., with menaces.	ditto	Imprisonment for life.	With the consent of the accused, resident magistrate.
295	Demanding with menaces anything capable of being stolen.	ditto	Imprisonment for five years.	Resident magistrate.
296	Extortion.	ditto	Imprisonment for two years.	Resident or second class magistrate.

## CHAPTER XXXI—BURGLARY, HOUSEBREAKING AND SIMILAR OFFENCES

298	Sacrilege.	May arrest without warrant.	Imprisonment for fourteen years.	With the consent of the accused, resident magistrate.
299	Burglary.	ditto	Imprisonment for life with or without corporal punishment.	With the consent of the accused, resident magistrate.
300	Housebreaking and committing felony.	ditto	Imprisonment for fourteen years.	With the consent of the accused, resident magistrate.
301	Entering a magazine with intent	ditto	Imprisonment for seven years.	Resident magistrate.
302 (1)	Housebreaking at night with intent to commit felony.	ditto	Imprisonment for seven years, with or without corporal punishment.	With the consent of the accused, resident magistrate.
(2)	Housebreaking during day or breaking into other buildings at any time with intent to commit felony.	ditto	Imprisonment for seven years.	With the consent of the accused, resident magistrate.
303	Possession of house-breaking implements by night—			
(i)	After previous conviction.	May arrest without warrant.	Imprisonment for ten years.	With the consent of the accused, resident magistrate.
(ii)	In all other cases.	ditto	Imprisonment for five years.	Resident magistrate.

\* (N.B.—Under section 28 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment, *vide* also section 47 of the Penal Code.)

1	2	3	4	5
Section	Offence	Whether the police may arrest without warrant or not	*Punishment under the Penal Code	Court by which or class of magistrate by whose court an offence is triable, in addition to the Supreme Court

CHAPTER XXXII—FRAUDS BY TRUSTEES AND PERSONS IN A POSITION OF TRUST AND FALSE ACCOUNTING

305	Conversion by trustee.	May arrest without warrant.	Imprisonment for seven years.	With the consent of the accused resident magistrate.
306	Director of company destroying books, etc.	ditto	ditto	With the consent of the accused, resident magistrate.
307	Fraudulent falsification of accounts by clerk or servant.	ditto	ditto	With the consent of the accused, resident magistrate.

CHAPTER XXXIII—FALSE PRETENCES

309	Obtaining property, etc. by false pretences.	May arrest without warrant.	Imprisonment for five years.	Resident magistrate.
310	Obtaining credit, etc., by false pretences.	ditto	Imprisonment for one year.	Resident or second class magistrate.
311	Obtaining registration by false pretence.	ditto	Imprisonment for one year.	Resident or second class magistrate.
312	False declaration for purpose of procuring passport.	ditto	Imprisonment for two years.	Resident or second class magistrate.

CHAPTER XXXIV—RECEIVING PROPERTY STOLEN OR UNLAWFULLY OBTAINED AND LIKE OFFENCES

313	Receiving stolen property— (a) where property was stolen or unlawfully obtained in circumstances amounting to felony;	May arrest without warrant.	Imprisonment for fourteen years.	With the consent of the accused, resident magistrate.
	(b) where property was stolen or unlawfully obtained in circumstances amounting to misdemeanour.	ditto	Imprisonment for seven years.	With the consent of the accused, resident magistrate.
314	Receiving property stolen or unlawfully obtained outside Fiji.	ditto	Imprisonment for seven years.	Resident magistrate.

\* (N.B.—Under section 28 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment, *vide* also section 47 of the Penal Code.)

1	2	3	4	5
Section	Offence	Whether the police may arrest without warrant or not	*Punishment under the Penal Code	Court by which or class of magistrate by whose court an offence is triable, in addition to the Supreme Court

## DIVISION VI—MALICIOUS INJURIES TO PROPERTY

## CHAPTER XXXV—OFFENCES CAUSING INJURY TO PROPERTY

317	Arson.	May arrest without warrant.	Imprisonment for life.	With the consent of the accused, resident magistrate.
318	Attempt to commit arson.	ditto	Imprisonment for fourteen years.	With the consent of the accused, resident magistrate.
319	Setting fire to crops, etc.	ditto	ditto	With the consent of the accused, resident magistrate.
320	Attempting to set fire to crops, etc.	ditto	Imprisonment seven years.	Resident magistrate.
321	Casting away vessel.	ditto	Imprisonment for fourteen years.	With the consent of the accused, resident magistrate.
322	Attempting to cast away vessel.	ditto	Imprisonment seven years.	Resident magistrate.
323	Killing or injuring animal or bird.	ditto	Imprisonment for two years.	Resident or second class magistrate.
324 (1)	Destroying or damaging property in general.	ditto	Imprisonment for two years.	Resident or second class magistrate.
(2)	Destroying or damaging inhabited house or vessel with explosives.	ditto	Imprisonment for life with or without corporal punishment.	With the consent of accused, resident magistrate.
(3)	Destroying or damaging river bank, wall or navigation works or bridge.	ditto	Imprisonment for life.	With the consent of the accused, resident magistrate.
(4)	Destroying or damaging wills or registers.	ditto	Imprisonment for fourteen years.	With the consent of the accused, resident magistrate.
(5)	Destroying or damaging wrecks.	ditto	Imprisonment seven years.	Resident magistrate.
(6)	Destroying or damaging railway, etc.	ditto	Imprisonment for fourteen years.	With the consent of the accused, resident magistrate.
(7)	Destroying or damaging property of special value.	ditto	Imprisonment seven years.	Resident magistrate.
(8)	Destroying or damaging deeds or records.	ditto	ditto	Resident magistrate.
325	Attempting to destroy or damage property by use of explosives.	ditto	Imprisonment for fourteen years.	With the consent of the accused, resident magistrate.
326	Communicating infectious disease to animals.	ditto	Imprisonment seven years.	Resident magistrate.

\* (N.B.—Under section 28 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment, *vide* also section 47 of the Penal Code.)

1	2	3	4	5
Section	Offence	Whether the police may arrest without warrant or not	*Punishment under the Penal Code	Court by which or class of magistrate by whose court an offence is triable, in addition to the Supreme Court
327	Removing boundary marks with intent to defraud.	ditto	Imprisonment for three years.	Resident magistrate.
328	Removing or injuring survey or boundary marks, etc.	ditto	Imprisonment for three months, or a fine of \$40.	Any court.
329	Injuring or obstructing railway works, etc.	May arrest without warrant.	Imprisonment for three months, or a fine of \$40.	Any court.
330	Criminal intimidation— (1) When a misdemeanour. (2) When a felony.	ditto ditto	Imprisonment for two years. Imprisonment for ten years.	Resident or second class magistrate. With the consent of the accused, resident magistrate.

## DIVISION VII—FORGERY, COINING, COUNTERFEITING AND SIMILAR OFFENCES

## CHAPTER XXXVII—PUNISHMENT FOR FORGERY

335 (1)	Forgery of will, deed, bank note, etc., with intent to defraud.	May arrest without warrant.	Imprisonment for life.	With the consent of the accused, resident magistrate.
(2)	Forgery of valuable security, documents of title, power of attorney, register, policy of insurance, charter-party, etc., with intent to defraud.	ditto	Imprisonment for fourteen years.	With the consent of the accused, resident magistrate.
336 (1)	Forgery of any document having thereon the impression of the public seal of Fiji, etc., with intent to defraud or deceive.	ditto	Imprisonment for life.	With the consent of the accused, resident magistrate.
(2)	Forgery of any register of births, deaths or marriages, etc., or copy of any such register, of any public record, etc., with intent to defraud or deceive.	ditto	Imprisonment for fourteen years.	With the consent of the accused, resident magistrate.
(3)	Forgery of official document, court register, certificate, etc., with intent to defraud or deceive.	ditto	Imprisonment for seven years.	With the consent of the accused, resident magistrate.
337	Alteration of Treasury books with intent to defraud.	ditto	Imprisonment for life.	With the consent of the accused, resident magistrate.

\* (N.B.—Under section 28 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment, vide also section 47 of the Penal Code.)

1	2	3	4	5
Section	Offence	Whether the police may arrest without warrant or not	*Punishment under the Penal Code	Court by which or class of magistrate by whose court an offence is triable, in addition to the Supreme Court
338	Forging copies of certificates of records.	ditto	Imprisonment for seven years.	With the consent of the accused, resident magistrate.
339	Forging registers of births, etc.	ditto	Imprisonment for life.	With the consent of the accused, resident magistrate.
340	Making false entries in copies of register sent to Registrar, etc.	May arrest without warrant.	Imprisonment for life.	With the consent of the accused, resident magistrate.
341 (1)	Forgery of other documents with intent to defraud.	ditto	Imprisonment for two years.	Resident or second class magistrate.
(2)	Forgery of other public document with intent to defraud or deceive.	ditto	ditto	Resident or second class magistrate.
(3)	Forgery of passport.	ditto	ditto	Resident or second class magistrate.
342 (1)	Forgery of public seal of Fiji, the seal of a court of record, etc., with intent to defraud or deceive.	ditto	Imprisonment for life.	With the consent of the accused, resident magistrate.
(2)	Forgery of seal of registry office, etc., with intent to defraud or deceive.	ditto	Imprisonment for fourteen years.	With the consent of the accused, resident magistrate.
(3)	Forgery of the seal of court of justice other than a court of record, etc., with intent to defraud or deceive.	ditto	Imprisonment for seven years.	With the consent of the accused, resident magistrate.
(4)	Forgery of any die used by the Commissioner of Inland Revenue, etc. or for stamping gold or silver ware, with intent to defraud or deceive.	ditto	Imprisonment for fourteen years.	With the consent of the accused, resident magistrate.
(5)	Forgery of any stamp or die used under the Stamp Duties Act or the Post Office Act with intent to defraud or deceive.	ditto	Imprisonment for seven years.	With the consent of the accused, resident magistrate.
343	Uttering a forged document, seal or die.	ditto	Same punishment as for forgery of the document, seal or die.	Any court by which the forgery of the document, seal or die would be triable.

\* (N.B.—Under section 28 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment, *vide* also section 47 of the Penal Code.)

1	2	3	4	5
Section	Offence	Whether the police may arrest without warrant or not	*Punishment under the Penal Code	Court by which or class of magistrate by whose court an offence is triable, in addition to the Supreme Court
344	Uttering cancelled document, etc.	ditto	Same punishment as for forgery of the document.	Any court by which the forgery of the document would be triable.
345	Demanding property on forged document.	ditto	Imprisonment for fourteen years.	With the consent of the accused, resident magistrate.
346 (1)	Importing forged currency note or bank note.	ditto	ditto	With the consent of the accused, resident magistrate.
(2)	Possession of forged stamp or die for marking gold or silver ware, etc., or any forged wrapper used by Commissioner of Inland Revenue, etc.	May arrest without warrant.	Imprisonment for fourteen years.	With the consent of the accused, resident magistrate.
(3)	Possession of any forged stamp or die resembling stamp or die used under Stamp Duties Act or Post Office Act.	ditto	Imprisonment for seven years.	Resident magistrate.
347	Possession or using implements for forgery.	ditto	ditto	Resident magistrate.
348	Possession of revenue paper, etc.	ditto	Imprisonment for two years.	Resident or second class magistrate.
349	Falsifying warrant for money.	ditto	Imprisonment for seven years.	Resident magistrate.
350	Procuring execution of document by false pretences.	ditto	Same punishment as for forgery of the document.	Any court by which the forgery of the document would be triable.
351	Writing letter for another and failing to sign name, etc.	ditto	Fine \$10.	Any court.

## CHAPTER XXXVIII—OFFENCES RELATING TO COIN AND BANK AND CURRENCY NOTES

353	Counterfeiting coin—			
	(a) in case of coin resembling current gold or silver coin;	May arrest without warrant.	Imprisonment for life.	With the consent of the accused, resident magistrate.
	(b) in case of coin resembling current copper coin.	ditto	Imprisonment for seven years.	Resident magistrate.
354	Gilding, silvering, filing and altering coin.	ditto	Imprisonment for life.	With the consent of the accused, resident magistrate.

\* (N.B.—Under section 28 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment, *vide* also section 47 of the Penal Code.)



