

# DISTRICT COURTS ORDINANCE 1924-1938.<sup>(1)</sup>

**An Ordinance to provide for the Establishment of District Courts and the Jurisdiction and Proceedings thereof, the Appointment of Justices of the Peace and their Powers and Duties, and for other purposes.**

**B**E it ordained by the Governor-General of the Commonwealth of Australia, with the advice of the Federal Executive Council, in pursuance of the powers conferred by the *New Guinea Act 1920*, as follows:—

## PART I.—PRELIMINARY.

1. This Ordinance may be cited as the *District Courts Ordinance 1924-1938*.<sup>(1)</sup>

Short title.  
Amended by  
No. 3 of 1934,  
s. 50.  
Commencement.

2. This Ordinance shall commence on a date to be fixed by the Administrator by notice in the *New Guinea Gazette*.<sup>(1)</sup>

3. This Ordinance is divided into Parts, as follows:—

Parts.

Part I.—Preliminary.

Part II.—Justices.

Division 1.—Appointment of Justices.

Division 2.—Jurisdiction of Justices.

Part III.—District Courts.

Division 1.—Establishment of District Courts.

Division 2.—Jurisdiction of District Courts.

(1) The *District Courts Ordinance 1924-1938* comprises the *District Courts Ordinance 1924*, as amended by the other Ordinances and Rules referred to in the following Table:—

TABLE.  
PART I.—ORDINANCES MADE BY THE GOVERNOR-GENERAL IN COUNCIL.

Short title, number and year.	Date on which made by Governor-General in Council.	Date on which notified in Commonwealth Gazette.	Date on which took effect.
<i>District Courts Ordinance</i> 1924 (No. 4 of 1924)	22.1.1924	24.1.1924	1.6.1924 <sup>(a)</sup> ( <i>N.G. Gaz.</i> of 15.5.1924)
<i>District Courts Ordinance</i> (No. 3) 1924 (No. 23 of 1924)	20.6.1924	20.6.1924	1.6.1924 (Sec. 2, <i>District Courts Ordinance</i> (No. 3) 1924)
<i>District Courts Ordinance</i> 1925 (No. 40 of 1925)	19.8.1925	27.8.1925	27.8.1925 ( <i>Cwth. Gaz.</i> of 27.8.1925)
<i>District Courts Ordinance</i> 1926 (No. 16 of 1926)	25.6.1926	28.6.1926	1.6.1924 (Sec. 2, <i>District Courts Ordinance</i> 1926)
<i>District Courts Ordinance</i> 1927 (No. 29 of 1927)	5.9.1927	10.11.1927	31.7.1929 ( <i>N. G. Gaz.</i> of 31.7.1929)

(a) The *District Courts Ordinance 1924* was notified to commence on 30th April, 1924, by notice published in *N.G. Gaz.* of 15th March, 1924. This notice was annulled by the *District Courts Ordinance* (No. 2) 1924, printed on p. 1150.

(Footnote continued on next page.)

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Part IV.—Commencement of Proceedings.

- Division 1.—General.
- Division 2.—Informations.
- Division 3.—Complaints.
- Division 4.—Summonses.
- Division 5.—Warrants of Arrest.

Part V.—Hearing.

- Division 1.—General.
- Division 2.—Evidence.
- Division 3.—Remand.
- Division 4.—Committal and Recognisance.
- Division 5.—Adjournment of Proceedings.

Part VI.—Proceedings in case of Indictable Offences.

- Division 1.—Committal where information is presented in Supreme Court.
- Division 2.—Proceedings in other cases.
- Division 2A.—Preservation of Testimony in certain cases.
- Division 3.—Bail.
- Division 4.—Recognisances of Witnesses to Appear at Trial.
- Division 5.—Offences committed in Remote Places.
- Division 6.—Miscellaneous.

Part VII.—Proceedings in case of Simple Offences.

- Division 1.—Venue.
- Division 2.—Hearing.

Amended by  
No. 16 of 1934,  
s. 2.

Inserted by  
No. 7 of 1935,  
s. 3.

Footnote (1) continued—

PART II.—ORDINANCES OF THE LEGISLATIVE COUNCIL.