1	2	3	4	5
Section	Offence	Whether the police may arrest without warrant or not	*Punishment under the Penal Code	Court by which or class of magistrate by whose court an offence is triable, in addition to the Supreme Court
355 (1)	Impairing coin.	ditto	Imprisonment for fourteen years.	With the consent of the accused, resident magistrate.
(2)	Possession of filings of coin.	ditto	Imprisonment seven years.	Resident magistrate.
356 (1)	Uttering counterfeit coin.	ditto	Imprisonment one year.	Resident or second class magistrate.
(2)	Uttering, or uttering and possessing, counterfeit gold or silver coins.	ditto	Imprisonment two years.	Resident or second class magistrate.
(3)	Possessing with intent to utter three or more counterfeit gold or silver coins.	May arrest without warrant.	Imprisonment five years.	Resident magistrate.
(4)	Possessing with intent to utter three or more counterfeit copper coins.	ditto	Imprisonment one year.	Resident or second class magistrate.
(5)	Committing a second offence under the section.	ditto	Imprisonment for life.	With the consent of the accused, resident magistrate.
(6)	Uttering coin of less value than current coin.	ditto	Imprisonment one year.	Resident or second class magistrate.
357	Buying or selling counterfeit coin—			
	(a) in case of coin resembling current gold or silver coin.	ditto	Imprisonment for life.	With the consent of the accused, resident magistrate.
	(b) in case of coin resembling current copper coin.	ditto	Imprisonment seven years.	Resident magistrate.
358	Importing or exporting counterfeit coin.	ditto	Imprisonment for fourteen years.	With the consent of the accused, resident magistrate.
359	Possessing or selling medals, etc., resembling coin.	ditto	Imprisonment one year.	Resident or second class magistrate.
360 (1) & (2)	Possessing, etc., implements for counterfeiting gold or silver coins.	ditto	Imprisonment for life.	With the consent of the accused, resident magistrate.
(3)	Possessing implements for counterfeiting copper coin.	ditto	Imprisonment seven years.	Resident magistrate.
363 (1)	Defacing current coin.	ditto	Imprisonment one year.	Resident or second class magistrate.
(3)	Uttering defaced coin.	ditto	Fine of \$4.	Any court.
364	Melting down currency.	ditto	Imprisonment for six months.	Any court.
365	Multilating or defacing currency notes.	ditto	Fine of \$40.	Any court.

\* (N.B.—Under section 28 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment, *vide* also section 47 of the Penal Code.)

1	2	3	4	5
Section	Offence	Whether the police may arrest without warrant or not	*Punishment under the Penal Code	Court by which or class of magistrate by whose court an offence is triable, in addition to the Supreme Court
366 (1)	Selling imitation currency note, bank note or current coin.	ditto	Imprisonment for six months.	Any court.
(2)	making or using any document resembling currency note.	ditto	Fine of \$10 in respect of each document.	Any court.
(3)	Failure to disclose name and address of person printing document resembling currency note.	ditto	Fine of \$20.	Any court.

## CHAPTER XXXIX—PERSONATION

369	Personation in general. If representation is that the offender is a person entitled by will or operation of law to any specific property and he commits the offence to obtain such property.	May arrest without warrant. ditto	Imprisonment for two years. Imprisonment for seven years.	Resident or second class magistrate. Resident magistrate.
370	Falsely acknowledging deeds, recognizances, etc.	ditto	ditto	Resident magistrate.
371	Personation of a person named in a certificate.	ditto	Same punishment as for forgery of certificate.	Any court by which forgery of certificate would be triable.
372	Lending, etc., certificate for purposes of personation.	ditto	Imprisonment for two years.	Resident or second class magistrate.
373	Personation of person named in testimonial of character.	ditto	Imprisonment for one year.	Resident or second class magistrate.
374	Lending, etc., testimonial of character for purposes of personation.	ditto	Imprisonment for two years.	Resident or second class magistrate.

## CHAPTER XL—SECRET COMMISSIONS AND CORRUPT PRACTICES

376	Corrupt practices.	Shall not arrest without warrant.	Imprisonment for two years or a fine of \$600.	Resident or second class magistrate.
377	Secret commission on Government contracts.	ditto	Imprisonment for seven years or a fine of \$1,000.	With the consent of the accused, resident magistrate.

\* (N.B.—Under section 28 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment, *vide* also section 47 of the Penal Code.)

1	2	3	4	5
Section	Offence	Whether the police may arrest without warrant or not	*Punishment under the Penal Code	Court by which or class of magistrate by whose court an offence is triable, in addition to the Supreme Court

DIVISION VIII—ATTEMPTS AND CONSPIRACIES TO COMMIT CRIMES AND ACCESSORIES AFTER THE FACT

CHAPTER XLI—ATTEMPTS

381	Attempt to commit a felony or misdemeanour.	According as to whether or not the offence is one for which the police may arrest without a warrant.	Imprisonment for two years, (unless otherwise stated).	Resident or second class magistrate.
382	Attempt to commit a felony punishable with death or imprisonment for fourteen years or upwards.	May arrest without warrant.	Imprisonment for seven years.	With the consent of the accused, resident magistrate.
383	Soliciting or inciting others to commit offence in Fiji or elsewhere.	May arrest without warrant if arrest for offence solicited or incited may be made without warrant but not otherwise.	Same punishment as for the offence solicited or incited.	Any court by which offence solicited or incited would be triable.
384	Neglecting to prevent commission or completion of a felony.	Shall not arrest without warrant.	Imprisonment for two years.	Resident or second class magistrate.

CHAPTER XLII—CONSPIRACIES

385	Conspiracy to commit a felony.	May arrest without warrant.	Imprisonment for seven years.	With the consent of the accused, resident magistrate.
386	Conspiracy to commit a misdemeanour.	According as to whether or not misdemeanour is one for which police may arrest without warrant.	Imprisonment for two years.	Resident or second class magistrate.
387	Conspiracy to effect certain specified purposes.	Shall not arrest without warrant.	ditto	Resident or second class magistrate.

CHAPTER XLIII—ACCESSORIES AFTER THE FACT

389	Being an accessory after the fact to a felony.	May arrest without warrant.	Imprisonment for three years.	Resident magistrate.
390	Being accessory after the fact to a misdemeanour.	Shall not arrest without warrant.	Imprisonment for two years.	Resident or second class magistrate.

\* (N.B.—Under section 28 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment, *vide* also section 47 of the Penal Code.)

1	2	3	4	5
Section	Offence	Whether the police may arrest without warrant or not	*Punishment under the Penal Code	Court by which or class of magistrate by whose court an offence is triable, in addition to the Supreme Court

OFFENCES UNDER OTHER LAWS WHERE NO SPECIFIC PROVISION IS  
MADE TO THE CONTRARY IN THOSE LAWS

If punishable with death or imprisonment for life.	May arrest without warrant.		
If punishable with imprisonment for ten years or upwards, but less than for life.	ditto		With the consent of the accused, resident magistrate.
If punishable with imprisonment for three years or upwards but less than ten.	ditto		Resident magistrate.
If punishable with imprisonment for one year or upwards, but less than three.	Shall not arrest without warrant unless express provision is contained in the law constituting the offence.		Resident or second class magistrate.
If punishable with imprisonment for less than one year or with fine only.	ditto		Any court.

\* (N.B.—Under section 28 (3) of the Penal Code a person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment, *vide* also section 47 of the Penal Code.)

## CRIMINAL PROCEDURE CODE

(Section 122)

## FORMS OF STATING OFFENCES IN INFORMATIONS

## 1.—MURDER

## STATEMENT OF OFFENCE

Murder, contrary to section 199 of the Penal Code.

## PARTICULARS OF OFFENCE

A.B., on the                      day of                      , 19                      , in the  
Division murdered J.S.

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## 2.—ACCESSORY AFTER THE FACT TO MURDER

## STATEMENT OF OFFENCE

Accessory after the fact to murder, contrary to section 216 of the Penal Code.

## PARTICULARS OF OFFENCE

A.B., well knowing that H.C. had murdered C.C., did on the                      day  
of                      , 19                      , in the                      Division and on other days thereafter  
receive, comfort, harbour, assist and maintain the said H.C.

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## 3 —MANSLAUGHTER

## STATEMENT OF OFFENCE

Manslaughter, contrary to section 198 of the Penal Code.

## PARTICULARS OF OFFENCE

A.B., on the                      day of                      , 19                      , in the  
Division, unlawfully killed J.S.

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## 4.—RAPE

## STATEMENT OF OFFENCE

Rape, contrary to section 149 of the Penal Code.

## PARTICULARS OF OFFENCE

A.B., on the                      day of                      , 19                      , in the  
Division, had carnal knowledge of E.F., without her consent.

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5.—WOUNDING*First Count*

## STATEMENT OF OFFENCE

Wounding with intent, contrary to section 224 of the Penal Code.

## PARTICULARS OF OFFENCE

A.B., on the                      day of                      , 19                      , in the                      Division, wounded C.D., with intent to maim, disfigure or disable, or to do some grievous harm, or to resist the lawful arrest of him the said A.B.

*Second Count*

## STATEMENT OF OFFENCE

Wounding, contrary to section 230 of the Penal Code.

## PARTICULARS OF OFFENCE

A.B., on the                      day of                      , 19                      , in the                      Division, unlawfully wounded C.D.

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6.—LARCENY*First Count*

## STATEMENT OF OFFENCE

Larceny, contrary to section 262 of the Penal Code.

## PARTICULARS OF OFFENCE

A.B., on the                      day of                      , 19                      , in the                      Division, stole a bag, the property of C.D.

*Second Count*

## STATEMENT OF OFFENCE

Receiving stolen goods, contrary to section 313 of the Penal Code.

## PARTICULARS OF OFFENCE

A.B., on the                      day of                      , 19                      , in the                      Division, did receive a bag, the property of C.D., knowing the same to have been stolen.

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7.—LARCENY BY CLERK

## STATEMENT OF OFFENCE

Larceny by clerks and servants, contrary to section 274 of the Penal Code.

## PARTICULARS OF OFFENCE

A.B., on the                      day of                      , 19                      , in the  
Division, being clerk or servant to M.N., stole from the said  
M.N., 10 yards of cloth.

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## 8.—ROBBERY

## STATEMENT OF OFFENCE

Robbery with violence, contrary to section 293 (1) of the Penal Code.

## PARTICULARS OF OFFENCE

A.B., on the                      day of                      , 19                      , in the  
Division, robbed C.D. of a watch, and at, or immediately  
before or immediately after, the time of such robbery did use personal violence to  
the said C.D.

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## 9.—BURGLARY

## STATEMENT OF OFFENCE

Burglary, contrary to section 299 (a), and larceny, contrary to section 270 of the  
Penal Code.

## PARTICULARS OF OFFENCE

A.B., in the night of the                      day of                      , 19                      , in the  
Division, did break and enter the dwellinghouse of C.D.  
with intent to steal therein, and did steal therein, one watch, the property of S.T.,  
the said watch being of the value of \$20.

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10.—THREATS

## STATEMENT OF OFFENCE

Uttering threatening letter, contrary to section 294 (1) of the Penal Code.

## PARTICULARS OF OFFENCE

A.B., on the                      day of                      , 19                      , in the  
Division, uttered, knowing the contents thereof, a letter or  
writing demanding money from J.N. with menaces and without any reasonable or  
probable cause.

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## 11.—EXTORTION

## STATEMENT OF OFFENCE

Threatening to publish a libel with intent, contrary to section 296 of the Penal Code.

## PARTICULARS OF OFFENCE

A.B., on the                      day of                      , 19                      , in the  
Division, threatened to publish a libel upon J.N. with intent  
to extort money from the said J.N.

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## 12.—FALSE PRETENCES

## STATEMENT OF OFFENCE

Obtaining goods by false pretences, contrary to section 309 of the Penal Code.

## PARTICULARS OF OFFENCE

A.B., on the                      day of                      , 19                      , in the  
Division, with intend to defraud, obtained from S.P. five  
yards of cloth by falsely pretending that he, the said A.B., was a servant to J.S.,  
and that he, the said A.B., had then been sent by the said J.S., to S.P., for the said  
cloth, and that he, the said A.B., was then authorised by the said J.S. to receive the  
said cloth on behalf of the said J.S.

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13.—CONSPIRACY TO DEFRAUD

## STATEMENT OF OFFENCE

Conspiracy to defraud, contrary to section 386 of the Penal Code.

## PARTICULARS OF OFFENCE

A.B., and C.D., on the                      day of                      , 19                      , and on divers days between that day and the                      day of                      , 19                      , in the                      Division, conspired together with intent to defraud by means of an advertisement inserted by them, the said A.B. and C.D., in the *H.S.* newspaper, falsely representing that A.B. and C.D. were then carrying on a genuine business as jewellers at                      in the                      Division, and that they were then able to supply certain articles of jewellery to whomsoever would remit to them the sum of \$4.

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14.—ARSON

## STATEMENT OF OFFENCE

Arson, contrary to section 317 of the Penal Code.

## PARTICULARS OF OFFENCE

I.B., on the                      day of                      , 19                      , in the                      Division, wilfully and unlawfully set fire to a house.

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15.—DAMAGE

## STATEMENT OF OFFENCE

Damaging trees, contrary to section 324 of the Penal Code.

## PARTICULARS OF OFFENCE

A.B., on the                      day of                      , 19                      , in the                      Division, wilfully and unlawfully damaged a                      tree there growing.

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## 16.—FORGERY

*First Count*

## STATEMENT OF OFFENCE

Forgery, contrary to section 335 (1) of the Penal Code.

## PARTICULARS OF OFFENCE

A.B., on the                      day of                      , 19                      , in the                      Division, with intent to defraud, forged a certain will purporting to be the will of C.D.

*Second Count*

## STATEMENT OF OFFENCE

Uttering a false document, contrary to section 343 of the Penal Code.

## PARTICULARS OF OFFENCE

A.B., on the                      day of                      , 19                      , in the                      Division, uttered a certain forged will purporting to be the will of C.D. knowing the same to be forged and with intent to defraud.

## 17.—COUNTERFEIT COIN

## STATEMENT OF OFFENCE

Uttering a counterfeit coin, contrary to section 356 of the Penal Code.

## PARTICULARS OF OFFENCE

A.B., on the                      day of                      , 19                      , at                      in the                      Division, uttered a counterfeit cent, knowing the same to be counterfeit.

## 18.—PERJURY

## STATEMENT OF OFFENCE

Perjury, contrary to section 117 of the Penal Code.

## PARTICULARS OF OFFENCE

A.B., on the                      day of                      , 19                      , in the                      Division, being a witness upon the trial of an action in the Supreme Court at                      in which one                      was plaintiff, and one                      was defendant, knowingly gave false testimony that he saw one, M.W., in the street called the                      on the                      day of                      , 19                      .

## 19.—FALSE ACCOUNTING

*First Count*

## STATEMENT OF OFFENCE

Fraudulent false accounting, contrary to section 307 of the Penal Code.

## PARTICULARS OF OFFENCE

A.B., on the                      day of                      , 19                      , in the                      Division, being clerk or servant to C.D., with intent to defraud, made or was privy to making a false entry in a cash book belonging to the said C.D., his employer, purporting to show that on the said day \$200 had been paid to L.M.

*Second Count*

## STATEMENT OF OFFENCE

Fraudulent false accounting, contrary to section 307 of the Penal Code.

## PARTICULARS OF OFFENCE

A.B., on the                      day of                      , 19                      , in the                      Division, being clerk or servant to C.D., with intent to defraud, omitted or was privy to omitting from a cash book belonging to the said C.D., his employer, a material particular, that is to say, the receipt on the said day of \$100 from H.S.

## 20.—FRAUDULENT CONVERSION OF PROPERTY

*First Count*

## STATEMENT OF OFFENCE

Fraudulent conversion of property, contrary to section 279 of the Penal Code.

## PARTICULARS OF OFFENCE

A.B., on the                      day of                      , 19                      , in the                      Division, fraudulently converted to his own use and benefit certain property, that is to say, \$200 entrusted to him by H.S., for him, the said A.B., to retain in safe custody.

*Second Count*

## STATEMENT OF OFFENCE

Fraudulent conversion of property, contrary to section 279 of the Penal Code.

## PARTICULARS OF OFFENCE

A.B., on the                      day of                      , 19                      , in the                      Division, fraudulently converted to his own use and benefit certain property, that is to say, \$200 which had been received by him, for and on account of L.M.

## 21.—SELLING OBSCENE BOOK

## STATEMENT OF OFFENCE

Selling obscene book, contrary to section 188 of the Penal Code.

## PARTICULARS OF OFFENCE

*E.M.*, on the                      day of                      , 19                      , in the  
Division, sold and caused or procured to be sold an obscene book, the particulars  
of which are deposited with this information. (Particulars to specify pages and lines  
complained of where necessary, as in a book.)

## 22.—BANKRUPT OBTAINING CREDIT

## STATEMENT OF OFFENCE

*A.B.*, undischarged bankrupt, obtaining credit contrary to section 137 of the  
Bankruptcy Act.

*C.D.*, being accessory to same offence.

## PARTICULARS OF OFFENCE

*A.B.*, on the                      day of                      , 19                      , in the  
Division, being an undischarged bankrupt, obtained credit to the extent  
of                      dollars from *H.S.* without informing the said *H.S.* that he  
then was an undischarged bankrupt.

*C.D.*, at the same time and place did aid, abet, counsel and procure *A.B.* to  
commit the said offence.

## 23.—BANKRUPTCY OFFENCE

*First Count*

## STATEMENT OF OFFENCE

Bankruptcy offence contrary to section 133 (1) of the Bankruptcy Act.

## PARTICULARS OF OFFENCE

*A.B.*, has been adjudged bankrupt, and on the                      day  
of                      , 19                      , in the                      Division, did not fully  
and truly discover to the trustee all his property, and how and to whom and for  
what consideration and when he had disposed of a piano part thereof.

*Second Count*

## STATEMENT OF OFFENCE

Bankruptcy offence contrary to section 133 (1) of the Bankruptcy Act.

## PARTICULARS OF OFFENCE

*A.B.*, has been adjudged bankrupt, and on the                      day  
of                      , 19                      , in the                      Division, did not deliver  
up to the trustee a book called a ledger, relating to his property or affairs.

*Third Count*

## STATEMENT OF OFFENCE

Bankruptcy offence contrary to section 133 (1) of the Bankruptcy Act.

## PARTICULARS OF OFFENCE

*A.B.*, on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and within twelve months next before the presentation of a bankruptcy petition against him upon which he was adjudged bankrupt, in the \_\_\_\_\_ Division, fraudulently removed a piano, value \$40, part of his property.

## 24.—PREVIOUS CONVICTION

Prior to commission of the said offence, the said *A.B.*, had been previously convicted of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at the \_\_\_\_\_ held at \_\_\_\_\_.

## THIRD SCHEDULE

(Section 80A)

(Inserted by Act 3 of 1983, s. 6.)

## PRESCRIBED OFFENCES AND FIXED PENALTIES

<i>Column 1</i> <i>Item No.</i>	<i>Column 2</i> <i>Offence</i>	<i>Column 3</i> <i>Fixed penalty</i>
1.	Begging (Minor Offences Act, section 3(a)) .....	\$10
2.	Pestering (Minor Offences Act, section 3(d)) .....	\$5
3.	Indecency (Minor Offences Act, section 6) .....	\$15
4.	Indecent or obscene language (Minor Offences Act, section 7(1)) .....	\$10
5.	Loitering (Minor Offences Act, section 8) .....	\$15
6.	Spitting or discharging nasal fluid or mucus (Minor Offences Act, section 41) .....	\$5
7.	Licence not affixed to vehicle (Traffic Act, section 14 (3)) .....	\$20
8.	Failing to wear PSV driver's badge (Traffic Regulations, regulation 24(9)) .....	\$15
9.	Exceeding maximum speed (Traffic Regulations, regulation 44) .....	\$15
10.	Failing to display maximum speed sign (Traffic Regulations, regulation 45) .....	\$10
11.	Emitting smoke (Traffic Regulations, regulation 49) .....	\$15
12.	Excess passengers on motor cycle (Traffic Regulations, regulation 53) .....	\$20
13.	Failing to wear a safety helmet (Traffic Regulations, regulation 54) .....	\$15

14.	Travelling in an insecure position (Traffic Regulations, regulation 56) .....	\$15
15.	Defective head lamp (Traffic Regulations, regulation 58) .....	\$10
16.	Defective side lamp (Traffic Regulations, regulation 59) ..	\$10
17.	Defective rear lamp (Traffic Regulations, regulation 61) .....	\$20
18.	Defective brake light (Traffic Regulations, regulation 62) .....	\$15
19.	Stationary vehicle not adequately lighted (Traffic Regulations, regulation 63) .....	\$20
20.	Failing to display extra light (Traffic Regulations, regulation 65(3)).....	\$10
21.	Failing to display extra light (Traffic Regulations, regulation 66).....	\$10
22.	Number plate not illuminated (Traffic Regulations, regulation 67).....	\$5
23.	Defective direction indicator (Traffic Regulations, regulation 68).....	\$15
24.	Defective tyre (Traffic Regulations, regulation 74) .....	\$15
25.	Defective mudguard (Traffic Regulations, regulation 44(4)) .....	\$10
26.	Defective service brake (driving brake) (Traffic Regulations, regulation 77(4)).....	\$25
27.	Defective parking brake (Traffic Regulations, regulation 77(5) (c)).....	\$15
28.	Defective windscreen wiper (Traffic Regulations, regulation 80).....	\$10
29.	Defective or absent mirror (Traffic Regulations, regulation 81).....	\$10
30.	Defective speedometer (Traffic Regulations, regulation 82).....	\$10
31.	Defective warning instrument (horn) (Traffic Regulations, regulation 83) .....	\$10
32.	Defective silencer (Traffic Regulations, regulation 84) ....	\$15
33.	Defective or absent marking (Traffic Regulations, regulation 85).....	\$5
34.	Failing to display trailer warning mark (Traffic Regulations, regulation 86) .....	\$10
35.	Stopping vehicle (Traffic Regulations, regulation 144).....	\$10
36.	Parking vehicle (Traffic Regulations, regulation 145) .....	\$10

*Controlled by Ministry of Justice*

CHAPTER 21

CRIMINAL PROCEDURE CODE

SECTION 197—CRIMINAL PROCEDURE CODE (RECORD OF  
EVIDENCE IN THE SUPREME COURT) RULES

*Rules 24 January 1950 [in force 17 February 1950]*

*(Made by the Chief Justice)*

*Short title*

1. These Rules may be cited as the Criminal Procedure Code (Record of Evidence in the Supreme Court) Rules.

*Judge's notes when shorthand note taken*

2. In cases where shorthand notes of the proceedings, including the evidence, are taken under section 346 of the Criminal Procedure Code, the judge shall take such notes of the evidence of the witnesses as he considers desirable.

*Where shorthand note not taken*

3. In cases where shorthand notes of the proceedings are not taken, the judge shall take down in writing in the language of the Court the substance of the evidence of each witness, or so much thereof as he deems material, in narrative form:

Provided that if he so wishes, the judge may take down the whole or any part of the evidence verbatim.

SECTION 348—CRIMINAL PROCEDURE CODE (FORMS) RULES

*Rules 2 May 1945 [in force 12 May 1945], 14 December 1950, 1 July 1953, 21 February 1958, 5 May 1958, 10 February 1960, 9 August 1962, 1 November 1962, 13 September 1966, 22 March 1967\*, 9 October 1969†, 9 December 1969‡, 24 May 1976§, 11 April 1983"*

*(Made by the Chief Justice)*

*Short title*

1. These Rules may be cited as the Criminal Procedure Code (Forms) Rules.

*Forms*

2. The forms set out in the Schedule shall be used in criminal procedure before magistrates' courts with such variation as the circumstances of each case require.

\* See Legal Notice No. 24 of 1967.

† See Legal Notice No. 141 of 1969.

‡ See Legal Notice No. 174 of 1969.

§ See Legal Notice No. 71 of 1976.

" See Legal Notice No. 24 of 1983.

C.P.C. FORM NO. 1

## CRIMINAL PROCEDURE CODE

FORM 1.  
(Section 78)

FIJI.

## COMPLAINT

In the Magistrates' Court at \_\_\_\_\_  
 of \_\_\_\_\_ makes complaint to the undersigned magistrate that  
 of \_\_\_\_\_ did on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ in Fiji  
 Taken (or sworn) at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me.

Magistrate.

C.P.C. FORM No. 2

## CRIMINAL PROCEDURE CODE

FORM 2.  
(Section 78)

FIJI.

In the Magistrates' Court at \_\_\_\_\_

CHARGE  
(Private Complaint)

(a) \_\_\_\_\_ of (b) \_\_\_\_\_  
 is charged on the complaint of \_\_\_\_\_ with the following offence:—  
 Statement of Offence (c)

Particulars of Offence (d)

Magistrate.  
Date

- (a) Name, and fathers's name if Indian.
- (b) Address and occupation.
- (c) Brief statement of offence with Act and section.
- (d) Brief particulars of offence in ordinary language.

Note.—This form is for use for charge on private complaint only.  
 (Substituted by Rules 14th December 1950.)



CRIMINAL PROCEDURE CODE  
FORM 3.  
(Section 78)

C.P.C. FORM No. 3

FIJI

In the Magistrates' Court at  
CHARGE  
(Complaint by Public Officer)  
*Statement of Offence*

(a) *Particulars of Offence*

(b) of

(d)

Sworn before me (c)

*Magistrate.*  
Date

(a) Offence with Act and section.

(b) Name or names of accused and brief particulars of offence in ordinary language.

(c) Strike out if not made on oath.

(d) Signature of complainant with rank.