Short title, number and year.	Date of assent by Administrator.	Date notified in <i>N.G. Gaz.</i> as not disallowed by Governor-General in Council.	Date on which came into operation.
<i>District Courts Ordinance</i> 1933 (No. 36 of 1933)	12.5.1933	15.12.1933	31.7.1933 ( <i>N.G. Gaz.</i> of 30.6.1933)
<i>District Courts Ordinance</i> 1934 (No. 16 of 1934)	7.2.1934	31.8.1934	7.2.1934 ( <i>Laws of T.N.G.</i> , Vol. XIII, p. 51)
<i>District Courts Ordinance</i> 1935 (No. 7 of 1935)	14.1.1935	31.7.1935	15.12.1936 ( <i>N.G. Gaz.</i> of 24.10.1936)
<i>District Courts Ordinance</i> 1937 (No. 31 of 1937)	25.8.1937	31.12.1937	25.8.1937 ( <i>Laws of T.N.G.</i> , Vol. XIV, p. 103)
<i>District Courts Ordinance</i> 1938 (No. 12 of 1938)	24.8.1938	30.11.1938	24.8.1938 ( <i>Laws of T.N.G.</i> , Vol. XIV, p. 134)

PART III.—RULES MADE BY THE ADMINISTRATOR.

Description and number and year (if any).	Date on which made by Administrator.	Date on which published in <i>N.G. Gaz.</i>	Date on which took effect.
<i>Amending Rules</i> .. .. .	25.8.1925	31.8.1925	31.8.1925 ( <i>N.G. Gaz.</i> of 31.8.1925)
<i>Amending Rules</i> (1936, No. 34) ..	23.10.1936	13.11.1936	15.12.1936 ( <i>N.G. Gaz.</i> of 13.11.1936)

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Part VIII.—Proceedings in connexion with Complaints.

Division 1.—General.

Division 2.—Set-off.

Division 3.—Default Summonses.

Part IX.—Enforcement of Decisions.

Division 1.—General.

Division 2.—Warrants of Execution and Commitment.

Division 3.—Adverse Claims.

Division 4.—Attachment of Debts.

Division 5.—Imprisonment of Fraudulent Debtors.

Division 6.—Miscellaneous.

Part X.—Surety of the Peace and for Good Behaviour.

Part XI.—Appeals from the Decisions of District Courts.

Part XII.—Protection of Justices in the Execution of their Office.

Part XIII.—Costs.

Part XIV.—Securities.

Part XV.—Miscellaneous.

4. In this Ordinance, unless the contrary intention appears— Definitions.

“Charge of an Indictable Offence” means charge of an indictable offence as such and in order to a committal for trial therefor;

“Clerk” means the person acting as Clerk of a District Court;

“Complainant” includes informant;

“Complaint” means a complaint other than a complaint for an offence and includes an application and notice of set-off;

“Court” means a District Court;

“Decision” includes a committal for trial and an admission to bail, and a conviction, order, order of dismissal, or other determination;

“Defendant” means a person against whom an information is laid or a complaint is made;

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Definition of “District Officer” omitted by No. 40 of 1925, s. 2.

“Fine” includes any pecuniary penalty or pecuniary forfeiture or pecuniary compensation payable under a conviction;

“Hearing” includes the examination of a person charged with an indictable offence;

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Definitions of “Indictable offence” and “Indictment” omitted by No. 16 of 1934, s. 3.

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“Information” includes a complaint for any offence but not any other complaint;

“Justice” means a justice of the peace for the Territory;

“Keeper of a gaol” means the head gaoler, and in the absence of the head gaoler from a gaol, includes the senior gaoler;

“Order” means an order made upon a complaint;

“Police Officer” means any member of the police force of the Territory;

“Simple Offence” means any offence punishable on summary conviction before a court by fine imprisonment or otherwise;

“Summary Conviction” or “Conviction” means a conviction by justices for a simple offence.

Inserted by  
No. 7 of 1935,  
s. 4.

Amended by  
No. 16 of 1934,  
s. 3.

Repeal.

5. The Ordinances mentioned in the First Schedule to this Ordinance are, to the extent therein expressed, hereby repealed.

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Forms.

7.—(1.) Subject to any rules or regulations for the time being in force under this Ordinance the forms in the Second Schedule<sup>(3)</sup> to this Ordinance, or forms to the like effect, may be used for the purposes to which they are respectively applicable, and instruments in those forms shall be deemed sufficient in law; but those forms, or any of them, may be varied for the purpose of adapting the same to circumstances.

(2.) No conviction or order shall be vacated quashed or set aside for want of form, or be impeached or affected by reason of any defect, mistake or omission therein, if the proceeding or matter to which the form relates is sufficient in substance and effect.

## PART II.—JUSTICES.

### *Division 1.—Appointment of Justices.*

Appointment of  
Justices.