*Note.*—This form is for use when there is one count only—one or more accused.

(Form Inserted by Rules 14th December, 1950.)

C.P.C. FORM NO. 4

## CRIMINAL PROCEDURE CODE

FORM 4.

(Section 78)

FIJI

In the Magistrates' Court at

CHARGE

(Complaint by Public Officer)

FIRST COUNT

*Statement of Offence*

(a)

*Particulars of Offence*

(b)

of

(c)

(d)

Sworn before me (e)

*Magistrate.*

Date

(a) Offence with Act and section.

(b) Name or names of accused persons and brief particulars of offence in ordinary language.

(c) Add further counts as necessary.

(d) Signature of complainant with rank.

(e) Strike out if not made on oath.

*Note.*—This form is for use when there is more than one count. If a second sheet is necessary the signatures will appear at bottom of second sheet only.

*(Form inserted by Rules 14th December, 1950.)*

C.P.C. FORM No. 5

CRIMINAL PROCEDURE CODE

FORM 5.  
(Section 81)  
SUMMONS

FIJI.

In the Magistrates' Court at

To (a) of (b)

You are hereby commanded to appear at o'clock in the noon of  
the day of , 19 , at the Magistrates' Court at the Court House  
there to answer the following charge(s) made on the complainant of  
(a) of (b) ,

*Statement of Offence (c)*

*Particulars of Offence (d)*

and be dealt with according to law.

Dated this day of , 19 .

*Magistrate or Justice of the Peace.*

- (a) Full name, and father's name if Indian.
  - (b) Full address, and occupation.
  - (c) Brief statement of offence with Act and section contravened.
  - (d) Brief particulars of offence in ordinary language.
-

C.P.C. Form No. 6

## CRIMINAL PROCEDURE CODE

FORM 6.

(Sections 81 and 88)

## SUMMONS

FIJI.

In the Magistrates' Court at

Case No.

To \_\_\_\_\_ of \_\_\_\_\_  
 You are hereby commanded to appear at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon  
 of the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at the Magistrate's Court at the Court  
 House \_\_\_\_\_ there to answer the charge(s) set out hereunder and be dealt  
 with according to law:

Provided that your personal attendance will be excused and the case may then  
 be disposed of in your absence if—

- (a) you admit the offence and plead guilty in writing; or
- (b) you appear by barrister and solicitor.

STATEMENT OF OFFENCE (with Act and section)

## PARTICULARS OF OFFENCE

You are warned that—

- (1) if your personal attendance has been excused any fine which may be imposed upon you must be paid within eight days from the return date on this form;
- (2) unless you enclose a stamped addressed envelope with the form you will not receive notification from the Court of any fine which may have been imposed and it will be your duty to make inquiry in that respect either in person or by telephone from the Court. If you fail to pay any such fine within the time allowed by the Court or to apply to the Court for an extension of time for payment of such fine you will be liable without further warning to be committed to prison forthwith for such term as the magistrate may have lawfully ordered.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

.....  
*Magistrate or Justice of the Peace.*

Note—This form must be used—

- (a) in all cases in which the offence is punishable only by fine or by imprisonment not exceeding three months; and
- (b) in any other case (not being a felony) in which the magistrate thinks fit to dispense with the personal attendance of the accused.

(Form substituted by Rules 9th December, 1969.)

C.P.C. Form No. 7

CRIMINAL PROCEDURE CODE

FORM 7.

(Sections 81 and 88)

SUMMONS TO SHOW CAUSE

FIJI.

In the Magistrates' Court at

Whereas on the       day of       , 19       , you [*name of Defendant*] were charged with the offence hereunder set out—

And whereas your personal attendance was dispensed with under section 88 of the Criminal Procedure Code

And whereas you were on the day aforesaid convicted of the said offence and ordered to pay a fine of       within the period of       days from the date thereof.

And whereas the said fine has not been paid within the period prescribed.

Now therefore you the said       are hereby commanded to appear before the Magistrates' Court at       on the       day of       , 19       , at

o'clock in the forenoon to show cause why you should not be committed to prison for such term as may then be prescribed.

*Statement of Offence*

Dated at       this       day of       , 19       .  
Magistrate.

(Form inserted by Rules 1st July, 1953.)

C.P.C. Form No. 8.

CRIMINAL PROCEDURE CODE

FORM 8.

(Section 79)

WARRANT TO APPREHEND DEFENDANT IN THE FIRST INSTANCE

FIJI

In the Magistrates' Court at

To all Police Officers in Fiji.

These are to command you in Her Majesty's name to arrest and bring before me at the Magistrates' Court at the Court House       (a)       of (b)

to be dealt with according to law on the following charge(s) made on the sworn complaint of (a)       of (b)

*Statement of Offence (c)*

*Particulars of Offence (d)*

Dated this       day of       , 19       .  
Magistrate or Justice of the Peace. .

(a) Name, and father's name if Indian.

(b) Full address, and occupation.

(c) Brief statement of offence, with Act and section contravened.

(d) Brief particulars of offence in ordinary language.

C.P.C. Form No. 9

## CRIMINAL PROCEDURE CODE

FORM 9.

(Section 80)

FIJI POLICE

## NOTICE TO ATTEND COURT

To \_\_\_\_\_ of \_\_\_\_\_

You are hereby required to attend the Magistrate's Court at

on \_\_\_\_\_ at \_\_\_\_\_

to answer the charge set out hereunder—

Provided that your personal attendance will be excused and the case then be disposed of in your absence if—

- (a) you admit the offence and plead guilty in writing; or
- (b) you appear by barrister and solicitor.

STATEMENT OF OFFENCE (with Act and section):

PARTICULARS OF OFFENCE:

(Signed)	Rank	Police Station	Date
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(On reverse side—Note, Written Plea of Guilty and Affidavit of Service)

Note—

- (1) If you desire to enter a written plea of guilty you may do so hereon by inserting your name, the date and your signature in the space provided below. The form should then be sent to the clerk of the Magistrate's Court named overleaf. It must be received by him not less than 24 hours before the return date, failing which the Court may proceed to hear the charge in your absence.
- (2) You are warned that—
  - (a) if your personal attendance has been excused any fine which may be imposed upon you must be paid within eight days from the return date on this form;
  - (b) unless you enclose a stamped addressed envelope with the form you will not receive notification from the Court of any fine which may have been imposed and it will be your duty to make inquiry in that respect either in person or by telephone from the Court. If you fail to pay any such fine within the time allowed by the Court or to apply to the Court for an extension of time for payment of such fine you will be liable without further warning to be committed to prison forthwith for such term as the magistrate may have lawfully ordered.

## WRITTEN PLEA OF GUILTY

I, \_\_\_\_\_ being the person named overleaf hereby  
enter a plea of guilty to the charge specified.

(Signed)	Date:
----------	-------

CRIMINAL PROCEDURE CODE

AFFIDAVIT OF SERVICE

I, \_\_\_\_\_ make oath  
and say that I did on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,  
serve a true copy of this Notice to Attend Court  
on \_\_\_\_\_ at \_\_\_\_\_  
Sworn by me at \_\_\_\_\_  
this \_\_\_\_\_ day of \_\_\_\_\_,  
19\_\_\_\_.

*Magistrate, Justice of the Peace  
or Commissioner for Oaths.*

*(Substituted by Rules\* 9 December 1969.)*

C.P.C. FORM NO. 9A

FORM 9A

*(Section 80B)*

*(Inserted by Rules† 11 April 1983.)*

*[Obverse]*

ROYAL FIJI POLICE

FIXED PENALTY NOTICE

TO—

[name] of [address]:

OR

the driver [or owner] of motor vehicle registered number \_\_\_\_\_ :

YOU ARE HEREBY CHARGED as follows:—

*Statement of offence:*

contrary to \_\_\_\_\_ (Maximum penalty: \_\_\_\_\_ )

*Particulars of offence:*

TAKE NOTICE that, if, *not later than 21 days from the date hereof*, payment of the fixed penalty of \$ \_\_\_\_\_ is received, as specified overleaf, at the Magistrate's Court at [place], all liability in respect of the offence will be discharged and no further action will be taken.

HOWEVER, if that fixed penalty is not so paid, you are hereby required to attend that Magistrate's Court on \_\_\_\_\_ 19\_\_\_\_, at [time], to answer the charge set out above, unless—

(a) you admit the offence and plead guilty in writing as specified overleaf; or

(b) an appearance is made on your behalf by a barrister and solicitor, in which case your personal attendance will be excused and the case will be disposed of in your absence.

Signed:

Rank:

Police Station:

Date:

19\_\_\_\_

\* See Legal Notice No. 174 of 1969.

† See Legal Notice No. 24 of 1983.

[Reverse, copies for service only]

### INSTRUCTIONS FOR PAYMENT OF FIXED PENALTY

If you wish to obtain a discharge by the payment of the fixed penalty, you may do so—

- (a) by tendering, in cash or by bank draft payable to the Government of Fiji, the amount of the fixed penalty, together with this notice, at the office of the Magistrate's Court specified overleaf; or
- (b) by forwarding, by properly pre-paid post, to the Clerk of the Magistrate's Court a bank draft, money order or postal order payable to the Government of Fiji for the amount of the fixed penalty, together with this notice and, if a receipt is required, a stamped addressed envelope.

NOTE: *In order to avoid Court proceedings, payment must be received at the abovementioned Court not later than 21 days after the date of this notice.*

### INSTRUCTIONS FOR WRITTEN PLEA OF GUILTY

NOTE: *These instructions are not applicable if fixed penalty is duly paid within 21 days of the date of this notice.*

1. If you wish to enter a written plea of guilty, you may do so by—

- (a) inserting your name, the date and your signature in the space provided below; and
- (b) delivering this notice, or sending it by properly pre-paid post, to the Clerk of the Magistrate's Court specified overleaf so as to reach him not later than 24 hours before the time specified overleaf for your attendance before the Court.

2. You are warned that—

- (a) unless the instruction set out in paragraph 1 is complied with within the specified time, the Court may proceed to hear the charge in your absence;
- (b) unless you enclose with this notice a stamped addressed envelope, you will not receive notification from the Court of any fine that may be imposed and it will be your duty to make inquiry of the Court in that regard either in person or by telephone; and
- (c) if you fail to pay any fine which is imposed upon you within the time allowed by the Court or to apply to the Court for an extension of time for the payment of that fine, you will be liable without further warning to be committed to prison forthwith for such term as the magistrate may have lawfully ordered.

### WRITTEN PLEA OF GUILTY

I, [full name], being the person charged overleaf, hereby enter a plea of guilty to the charge specified.

Signed:

Date: 19 .



[Reverse, other copies]

AFFIDAVIT OF SERVICE

(To be completed in all cases)

I, [full name of police officer], the police officer whose signature appears at the foot of the Fixed Penalty Notice overleaf, make oath and say that, on the                      day of                      , 19                      , at                      , I did—

serve upon the accused person specified therein

OR

affix, in a conspicuous position, on the motor vehicle specified therein a true copy of that Fixed Penalty Notice.

Sworn by the abovenamed police officer }  
at              this              day of              , 19              , }

Magistrate or Justice of Peace  
or Commissioner for Oaths

SUPPLEMENTARY AFFIDAVIT OF SERVICE

(To be completed when service is effected on the registered owner of a motor vehicle for the purposes of subsection 80C(4) )

I, [full name], a [rank] stationed at                      Police Station, make

oath and say that, on the              day of              , 19              , I did serve upon [name of registered owner of motor vehicle] a true copy of the Fixed Penalty Notice overleaf by [means of service].

Sworn by the abovenamed police officer }  
at              this              day of              , 19              , }

Magistrate or Justice of the Peace  
or Commissioner for Oaths

C.P.C. FORM NO. 10

## CRIMINAL PROCEDURE CODE

FORM 10.

(Section 90)

WARRANT TO APPREHEND DEFENDANT WHERE  
SUMMONS IS DISOBEYED

FIJI.

In the Magistrates' Court at

To all Police Officers in Fiji.

WHEREAS on the            day of            , 19            , on the complaint of  
(a)            of (b)            (a)            of (b)            hereinafter called the de-  
fendant was summoned to appear before the Magistrates' Court at the Court  
House,            , on the            day of            , 19            , at            o'clock in  
the            noon to answer the following charge(s):—

*Statement of Offence (c)*

And whereas an oath has been made that the defendant was duly served with  
the summons but did not appear.

These are to command you in Her Majesty's name to arrest the defendant and  
bring him before me at the Magistrates' Court at            to answer the said  
charge(s) and be dealt with according to law.

Dated this            day of            , 19            .

*Magistrate or Justice of the Peace.*

(a) Name, and father's name if Indian.

(b) Full address, and occupation.

(c) Brief statement of offence, with Act and section contravened.

FORM NO. 11

CRIMINAL PROCEDURE CODE

FORM 11.

(Section 108)

BAIL RECOGNIZANCE

FIJI.

In the Magistrates' Court at

On the                      day of                      , 19                      ,                      of                      ,  
as principal,                      of                      , as surety and                      of                      ,  
as surety, severally acknowledged themselves to owe to Her Majesty the Queen the  
several sums following; that is to say:—

the said                      the sum of                      dollars, the said  
the sum of                      dollars, and the said                      the sum of                       
dollars, to be paid by them the said                      if the  
said                      shall fail in the condition hereunder written.

The condition is that if the said                      shall personally appear on  
the                      day of                      , 19                      , at                      o'clock in the  
noon at the Magistrates' Court at the Court House,                      , to  
answer a charge(s) made on the information of                      and shall  
continue to attend from day to day and at each adjournment of the said court and  
not to depart therefrom without leave this bond shall be void.

*Principal.*

*Surety.*

*Surety.*

*Magistrate or Police Officer.*

C.P.C. FORM NO. 12

CRIMINAL PROCEDURE CODE  
FORM 12.  
(Section 129)  
SUMMONS TO WITNESS

FIJI.

In the Magistrates' Court at

To Case No.  
WHEREAS a charge(s) has/have been made on the complaint  
of  
of that  
of did commit the following  
offence(s):—

*Statement of Offence(s)*  
*Particulars of Offence(s)*

AND it appearing to me by the statement of  
that you are likely to give material evidence therein on behalf of the (a).

You are therefore hereby summoned to appear before the Magistrate's Court  
at the Court House  
on the day of , 19 , at the hour  
of o'clock in the noon to testify what you  
know in the matter: and also to bring with you and produce at the time and place  
aforesaid (b).

Dated this day of , 19 .

.....  
*Magistrate or Justice of the Peace.*

(a) Complainant or Defendant. (b) Specify documents to be produced.

AFFIDAVIT OF SERVICE

I of  
make oath and say that I did on the day of  
19 , serve a true copy of the within  
summons on the within-named witness by delivering the same to the said  
at  
Sworn before me at }  
this day of 19 } .....

.....  
*Magistrate, Justice of the Peace or  
Commissioner for Oaths.*

C.P.C. FORM NO. 13

## CRIMINAL PROCEDURE CODE

FORM 13.

(Section 131)

## WARRANT FOR A WITNESS IN THE FIRST INSTANCE

FIJI.

In the Magistrates' Court at

To all Police Officers in Fiji.

of having deposed to me that of  
is in possession of material evidence (*or*, is a material witness) in respect of a charge  
against and is not likely to give evidence unless compelled to do  
so.

These are to command you in Her Majesty's name to arrest and bring the  
said before me at the Magistrates' Court at the Court  
House, , at o'clock in the noon on the  
day of to give evidence in such behalf.

Dated this day of , 19 .

*Magistrate.*

C.P.C. Form No. 14

## CRIMINAL PROCEDURE CODE

FORM 14.

(Section 130)

## WARRANT WHERE A WITNESS HAS NOT OBEYED A SUMMONS

FIJI.

In the Magistrates' Court at

To all Police Officers in Fiji.

of not having appeared in obedience to a summons requiring  
his attendance on the day of at the  
Magistrates' Court at the Court House, , to give evidence  
on behalf of of on a charge against  
of

These are to command you in Her Majesty's name to arrest and bring before  
me at o'clock in the noon on the day of the said  
to be dealt with according to law.

Dated this day of , 19 .

*Magistrate.*

C.P.C. Form No. 15

CRIMINAL PROCEDURE CODE

FORM 15.

(Section 137)

COMMITMENT OF A WITNESS FOR REFUSING TO BE SWORN OR TO  
GIVE EVIDENCE

In the Magistrates' Court at

FIJI.

To all Police Officers in Fiji and to the Officer in Charge of the  
prison.

of having refused this day at a Magistrates' Court held at  
the Court House, , without just excuse to be examined on oath (or  
solemn affirmation) as a witness at the hearing of a charge against of  
(or being duly sworn (or affirmed) this day at the Magistrates'  
Court held at the Court House as a witness on the information of  
against having refused without just excuse to answer  
certain questions concerning the premises):

Whereupon the hearing of the said charge was adjourned to the  
day of , 19 , and the said was ordered to be  
committed to prison until such date unless he sooner consents to do what is  
required of him.

These are therefore to command you the said Police Officers in Her Majesty's  
name to convey the said to the prison and there to deliver  
him to the Officer in Charge thereof who is hereby directed to imprison him until  
such date unless he sooner consents to do what is required of him and then to bring  
him before this Court at such adjourned hearing as aforesaid.

Dated this day of , 19 .

Magistrate.

C.P.C. FORM NO. 16

CRIMINAL PROCEDURE CODE

FORM 16.

(Section 202)

WARRANT TO REMAND DEFENDANT WHEN ARRESTED

In the Magistrates' Court at

FIJI.

To all Police Officers in Fiji and to the Officer in Charge of the  
prison.

of having been brought before me under arrest to answer  
the following charge(s):—

*Statement of Offence*

These are to command you the said Police Officers in Her Majesty's name to  
convey and deliver the said to the Officer in Charge of the  
prison who is hereby directed safely to keep him until the day of  
, 19 , and then have him before the Magistrates' Court at the Court  
House, , at o'clock in the noon.

Dated this day of , 19 .

Magistrate.

C.P.C. FORM NO. 17

## CRIMINAL PROCEDURE CODE

FORM 17.

(Section 202)

WARRANT OF COMMITMENT FOR SAFE CUSTODY ON ADJOURN-  
MENT OF HEARING

FIJI.

In the Magistrates' Court at

To all Police Officers in Fiji and to the Officer in Charge of the  
prison.Whereas the hearing of a charge against \_\_\_\_\_ has been adjourned to  
the \_\_\_\_\_ day of \_\_\_\_\_ at o'clock in the \_\_\_\_\_ noon at  
the Magistrates' Court at the Court House,These are to command you the said Police Officers in Her Majesty's name that  
\_\_\_\_\_ be conveyed to the \_\_\_\_\_ prison and there delivered to the  
Officer in Charge thereof who is hereby directed safely to keep him until the said  
\_\_\_\_\_ day of \_\_\_\_\_ and then have him before me at the said time  
and place.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

\_\_\_\_\_  
Magistrate.

C.P.C. FORM NO. 18

## CRIMINAL PROCEDURE CODE

FORM 18.

(Section 203)

WARRANT TO ARREST ACCUSED WHO HAS NOT APPEARED AFTER  
ADJOURNMENT

FIJI.

In the Magistrates' Court at

To all Police Officers in Fiji.

Whereas on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_,  
\_\_\_\_\_ of \_\_\_\_\_ hereinafter called the accused, appeared before the  
Magistrates' Court at the Court House, \_\_\_\_\_, to answer a charge(s) made on  
the complaint of \_\_\_\_\_ of \_\_\_\_\_ that he the said accused did commit the  
following offence(s):—*Statement of Offence*And the hearing of the said charge(s) was adjourned to the  
day of \_\_\_\_\_, 19 \_\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon at the Magistrates'  
Court at the Court House, \_\_\_\_\_, at which time and place the accused failed to  
appear.These are to command you the said Police Officers to arrest the accused and  
have him before me forthwith at the Magistrates' Court at the Court  
House,

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

\_\_\_\_\_  
Magistrate.

C.P.C. FORM NO. 19

CRIMINAL PROCEDURE CODE

FORM NO. 19.

(Section 217)

CONVICTION WHEN THE PUNISHMENT IS IMPRISONMENT

FIJI.

In the Magistrates' Court at

Be it remembered that on            day of            , 19    ,            of  
is convicted before me of the following offence:—

*Statement of Offence*

*Particulars of Offence*

and I adjudge him for his said offence to be imprisoned in the prison at            for  
the space of

Dated this            day of            , 19    .

*Magistrate.*

C.P.C. FORM NO. 20

CRIMINAL PROCEDURE CODE

FORM 20.

(Section 217)

CONVICTION FOR A FINE AND IN DEFAULT OF PAYMENT  
IMPRISONMENT

FIJI.

In the Magistrates' Court at

BE it remembered that on            day of            , 19    ,            is  
convicted before me of the following offence:—

*Statement of Offence*

and I adjudge him for his said offence to forfeit and pay the sum of (a)            to  
be paid and applied according to law and also to pay to the said            the sum of  
for his costs in this behalf and if the said several sums be not paid  
forthwith (*or*, on or before            next) I adjudge the said  
to be imprisoned in the            prison for the space of  
unless the said several sums (and the costs and charges of conveying the  
said            to the said prison) shall be sooner paid.

Given under my hand the day and year first above-mentioned at

*Magistrate.*

(a) Stating the penalty and the compensation (if any).



C.P.C. FORM No. 21

## PENAL CODE

FORM 21.

(Section 28)

WARRANT OF COMMITMENT ON A CONVICTION WHERE THE  
PUNISHMENT IS BY IMPRISONMENT

FIJI.

In the Magistrates' Court at

To all Police Officers in Fiji and to the Officer in Charge of the  
prison.Whereas late of was this day duly convicted before me of  
the following offence:—*Statement of Offence*and it was thereby adjudged that the said for his offence should be  
imprisoned in the prison for the space ofThese are therefore to command you the said Police Officers to take the said  
and convey him to the prison and deliver him to the Officer in  
Charge thereof who is hereby directed to imprison him for the space of

Dated this day of , 19 .

Magistrate.

C.P.C. FORM NO. 22

PENAL CODE

FORM 22.

(Section 37)

WARRANT OF COMMITMENT ON A CONVICTION AND IN  
DEFAULT OF PAYMENT IMPRISONMENT

FIJI.

In the Magistrates' Court at

Case No.

Warrant No.

To all Police Officers in Fiji and to the Officer in Charge of the  
prison.

Whereas

late of (hereinafter called the said defendant) was on the day  
of , 19 , duly convicted before me of the following offence:—

*Statement of Offence*

and it was thereby adjudged that the said defendant should for such his offence pay  
a fine of and costs (and for compensation) or in  
default of payment be imprisoned in the prison for the space  
of ;

And whereas the said defendant hath made default.

These are therefore to command you the said Police Officers to take the said  
defendant and convey him to the prison and deliver him to the Officer in  
Charge thereof who is hereby directed to imprison him the said defendant for the  
space of unless he shall sooner pay the following sums of money:—

Fine .....	\$
Costs .....	\$
Compensation .....	\$
Warrant issuing fee .....	\$4.00

Total:

Dated this day of , 19 .

Magistrate.

(Form substituted by Rules 23rd August, 1965.)

C.P.C. FORM NO. 23

## PENAL CODE

FORM 23.

(Section 36)

## WARRANT OF DISTRESS UPON A CONVICTION FOR A FINE

FIJI.

In the Magistrates' Court at

To all Police Officers in Fiji.

Whereas                      late of                      was on the  
day of                      duly convicted before me of the following offence:—

*Statement of Offence**Particulars of Offence*

and it was thereby adjudged that the said                      should for such his offence pay a  
fine of                      and should also pay to                      the sum of                      for costs  
(and compensation). And whereas the said                      being so convicted as aforesaid  
and being required to pay the said sums of                      and                      hath not paid the  
same but therein hath made default. These are therefore to command you in Her  
Majesty's name forthwith to make distress of the goods and chattels of the  
said                      and if within the space of                      days next after the making of such  
distress the said sums together with the reasonable charges of taking and keeping  
the distress shall not be paid that you do sell the said goods and chattels so by you  
distrained and do pay the money arising by such sale unto the Clerk of the  
Magistrates' Court at                      that he may pay and apply the same as by law  
directed and may render the overplus if any on demand to the said                      and if  
no such distress can be found then that you certify the same unto me to the end that  
such further proceedings may be had therein as to the law doth appertain.

Dated this                      day of                      , 19                      .

*Magistrate.*

Amount adjudged:—

Fine .....	\$
Costs .....	\$
Compensation .....	\$
Less paid .....	\$

Warrant issuing fee ..... \$2.00

Amount to be levied ..... \$

And, in addition, the charges of taking  
and keeping the distress ..... \$

*N.B.*—If this warrant is executed outside the local limits of the jurisdiction of  
the court issuing the same it must be endorsed by a resident or second class  
magistrate within the local limits of whose jurisdiction such property is found.  
(Section 35).

RETURN

C.P.C. FORM NO. 24

PENAL CODE

FORM 24.

(Section 38)

WARRANT OF COMMITMENT IN DEFAULT OF OR IN LIEU OF  
DISTRESS UPON A CONVICTION FOR A FINE

FIJI.