8. The Administrator may by notice published in the *New Guinea Gazette* appoint such justices of the peace as he from time to time deems necessary to keep the peace in each district of the Territory.

Resignation.

9. A justice may at any time tender the resignation of his office by writing addressed to the Administrator and upon the resignation being accepted by the Administrator and notified in the *New Guinea Gazette* his office shall be vacated.

(2) Section 6 amends the adopted *Criminal Procedure Ordinance* of 1889 of the Territory of Papua, and the amendments so made are incorporated therein.

(3) The Second Schedule was repealed by the *District Courts Ordinance* 1935 (No. 7 of 1935). Forms are now prescribed by the Schedule to the *District Courts Rules*, printed on p. 1151.

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**10.** Every Judge, every Stipendiary Magistrate, and every District Officer shall by virtue of his office and without any further commission or authority than this Ordinance be a justice of and for the Territory.

Persons to be justices.  
Amended by No. 29 of 1927, s. 3 and by No. 16 of 1934, s. 2; substituted by No. 7 of 1935, s. 5.

**10A.**—(1.) The Governor-General may appoint a person to be a Stipendiary Magistrate for the Territory.

Appointment of Stipendiary Magistrate.

(2.) The Stipendiary Magistrate shall, by virtue of his office and without any further commission or authority than this Ordinance, have all the powers and functions of a District Officer under this Ordinance.

Section 10A. inserted by No. 40 of 1925, s. 3.

**11.** Any person may be appointed to be a justice although he is not resident in the Territory.

Justices beyond the Territory.

*Division 2.—Jurisdiction of Justices.*

**12.** Justices of the peace shall have and may exercise within and for their jurisdiction the several powers and authorities conferred upon them by this or any other Ordinance.

Jurisdiction of Justices.

**13.**—(1.) The Administrator may, by notice in writing, direct any District Officer to perform any special duty, specified in the notice, in a district other than his own.

Special duty to be performed by District Officers.

(2.) Notwithstanding anything contained in this Ordinance, a District Officer shall, for the purposes of the performance of any such special duty, have in the district in which he is performing the duty, subject to such limitations (if any) as are specified in the notice, the same jurisdiction as the District Officer of that district.

**14.** Any act done by a justice, by virtue of his office, out of the Territory, for the purpose of authentication of the signature of any person to any instrument intended to take effect within the Territory, and any oath administered by any such justice, by virtue of his office, out of the Territory, in any case in which an oath may be administered by a justice shall, unless the act or oath is required by law to be done or administered within the Territory, be valid and effectual therein.

Acts done beyond the Territory.

**15.**—(1.) A justice, other than a judge of the Supreme Court shall not exercise any of the functions of his office until he has taken or made an oath or affirmation of allegiance and the oath or affirmation of office set forth in the Third Schedule to this Ordinance.

Oath of allegiance and office.  
Sub-section (1.) amended by No. 16 of 1934, s. 2.

(2.) The oaths or affirmations may be taken or made before and may be administered or received by a judge of the Supreme Court or any person authorized in that behalf by the Administrator.

Sub-section (2.) amended by No. 16 of 1934, s. 2.

(3.) When a person has once taken or made the oaths or affirmations on his appointment to the office of justice and after-

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wards ceases or has ceased to hold that office, it shall not be necessary for him to again take the oaths or affirmations on his again becoming a justice.

Authentication of acts of justices.

**16.** All summonses, warrants, convictions, and orders (not being by law authorized to be made by word of mouth only) shall be under the hands of the justices issuing or making them.

Power to issue warrant, &c., on Sunday. Inserted by No. 7 of 1935, s. 6.

**16A.** A justice may receive any information and may grant or issue any warrant or summons on a Sunday as on any other day.

Presumption of jurisdiction.

**17.** Every act done or purporting to have been done by or before a justice shall, in the absence of proof to the contrary, be taken to have been done within his jurisdiction.

Acts by one justice.

**18.** One justice out of court may receive an information or a complaint and grant a summons or warrant thereon and may issue his summons or warrant to compel the attendance of witnesses and do all other necessary acts and matters preliminary to the hearing notwithstanding that the case must be heard and determined by two or more justices.

Issue of warrant of execution or commitment.

**19.** After a case has been heard and determined, one justice may issue any warrant of execution or commitment thereon, and the justice who so acts need not be the justice or one of the justices by whom the case was heard and determined.

Execution of warrants and service of summonses. Section 19A inserted by No. 7 of 1935, s. 7.