In the Magistrates' Court at

Case No.  
Warrant No.

To all Police Officers in Fiji and to the Officer in Charge of the  
prison.

Whereas

late of (hereinafter called the said defendant), was on the  
day of , 19 , duly convicted before me on the following  
offence:—

*Statement of Offence*

and it was thereby adjudged that the said defendant should for such his offence pay  
a fine of and for costs (and for compensation (a) \*  
(or in default of payment be imprisoned in the prison for the space  
of ); \* (b) AND whereas on the day of  
19 , a distress warrant was issued for levying the said sum(s) but no sufficient  
distress whereon to levy the same could be found;

\* (b) and whereas it appears that \* (b) (distress and sale of the defendant's  
property would be ruinous to him or his family) \* (b) (the defendant has no property  
whereon distress may be levied).

These are therefore to command you the said Police Officers to take the said  
defendant and convey him to the  
prison and deliver him to the Officer in Charge thereof who is hereby directed to  
imprison him for the space of unless he shall sooner pay the following  
sums of money:—

Fine .....	\$
Costs .....	\$
Compensation .....	\$
Expenses of Distress .....	\$
Warrant issuing fee .....	\$2.00

Total: \_\_\_\_\_

Dated this day of , 19 .

Magistrate.

(Form substituted by Rules 23rd August, 1965.)

\*(a) Delete if not applicable.  
\*(b) Delete whichever is inapplicable (see section 33 (1) and (2) Penal Code).

C.P.C. FORM NO. 25

## CRIMINAL PROCEDURE CODE

FORM 25.

(Section 217)

## ORDER OF DISMISSAL OF A CHARGE

FIJI.

In the Magistrates' Court at

Be it remembered that on the                      day of                      , 19                      , on the  
complaint of                      of                      ,                      of                      was charged before  
me with the following offence(s):—

*Statement of Offence**Particulars of Offence*

and now both the said parties appear before me in order that I should hear and  
determine the said charge(s) (or, the said                      appears before me but the  
said                      although duly called does not appear) whereupon the matter of  
the said charge(s) being by me duly considered it manifestly appears to me that the  
said charge(s) is/are not proved and I do therefore dismiss the same (and do  
adjudge that the said                      do pay to the said                      the sum of  
                    for his costs incurred by him for his defence in this behalf and if the  
said sum for costs be not paid I adjudge the said                      to be imprisoned in the  
                    prison unless the said sum for costs and charges of the said distress  
shall be sooner paid).

Dated this                      day of                      , 19                      .

*Magistrate.*

C.P.C. FORM NO. 26

PENAL CODE

FORM 26.

(Section 36)

WARRANT OF DISTRESS FOR COSTS UPON AN ORDER OF DISMISSAL  
OF A CHARGE

FIJI.

In the Magistrates' Court at

To all Police Officers in Fiji.

Whereas                      of                      was charged before me on the  
day of                      , 19                      , with the following offence(s):—

*Statement of Offence*

whereupon the matter of the said charge(s) was duly considered by me and it  
manifestly appearing to me that that said charge(s) was/were not proved I therefore  
dismissed the same and adjudged that the said                      should pay to the said  
the sum of                      for his costs incurred by him for his defence in this  
behalf and                      has not paid the same but therein has made default.

These are therefore to command you in Her Majesty's name forthwith to make  
distress of the goods and chattels of the same                      and if within the space  
of                      days next after making of such distress the said sums together with  
the reasonable charges of taking and keeping the distress shall not be paid that you  
do sell the said goods and chattels so by you distrained and do pay the money  
arising by such sale unto the Clerk of the Magistrates' Court at                      that  
he may pay and apply the same as by law directed and may render the overplus if  
any on demand to the said                      and if no such distress can be found then  
that you certify the same unto me to the end that such further proceedings may be  
had therein as to the law doth appertain.

Dated this                      day of                      19                      .

*Magistrate.*

*N.B.*—If this warrant is executed outside the local limit of the jurisdiction of  
the court issuing the same it must be endorsed by a resident or second class  
magistrate within the local limits of whose jurisdiction such property is found.  
(Section 36.)

RETURN

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C.P.C. FORM NO. 27

## PENAL CODE

FORM 27.  
(Section 38)WARRANT OF COMMITMENT FOR WANT OF DISTRESS UPON AN  
ORDER FOR DISMISSAL OF A CHARGE

FIJI.

In the Magistrates' Court at

To all Police Officers in Fiji and to the Officer in Charge of the                      prison.

Whereas on the                      day of                      on the complaint of  
                    of                      ,                      of                      was charged before  
me with the following offence(s):—

*Statement of Offence*

and the several proofs adduced to me in that behalf being by me duly heard and considered and it manifestly appearing to me that the said charge(s) was/were not proved I therefore dismissed the same and adjudged that the said  
should pay to the said                      the sum of                      for his costs incurred by him in his defence in that behalf and I ordered that if the said sum for costs should not be paid the said                      should be imprisoned in the  
                    prison for the space of                      and whereas afterwards  
on the                      day of                      in the year aforesaid I issued a warrant to all Police Officers in Fiji commanding them to levy the said sum of  
for costs by distress and sale of the goods and chattels of the said                      ; And  
whereas it appears to me as well by the return of                      to the said warrant of distress as otherwise that he hath made diligent search for the goods and chattels of the said                      but that no sufficient distress whereon to levy the sum abovementioned could be found.

These are therefore to command you the said Police Officers to take the said  
                    and convey him to the                      prison and deliver him to the  
Officer in Charge thereof who is hereby directed to imprison him for the space of  
                    unless the said sum and all costs and charges of the said distress  
amounting to a further sum of                      shall be sooner paid.

Dated this                      day of                      , 19                      .

*Magistrate.*

\*C.P.C. FORM NO. 28

CRIMINAL PROCEDURE CODE  
(Section 42)  
AND PENAL CODE  
(Section 41)  
FORM 28.

RECOGNIZANCE FOR KEEPING THE PEACE

FIJI.

In the Magistrates' Court at

We the undersigned severally acknowledge ourselves to owe to Her Majesty the Queen the several sums following namely of , as Principal the sum of and of and of in Fiji as surety the sum of each, payment thereof to be enforced severally against us by due process of law if the said principal fail in the condition endorsed hereon.

..... Principal

..... Surety

..... Surety

Taken before me this day of , 19 .  
Magistrate.

CONDITION

The condition of the above recognizance is such that if the above bounden principal shall keep the peace and be of good behaviour towards Her Majesty and all Her liege people and especially towards for a term of now next ensuing then the said recognizance shall be void but other wise shall remain in full force.

\* Inserted by Rules 21st February, 1958.

\* Inserted by Rules 21st February, 1958.



\*C.P.C. FORM NO. 29

## PENAL CODE

FORM 29.

(Section 42)

## RECOGNIZANCE TO APPEAR AND RECEIVE SENTENCE

FIJI.

In the Magistrates' Court at

We the undersigned severally acknowledge ourselves to owe to Her Majesty the Queen the several sums following namely  
 of as principal the sum of dollars and of  
 and of

as sureties the sum of dollars each, payment thereof to be enforced severally against us by due process of law if the said principal fail in the condition hereon endorsed.

..... Principal  
 ..... Surety  
 ..... Surety

Taken before me this day of , 19 .

Magistrate.

## CONDITION

The condition of the above recognizance is such that if  
 the above bounden principal who was on the  
 day of , 19 , convicted by the Magistrates' Court at of  
 the offence of contrary to section of the Penal Code  
 shall appear before the Magistrates' Court at to receive sentence when  
 called upon at any time during the period of now next ensuing and in  
 the meantime keep the peace and be of good behaviour then the said recognizance  
 shall be void but otherwise shall remain in full force.

\*C.P.C. FORM NO. 30

CRIMINAL PROCEDURE CODE

FORM 30.

(Section 116 (2) )

DISTRESS WARRANT FOR SUMS DUE UNDER RECOGNIZANCE

FIJI.

In the Magistrates' Court at

To all Police Officers in Fiji.

Whereas                      was by his recognizance entered into on the                      day  
of                      , 19                      , bound in the sum of                      dollars;

And the condition of the recognizance having been broken and sufficient cause  
not having been shown why the penalty should not be paid it was on the  
day of                      , 19                      , adjudged by me that the said recognizance  
should be forfeited and that he should pay the said sum of                      dollars;  
And default having been made in payment.

These are therefore to command you in Her Majesty's name forthwith to make  
distress of the goods and chattels of the said                      (except the wearing  
apparel of him and his family, and, to the value of ten dollars, the tools and  
implements of his trade); and if within the space of                      days next after the  
making of such distress, unless he consents in writing to an earlier sale, the sum  
stated at the foot of this warrant together with the reasonable costs and charges of  
the making and keeping of the said distress be not paid then to sell the said goods,  
and pay the proceeds of the said distress to the Clerk of the Magistrates' Court at  
that he may pay and apply the same as by law directed and if no such  
distress can be found to certify the same to the said Court.

Dated the                      day of                      , 19                      .

Magistrate

\$ c.

Amount due under recognizance .....

Paid .....

Remaining due .....

Costs of issuing this warrant .....

Amount to be levied .....

N.B.—If this warrant is executed outside the local limits of the jurisdiction of  
the Court issuing the same it must be endorsed by a resident or second class  
Magistrate within the local limits of whose jurisdiction such property is found  
(Section 36, Cap. 17).

\* Inserted by Rules 21st February, 1958.

\*C.P.C. FORM NO. 31

CRIMINAL PROCEDURE CODE  
FORM 31.

(Sections 310 and 311)

In the matter of an Appeal from the Magistrates' Court at  
In Criminal Case No.

## PETITION OF APPEAL

To Her Majesty's Supreme Court of Fiji.

The Petition of sheweth—

1. That on the day of , 19 , your Petitioner was  
convicted by the Magistrates' Court at of the following offence:—*Statement of Offence**Particulars of Offence*2. That upon his conviction for the said offence your Petitioner was sentenced  
to3. That your Petitioner desires to appeal against the said conviction/sentence  
upon the following grounds:—

Presented this day of , 19 .

..... Appellant.

\* Inserted by Rules 21st February, 1958.

\* Inserted by Rules 21st February, 1958.

\*C.P.C. FORM NO. 32

CRIMINAL PROCEDURE CODE

(Section 315)

FORM 32.

RECOGNIZANCE FOR BAIL ON APPEAL

FIJI.

In the Magistrates' Court at

Whereas \_\_\_\_\_ was convicted of the offence of \_\_\_\_\_ on  
the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and now is in lawful custody  
in respect of such offence and has presented (declared his intention of presenting) a  
petition of appeal against his conviction (and sentence) to the Supreme Court of  
Fiji and has been granted bail pending the determination of his appeal upon his  
entering into his own recognizance in the sum of \$ \_\_\_\_\_ (with

\_\_\_\_\_ surety each in the sum of \$ \_\_\_\_\_ )  
Be it known that on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, the  
said \_\_\_\_\_ as principal and \_\_\_\_\_ as surety and  
\_\_\_\_\_ as surety severally acknowledged themselves to  
owe to Her Majesty the Queen the several sums following that is to say; the  
principal the sum of \_\_\_\_\_ dollars and the surety \_\_\_\_\_ the sum  
of \_\_\_\_\_ dollars each, payment thereof to be enforced severally against them  
by due process of law if the principal fail in the condition hereunder written.

CONDITION

The condition is that if he the said \_\_\_\_\_ (shall duly present his  
petition of appeal within the time allowed and) shall personally appear and  
surrender himself at and before the Supreme Court on such date and at such time  
and place as may be notified to him by the Chief Registrar at the hearing of his  
appeal to such Court and at the final determination thereof and abide by the  
judgment of the said Court and shall not depart or be absent from such Court or  
from any such hearing without the leave of the said Court and in the meantime shall  
not depart out of Fiji then this bond shall be void but otherwise shall remain in full  
force.

Taken before me:

..... *Principal*  
..... *Surety*  
..... *Surety*

*Magistrate.*

*Note*—When released on bail my residence to which any notices, etc., are to be  
addressed will be as follows:—

..... *Appellant.*

\* Inserted by Rules 21st February, 1958.

\*C.P.C. FORM NO. 33

## CRIMINAL PROCEDURE CODE

FORM 33.

(Section 233)

## WARRANT OF COMMITMENT FOR TRIAL

FIJI.

In the Magistrates' Court at

To all Police Officers in Fiji and to the Officer in charge of Prison

Whereas \_\_\_\_\_ of \_\_\_\_\_ was this day charged  
before me with the following offence:—

### Statement of Offence

### Particulars of Offence

and was duly committed for trial to the Supreme Court of Fiji.

These are therefore to command you the said Police Officers in Her Majesty's name to take the said \_\_\_\_\_ and safely convey him to the \_\_\_\_\_ prison aforesaid and there deliver him to the Officer in Charge thereof. And I do hereby command you the said Officer in Charge of the said prison to receive the said \_\_\_\_\_ in to your custody in the said prison and there safely keep him until he shall be thence delivered in due course of law.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_ .  
Magistrate.

\* Inserted by Rules 21st February, 1958.

\*C.P.C. FORM NO. 34

CRIMINAL PROCEDURE CODE

FORM 34.

(Section 233)

RECOGNIZANCE OF BAIL ON COMMITTAL FOR TRIAL

FIJI.

In the Magistrates' Court at

We the undersigned severally acknowledge ourselves to owe to Her Majesty the Queen the several sums following that is to say of  
as principal the sum of dollars and  
of and of as surety the  
sum of dollars each, payment thereof to be enforced severally  
against us by due process of law if the said principal fail in the condition endorsed  
hereon.

Taken before me this day of 19

.....Principal  
.....Surety  
.....Surety

Magistrate.

CONDITION

The condition of the above recognizance is such that whereas the above bounden principal was this day charged before me and committed for trial to the Supreme Court of Fiji for the following offence:—

*Statement of Offence*

*Particulars of Offence*

If therefore the said principal shall appear before the said Supreme Court at on the day of , 19 , at 10 o'clock in the forenoon and there surrender himself into the custody of the Officer in charge of Her Majesty's prison there and plead to and take his trial upon an information against him for or in respect of the charge aforesaid and not depart the said court without leave then the said recognizance shall be void but otherwise shall remain in full force.

---

\* Inserted by Rules 21st February, 1958.

C.P.C. FORM NO. 35

## CRIMINAL PROCEDURE CODE

FORM 35.

(Section 236)

## RECOGNIZANCE TO APPEAR AND GIVE EVIDENCE

FIJI.

In the Magistrates' Court at

Case No.

Each of us, the undermentioned persons, acknowledges for himself/herself that he/she owes to Her Majesty the Queen the sum of                      dollars payment thereof to be enforced against him/her by due process of law if he/she shall fail to comply with the condition endorsed hereon.

Taken before me this                      day of                      , 19                      .

Magistrate.

## CONDITION

The condition of this recognizance in respect of each of the abovenamed persons is that if he/she appears at the Criminal Sessions of the Supreme Court sitting at                      commencing on the                      day of                      , 19                      at the hour of                      o'clock in the forenoon (or on such other day and at such other time during the Sessions as may be notified to him/her in writing by the Magistrate's Court by which he/she was ordered to enter into this recognizance, or by the Chief Registrar of the Supreme Court) to give evidence upon the trial of an information to be then and there preferred against                      and appears at every time and place to which during the course of the proceedings the said trial may be from time to time adjourned, unless the Court otherwise orders in the meantime; AND also appears and gives evidence, if required by any such notice, at any further examination concerning the charge against the said accused which may be held by direction of the Director of Public Prosecutions, then this recognizance shall be void but otherwise shall remain in full force.

\*C.P.C. FORM NO. 36

CRIMINAL PROCEDURE CODE

FORM 36.

(Section 106)

INFORMATION TO OBTAIN A SEARCH WARRANT

F.I.J.I.

In the Magistrates' Court at

The information of \_\_\_\_\_ of \_\_\_\_\_, who upon oath states that he has reasonable cause to suspect and he does suspect and believe that certain property, namely (a) \_\_\_\_\_ upon, by or in respect of which an offence has been committed (or which is necessary to the conduct of an investigation into an offence) is in a certain (b) \_\_\_\_\_ at (c) \_\_\_\_\_ of (d) \_\_\_\_\_

And that the grounds of such suspicion and belief are

(Signature of Informant).

Sworn before me at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

Magistrate or Justice of the Peace.

(a) describe article or things.

(b) building, ship, vehicle, receptacle or place.

(c) situation of building, etc.

(d) name of owner or person residing in or being in charge of the building, etc.

\*C.P.C. FORM NO. 37

CRIMINAL PROCEDURE CODE

FORM 37.

(Section 103)

SEARCH WARRANT

F.I.J.I.

In the Magistrates' Court at

To All Police Officers in Fiji.

Whereas it is made to appear to me by information on oath laid this day by \_\_\_\_\_ of \_\_\_\_\_ that there is reasonable ground for suspecting that certain property, namely (a) \_\_\_\_\_ in respect of which an offence has been committed (or which is necessary to the conduct of an investigation into an offence) is in a certain (b) \_\_\_\_\_ at (c) \_\_\_\_\_ of (d) \_\_\_\_\_

You are hereby authorised forthwith with proper assistance to enter the said (b) \_\_\_\_\_ if necessary by force, and there search for the property above mentioned and, if anything searched for be found, or any other thing which there is reasonable cause to suspect to have been stolen or unlawfully obtained be found, to seize it and bring it before this Court to be dealt with according to law.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

Magistrate or Justice of the Peace.

(a) describe article or things.

(b) building, ship, vehicle, receptacle or place.

(c) situation of building, etc.

(d) name of owner or person residing in or being in charge of the building, etc.

\* Inserted by Rules 1st November, 1962.



\*C.P.C. FORM NO. 38

## PENAL CODE

FORM 38.

(Section 164)

## INFORMATION TO OBTAIN A SEARCH WARRANT

FIJI.

In the Magistrates' Court at

The information of , the parent (or relative or person acting in the interests) of a woman (or girl), who upon oath states that she has reasonable cause to suspect and does suspect that the said is unlawfully detained for immoral purposes by at and is so detained against her will (or she is under the age of sixteen, namely of the age of years) (or she is under the age of twenty-one, namely, of the age of years and is so detained against the will of her parent or any person having lawful care or charge of her)

And that the reasons for such suspicion are

(Signature of informant).

Sworn before me at this day of ,  
19 .

Magistrate.

---

\* Inserted by Rules 1st November, 1962.

\*C.P.C. FORM NO. 39

PENAL CODE  
FORM 39.  
(Section 164)  
SEARCH WARRANT

In the Magistrates' Court at

FIJI.

To a Police Officer.

Whereas it is made to appear to me by information on oath laid this day by

of

the parent (or relative or person acting in the interests of)

a woman (or girl)

that there is

reasonable cause to suspect that the said

is

unlawfully detained for immoral purposes by

at

and is so detained against her will (or

she is under the age of sixteen, namely, of the age of

years) (or she is

under the age of twenty-one, namely, of the age of

years and is so

detained against the will of her parents or any person having lawful care of charge of her).

You are hereby authorised to enter the said premises (accompanied by the said

if he so desire) to

search for the said

and if she

be found to remove her therefrom and take her to and detain her in a place of safety until she can be brought before a magistrate.

Dated this

day of

, 19

Magistrate.

\*C.P.C. FORM NO. 40

PENAL CODE  
FORM 40.  
(Section 169)

INFORMATION TO OBTAIN A SEARCH WARRANT

In the Magistrates' Court at

FIJI.

The information of

of

who upon oath states that he has reasonable cause to suspect and does suspect that

(a part of) a house situate at

is used by a woman (or girl)

named

purposes of prostitution

and that a man named

residing in (or frequenting) the said house is living wholly or in part on her earnings

(or is exercising control, direction or influence over her movements)

And that the reasons for such suspicion are

Sworn before me at

this

(Signature of Informant).

day of

, 19

Magistrate.

\*C.P.C. FORM NO. 41

PENAL CODE  
FORM 41.  
(Section 169)  
SEARCH WARRANT

FIJI.

In the Magistrates' Court at

Whereas it is made to appear to me by information on oath laid this day by  
of  
that there is reason to suspect that (a part of) a house situate at is used by  
a woman (or girl) named  
for purposes of prostitution and that a man named  
, residing in (or frequenting) the said house is living wholly (or in part) on her  
earnings (or is exercising control, direction or influence over her movements).  
You are hereby authorised to enter and search the said house and to arrest the  
said .

Dated this                      day of                      , 19     .

*Magistrate.*

\*C.P.C. FORM NO. 42

GAMING ACT  
FORM 42.  
(Section 13)  
INFORMATION TO OBTAIN A SEARCH WARRANT

FIJI.

In the Magistrates' Court at

The information of \_\_\_\_\_ of \_\_\_\_\_, who upon oath states that he has reasonable ground to suspect and does suspect and believe a certain place, namely \_\_\_\_\_ situate at \_\_\_\_\_ to be a common gaming house. And the grounds of such belief are \_\_\_\_\_

(Signature of Informant).

Sworn before me at                  this                  day of                  , 19                  .  
Magistrate.

\*C.P.C. FORM NO. 43

GAMING ACT  
FORM 43.  
(Section 13)  
SEARCH WARRANT

FIJI.

In the Magistrates' Court at

To all Police Officers in Fiji.

Whereas it is made to appear to me, the undersigned Magistrate, by sworn information laid this day by  
of , that there is (or Whereas of my own knowledge I the undersigned Magistrate, have) reasonable ground to suspect and believe a certain place, namely,

situate at to be a common gaming house.

You are hereby authorised with such assistants as may be necessary, to enter and, if necessary, to break into the said place and there to search for and to seize all implements of gambling; and also all moneys or securities for money, which may be either in actual use for the purpose of gambling or be found upon the persons of the keepers of such place, and to arrest such persons as may be found therein, to be dealt with according to law.

Dated this day of , 19 .

Magistrate.

\*C.P.C. FORM NO. 44

DANGEROUS DRUGS ACT  
FORM 44.  
(Section 36)

INFORMATION TO OBTAIN A SEARCH WARRANT

FIJI.

In the Magistrates' Court at

The information of of ,  
who upon oath states that he has reasonable ground to suspect and does suspect and does suspect that a certain drug or other substance, to which the Dangerous Drugs Act applies, is in contravention of the provisions of that Act being unlawfully kept (or landed or conveyed or sold) in (a) at  
And that the grounds of such suspicion are

(Signature of Informant).

Sworn before me at this day of , 19 .

Magistrate.

(a) building, ship, vehicle or place.

\*C.P.C. FORM NO. 45

## DANGEROUS DRUGS ACT

FORM 45.

(Section 36)

## SEARCH WARRANT

FIJI.

In the Magistrates' Court at

To

Whereas I the undersigned Magistrate, am satisfied by information on oath laid this day by \_\_\_\_\_ of \_\_\_\_\_ that there is reasonable ground to suspect that a certain drug or other substance to which the Dangerous Drugs Act applies is in contravention of the provisions of that Act being unlawfully kept (or landed or conveyed or sold) in (a)

at

You are hereby authorised forthwith to enter, if need be by force, the said (a) \_\_\_\_\_ and every part thereof to examine and to search for any such drug or other article unlawfully kept therein, and to demand from the owner or occupier thereof the production of the authority for being in possession of the same. And if there is reasonable cause to believe that any drug or other article, to which the Dangerous Drugs Act applies, found by you is being kept, conveyed, landed or sold in contravention of the said Act, to seize and detain the same to be dealt with according to law.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

Magistrate.

(a) building, ship, vehicle or place.

\*C.P.C. FORM NO. 46

## DANGEROUS DRUGS ACT

FORM 46

(Section 38 (2))

## INFORMATION TO OBTAIN A SEARCH WARRANT

FIJI.

In the Magistrates' Court at

The information of \_\_\_\_\_ of \_\_\_\_\_ who upon oath states that he has reasonable ground to suspect and does suspect that certain drugs to which the Dangerous Drugs Act applies, are, in contravention of the provisions of that Act, in the possession of or under the control of \_\_\_\_\_

in certain premises at

(or that a document relating to or connected with a certain (intended) transaction or dealing, namely, \_\_\_\_\_ which was (or would if carried out be) an offence against the said Act, is in the possession or control of \_\_\_\_\_ in certain premises at \_\_\_\_\_).

And that the grounds of such suspicion are

(Signature of Informant).

Sworn before me at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

Magistrate or Justice of the Peace.

\*C.P.C. FORM NO. 47

DANGEROUS DRUGS ACT  
FORM 47.  
(Section 38 (2))  
SEARCH WARRANT

FIJI.

In the Magistrates' Court at

To

Whereas I the undersigned Magistrate (*or* Justice of the Peace) am satisfied by information on oath laid this day by

of that there is reasonable ground to suspect that certain drugs to which the Dangerous Drugs Act applies, are, in contravention of the provisions of that Act, in the possession of or under the control of

in certain premises at (*or* that a document relating to or connected with a certain (intended) transaction or dealing, namely

which was (*or* would if carried out be) an offence against the said Act, is in the possession or control of

in certain premises at ).