**19A.—(1.)** Any warrant issued by a justice for compelling the appearance of any person or for apprehending any person charged with any offence, and any warrant of commitment, search warrant, or warrant of execution, issued by a justice, may be executed in any part of the Territory.

(2.) Any summons issued by a justice or clerk may be served in any part of the Territory.

(3.) A warrant need not be returnable at any particular time but may remain in force until executed, and any warrant of execution or commitment may be executed from time to time until satisfaction thereof is obtained.

Warrants of execution after appeal.

**20.** After an appeal against a conviction or order has been decided against the appellant, any justice may issue a warrant of execution or commitment for execution of the conviction or order as if no appeal had been brought.

Special powers given to District Officers.

**21.—(1.)** Every District Officer shall, in the absence of other justices, have power to do alone, at any time and place appointed for holding courts, whatever might be done by two or more justices sitting in court, and shall have power to do alone any act which by any law is directed to be done by more than one justice.

Sub-section (2.) amended by No. 36 of 1933, s. 3.

(2.) In any place appointed for holding courts in which a clerk is not appointed, or from which the clerk is absent, the District

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Officer acting in that place may discharge the duties of clerk, and all acts done by the District Officer in pursuance of this sub-section shall be as valid as if done by the clerk, and all notices required to be given to the clerk, and all other matters and things required to be done with or in reference to the clerk, may be given to or done with or in reference to the District Officer, and shall have the like force and effect:

Provided that the justices in court assembled or the Government Secretary may require that all or any of those duties, acts, matters, and things shall be done by, with, or in reference to some police officer, and thereupon the acts, matters, and things if so done shall be as valid as if done by, with, or in reference to a clerk.

(3.) Where in any Ordinance of the Territory of Papua adopted as an Ordinance of the Territory of New Guinea any power is conferred on a magistrate that power shall, with respect to the Territory of New Guinea, be exercisable by a District Officer.

**22.** A warrant or summons issued by a justice shall not be avoided by reason of the justice dying or ceasing to hold office.

Summons or warrant not avoided by death of justice.

**23.—(1.)** Where a justice refuses to do any act relating to the duties of his office as a justice, the party requiring the act to be done may apply to the Supreme Court, or a judge thereof, upon affidavit of the facts, for an order calling upon the justice and also the party to be affected by the act to show cause why the act should not be done, and if, after due service of the order, good cause is not shown against it, the court or judge may make the order absolute, with or without payment of costs.

Order in lieu of mandamus. Sub-section (1.) amended by No. 16 of 1934, s. 2.

(2.) A justice upon being served with an order absolute shall obey the order, and do the act required by it to be done.

**PART III.—DISTRICT COURTS.**

*Division 1.—Establishment of District Courts.*

**24.—(1.)** The Administrator may by proclamation<sup>(4)</sup>—

District Courts.

- (i) establish District Courts; and
- (ii) abolish District Courts.

(2.) The District Courts established by the *Judiciary Ordinance 1921-1923* and in existence immediately prior to the commencement of this Ordinance shall be deemed to have been established under this Ordinance.<sup>(4)</sup>

(4) Section 32 of the *Judiciary Ordinance 1921* (repealed by the *Judiciary Ordinance 1924*) provided that there should be a District Court in each District. By Proclamation made under the *Administrative Districts Ordinance 1922* dated 23rd October, 1922, published in *N.G. Gaz.* of 31st October, 1922, and printed below, title DISTRICTS, the Territory was divided into the following Districts:—Rabaul, Kavieng, Madang, Manus, Kieta, Namatanai, Morobe, Aitape, Gasmata, and Talasea. As a result of changes made by proclamations issued under Section 24 and printed on p. 1199, District Courts of the Districts of Rabaul, Gasmata, Talasea, Kavieng, Namatanai and Aitape were abolished and District Courts of the Districts of Sepik, New Britain and New Ireland were established. As at the cessation of civil administration in 1942, District Courts of the following Districts were in existence:—New Britain, New Ireland, Madang, Manus, Kieta, Morobe, and Sepik.

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Transfer of proceedings where Court abolished.  
 Inserted by No. 16 of 1926, s. 3.

**24A.** Where the Administrator issues a proclamation<sup>(5)</sup> abolishing a District Court, he may, in the same or a subsequent proclamation published in the *New Guinea Gazette*, direct that the books and records of the Court be transferred to some other District Court named in the proclamation, and that all proceedings pending in the first mentioned Court at the date of its abolition shall be had and determined in the other District Court, and thereupon all such books and records shall be so transferred, and all proceedings so pending shall be so had and determined, and that other Court shall have jurisdiction to make all orders and to do all things in relation to those proceedings which could have been made or done by the first mentioned Court if it had not been abolished.