You are hereby authorised to enter, if need be by force, the above-mentioned premises and to search the said premises and any person found therein, and if there be reasonable ground for suspecting that an offence has been committed against the Dangerous Drugs Act in relation to any such drugs which may be found in the premises or in the possession of any person found therein, or that any document which maybe found is such a document as aforesaid, to seize and detain such drugs or documents, to be dealt with according to law.

Dated this day of , 19 .

*Magistrate or Justice of the Peace.*

\* Inserted by Rules 1st November, 1962.

\*C.P.C. FORM NO. 48

## ARMS AND AMMUNITION ACT

FORM 48.

(Section 30)

## INFORMATION TO OBTAIN A SEARCH WARRANT

FIJI.

In the Magistrates' Court at

The information of \_\_\_\_\_ of \_\_\_\_\_  
who upon oath states that he has reasonable cause to suspect and does suspect and  
believe that \_\_\_\_\_

\_\_\_\_\_ of \_\_\_\_\_ has in his possession an arm (or  
ammunition), namely, \_\_\_\_\_ without a licence (or in  
contravention of the conditions upon which a licence in respect thereof is issued)  
(or for an unlawful purpose) (or whereof he cannot be left in possession without  
danger to the public peace).

And that the grounds of such suspicion and belief are

(Signature of Informant).

Sworn before me at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_  
\_\_\_\_\_  
Magistrate.

\*C.P.C. FORM NO. 49

## ARMS AND AMMUNITION ACT

FORM 49.

(Section 30)

## SEARCH WARRANT

FIJI.

In the Magistrates' Court at

To all Police Officers in Fiji.

Whereas I the undersigned Magistrate have reason to believe by information  
on oath laid this day by \_\_\_\_\_ of \_\_\_\_\_  
that \_\_\_\_\_ of \_\_\_\_\_ has in his possession an arm (or  
ammunition) namely, \_\_\_\_\_ without a licence (or in contravention of the  
conditions upon which a licence in respect thereof is issued) (or for an unlawful  
purpose) (or whereof he cannot be left in possession without danger to the public  
peace).

You are hereby authorised to enter with such assistants as may be necessary  
and search the house or premises occupied by the said \_\_\_\_\_ at  
\_\_\_\_\_ wherein there is reason to believe that the said arm (or ammunition)  
is to be found and to seize and bring before this Court (or the Magistrates' Court  
at \_\_\_\_\_) such arm (or ammunition) and to arrest any person found in such  
house or on such premises whom you may have reason to suspect to have  
committed any offence punishable under the Arms and Ammunition Act.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_  
\_\_\_\_\_  
Magistrate.

\* Inserted by Rules 1st November, 1962.

\*C.P.C. FORM NO. 50

LIQUOR ACT  
FORM 50.  
(Section 85)

INFORMATION TO OBTAIN A SEARCH WARRANT

FIJI.

In the Magistrates' Court at

The complaint of \_\_\_\_\_ of \_\_\_\_\_, who upon oath states  
that he suspects and believes liquor to have been sold at, or in, a place not licensed  
for such purpose namely (a)  
at \_\_\_\_\_

And that the grounds of such suspicion and belief are

Sworn before me at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_  
(Signature of Informant).

Magistrate.

(a) describe place and situation.

\*C.P.C. FORM NO. 51

LIQUOR ACT  
FORM 51.  
(Section 85)  
SEARCH WARRANT

FIJI.

In the Magistrates' Court at

To all Police Officers in Fiji.

Whereas it is made to appear to me, the undersigned Magistrate, upon the  
complaint laid this day by \_\_\_\_\_ of \_\_\_\_\_, that there is  
reasonable ground to suspect and believe liquor to have been sold at, or in, a place  
not licensed for that purpose, namely (a)

You are hereby authorised to enter and search such place and for that purpose  
to break open any doors not opened within a reasonable time after demand and to  
seize all liquor and every receptacle in which the same shall be then and there found  
by you.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

Magistrate.

(a) describe place and situation.

\* Inserted by Rules 1st November, 1962.



\*C.P.C. FORM No. 52

## REGISTRATION OF CLUBS ACT

FORM 52.

(Section 8)

## INFORMATION TO OBTAIN A SEARCH WARRANT

The information of \_\_\_\_\_ of \_\_\_\_\_, who upon oath states that he has reasonable ground for supposing and does suppose that a certain club registered under the Registration of Clubs Act, named the Club, at \_\_\_\_\_, is so managed or carried on as to constitute a ground for striking such club off the register.

And that the grounds of such supposition are

Sworn before me at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_. *(Signature of Informant).*

*Magistrate or Justice of the Peace.*

\*C.P.C. FORM No. 53

## REGISTRATION OF CLUBS ACT

FORM 53.

(Section 8)

## SEARCH WARRANT

FIJI.

In the Magistrates' Court at \_\_\_\_\_

To all Police Officers in Fiji.

Whereas I the undersigned Magistrate (*or Justice of the Peace*) am satisfied by information on oath laid this day by

of \_\_\_\_\_, that there is reasonable ground for supposing that a certain club, registered under the Registration of Clubs Act, named the

Club, at \_\_\_\_\_ is so managed or carried on as to constitute a ground for striking such club off the register.

You are hereby authorised to enter the premises of the said club, if need be by force, and to inspect the said premises, to take the names and addresses of any persons found therein and to seize any books and papers relating to the business of the said club.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

*Magistrate or Justice of the Peace.*

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\* Inserted by Rules 1st November, 1962.

C.P.C. FORM NO. 54

CRIMINAL PROCEDURE CODE

FORM 54.

(Section 236)

NOTICE TO WITNESS BOUND OVER OF THE CONDITION OF HIS  
RECOGNIZANCE

Date: .....

To: .....

You have today entered into a recognizance in the sum of \$ .....  
payable to Her Majesty the Queen which will be enforced against you if you fail to  
comply with the following condition:

CONDITION

The condition of this recognizance is that if you appear at the Criminal  
Sessions of the Supreme Court sitting at ..... commencing  
on the ..... day of ..... , 19..... at the hour of  
..... o'clock in the forenoon (or on such other day and at such other time  
during the Sessions as may be notified to you in writing by the Magistrate's Court  
by which you were ordered to enter into the recognizance, or by the Chief Registrar  
of the Supreme Court) to give evidence upon the trial of an information to be then  
and there preferred against ..... and appear at every time and  
place to which during the course of the proceedings the said trial may be from time  
to time adjourned, unless the Court otherwise orders in the meantime, and also  
appear and give evidence, if required by any such notice, at any further  
examination concerning the charge against the said accused which may be held by  
direction of the Director of Public Prosecutions, then this recognizance shall be  
void but otherwise shall remain in full force.

This means that you must appear before the Supreme Court at ..... on  
the ..... day of ..... , 19.... at ... a.m.  
unless, in the meantime, you receive from the Magistrate's Court, or from the  
Chief Registrar, a written notice to appear at the Supreme Court on a different day  
or at a different time. And that if you receive a written notice to appear at the  
Magistrate's Court on any further examination concerning the charge against the  
said ..... you must comply with such notice.

Clerk of the Court

..... Magistrate's Court.

\* Delete in the case of an adult (vide sec. 34 of Cap. 17).

C.P.C. FORM NO. 55

## CRIMINAL PROCEDURE CODE

FORM 55.

(Section 236)

NOTICE TO WITNESS TO APPEAR ON A DATE OTHER THAN THAT  
SPECIFIED IN HIS RECOGNIZANCE

Date: .....

To: .....

WHEREAS on the ..... day of ....., 19....., you entered into a recognizance in the ..... Magistrate's Court and due notice was given to you of the condition of that recognizance.

NOW THEREFORE I do hereby notify you that you are required to appear at the Criminal Sessions of the Supreme Court sitting at ..... on the ..... day of ..... 19....., at the hour of ..... o'clock in the ..... noon to give evidence upon the trial of an information to be then and there preferred against ..... and to appear at every time and place to which during the course of the proceedings the said trial may be from time to time adjourned.

Chief Registrar/Clerk of the Court  
..... Magistrate's Court.

C.P.C. FORM NO. 56

## CRIMINAL PROCEDURE CODE

FORM 56.

(Section 236)

NOTICE TO WITNESS TO APPEAR AND GIVE EVIDENCE AT FURTHER  
EXAMINATION BEFORE THE MAGISTRATE'S COURT

Date: .....

To: .....

WHEREAS on the ..... day of ....., 19....., you entered into a recognizance in the ..... Magistrate's Court and due notice was given to you of the condition of that recognizance.

NOW THEREFORE I do hereby notify you that you are required to appear at the ..... Magistrate's Court on the ..... day of ..... 19....., at ..... o'clock in the ..... noon and to give evidence at a further examination concerning the charge against ..... which is to be held by direction of the Director of Public Prosecutions.

Chief Registrar/Clerk of the Court  
..... Magistrate's Court.

C.P.C. FORM NO. 57

CRIMINAL PROCEDURE CODE

FORM 57.

(Section 88)

NOTICE OF INTENTION TO CITE PREVIOUS CONVICTIONS

To .....  
of .....

You are hereby given notice that if, but only if, you are convicted of [any of] the offence[s] of

in respect of which you are summoned to appear before the Magistrate's Court at  
on the , 19 , the convictions which are  
recorded against you and are set out below (and on the attached sheets) will be  
brought to the notice of the Court: and if you are not present in person before the  
Court, the Court may take account of any such previous conviction as if you had  
appeared and admitted it.

Date of  
conviction

Court

Offence

Sentence

Signed

[Prosecutor]

Note:

- (1) If you do not intend to appear in person at the hearing and you dispute any of the above convictions, or any of the details in connexion with them, you should immediately notify the Prosecuting Officer at\* so that further inquiries can be made.
- (2) Nothing in this notice limits in any way your right to appear in person on the date fixed for the hearing and to dispute any conviction alleged against you.
- (3) This notice MUST be served seven clear days before the day on which it is intended to cite the previous convictions.

\*State address.

C.P.C. FORM No. 58

## CRIMINAL PROCEDURE CODE

FORM 58.

(Section 216)

IN THE ..... COURT

Holden at .....

Criminal Case No. .... of .....

REGINA

v

## OTHER OFFENCES TO BE TAKEN INTO CONSIDERATION

Whereas on the ..... day of ..... I was convicted  
by this Court of the following offence—

*Statement of Offence**Particulars of Offence*

AND WHEREAS I admit I have committed the other untried offences of a  
like character set out in the Schedule.

NOW THEREFORE I consent to the Court taking into consideration such  
admitted offences in passing sentence against me.

Dated this ..... day of .....,  
19.....

.....  
Accused Person

I hereby also consent.

Dated this ..... day of ....., 19.....

.....  
Prosecutor

(Set out below in numbered paragraphs the statement of offence and the  
particulars thereof, in respect of each offence to be taken into consideration).

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SECTION 349—CRIMINAL PROCEDURE CODE (ALLOWANCES TO  
WITNESSES AND ASSESSORS) RULES

*Made by the Chief Justice*

*Rules 26th Jan. 1971, 18th Sep., 1973, 10th Jul. 1978.*

*Short title*

1. These Rules may be cited as the Criminal Procedure Code (Allowances to Witnesses and Assessors) Rules.

*Allowances*

2. Witnesses attending at trials or inquiries before a Magistrate's Court or the Supreme Court and assessors attending trials at the Supreme Court may be granted such allowances for their attendance and such sums for expenses not exceeding the respective amounts specified in the second column of the Schedule:

Provided that the court may—

- (a) disallow any such allowance or expenses in respect of any person in any case, for good cause which shall be noted on the record; and
- (b) allow an increase in any such allowance not exceeding a total increase of \$10 in respect of any one person for any one day where it is satisfied that the witness or assessor has suffered other expenses or additional pecuniary loss in excess of the allowance granted under the provisions of this rule.

<i>1st Column</i>	<i>2nd Column</i>
1. ALLOWANCES:	
(a) Assessors .....	\$12.00 a day
(b) Expert witnesses, professional men, merchants, bankers, persons in business on their own account, company directors and managers.	\$10.00 a day but, if attending for not more than two hours on any day, \$5.00 for such day.
(c) Other persons .....	\$6.00 a day but, if attending for not more than two hours on any day, \$3.00 for such day.
2. TRAVELLING EXPENSES: .....	When official transport is not provided the amount of the fares by public service bus but, in respect of persons specified in paragraph (b) of item 1, and in respect of other persons where public service buses are not available, the actual or reasonable cost of transport incurred
3. SUBSISTENCE EXPENSES: .....	(a) If necessarily absent overnight from place of residence the actual cost of board and lodging reasonably incurred. (b) If not necessarily absent overnight but the place of residence of the person is more than two miles distant from the court and the attendance exceeds four hours or includes a luncheon adjournment, \$1.50 in respect of each meal.

Controlled by Ministry of the Attorney-General