Constitution of court.  
 Sub-section (1.) amended by No. 36 of 1933, s. 4.

**25.—(1.)** A court may be constituted by a District Officer or by two or more justices of whom two at least shall be present and acting together during the whole time of any hearing and determination of a case.

Sub-section (2.) substituted by No. 36 of 1933, s. 4.

(2.) Where a court is constituted by two or more justices, a Stipendiary Magistrate, if present, or, if a Stipendiary Magistrate is not present, the senior District Officer present, or, if a District Officer is not present, the senior justice present, shall be the chairman of the Court.

Districts.

**26.—(1.)** The Administrator may by proclamation<sup>(6)</sup> appoint places for holding courts within districts and may in like manner cancel those appointments respectively.

(2.) If necessary, more places than one may be appointed within the same district or the appointment may be general and not limited to any particular place or places within the district.

Clerks of Courts.  
 Section 27 substituted by No. 40 of 1925, s. 4.

**27.—(1.)** There shall be such Clerks of Courts as are necessary, who shall, subject to the next succeeding sub-section, be appointed under the provisions of the *Public Service Ordinance 1922-1925*.<sup>(7)</sup>

(5) Pursuant to Section 24A, the Administrator, by Proclamation dated 27th August, 1926, and published in *N.G. Gaz.* of 31st August, 1926, directed that the books and records of the District Courts of the Districts of Rabaul, Gasmata, and Talasea be transferred to the District Court of the District of New Britain. By Proclamation dated 26th June, 1928, and published in *N.G. Gaz.* of 30th June, 1928, the Administrator directed that the books and records of the District Courts of the Districts of Kavieng and Namatanai be transferred to the District Court of the District of New Ireland. By Proclamation dated 15th November, 1932, and published in *N.G. Gaz.* of 15th November, 1932, the Administrator directed that the books and records of the District Court of the District of Aitape be transferred to the District Court of the Sepik District.

(6) Pursuant to Section 26, the Administrator made the proclamations particulars of which are set out in the following Table. Each proclamation proclaims that District Courts may be held at any place within the Districts to which it refers.

Date on which proclamation made.	Date on which published in <i>N.G. Gaz.</i>	Districts.
19.7.1924	31.7.1924	Rabaul(a), Kavieng(a), Madang, Manus, Kieta, Namatanai(a), Morobe, Aitape(a), Gasmata(a), and Talasea(a)
29.9.1925	30.9.1925	Sepik
24.6.1926	1.7.1926	New Britain
27.6.1928	30.6.1928	New Ireland

(a) These Districts were subsequently abolished. See footnote (4) printed on p. 1077.

(7) Now the *Public Service Ordinance 1922-1940*.

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(2.) The Administrator may appoint any officer of the Public Service to be the Clerk of a Court and the *Public Service Ordinance 1922-1925*<sup>(7)</sup> shall apply to the officer in his capacity as Clerk of the Court.

(3.) The Clerk of a Court may discharge the duties of his office at every place for which he is so appointed.

**27A.** The clerk shall keep such registers and books as are prescribed.

Clerk to keep registers, &c.  
Inserted by No. 7 of 1935, s. 8.

*Division 2.—Jurisdiction of District Courts.*

**28.—(1.)** Whenever, by any law for the time being in force in the Territory, any offence is punishable on summary conviction or any person is made liable to a penalty or punishment or to pay a sum of money for any offence, act or omission, and the offence, act or omission is not by the Ordinance declared to be treason, crime, misdemeanour or indictable offence, and is not by virtue of the *Ordinances Interpretation Ordinance 1934*<sup>(8)</sup> an indictable offence, and no other provision is made for the trial of the person committing the offence, the matter may be heard and determined by a District Court in a summary manner under the provisions of this Ordinance.

Jurisdiction of courts.  
Sub-section (1.) amended by No. 16 of 1934, s. 4.

(2.) Where, by any law for the time being in force in the Territory, jurisdiction is conferred on one or more justices to hear and determine any proceedings in respect of an offence or to do any act or to exercise any power, that jurisdiction may be exercised by a court.

Sub-section (2.) substituted by No. 36 of 1933, s. 5.

**29.—(1.)** In addition to the jurisdiction given to it by any Ordinance for the time being in force, every court shall, subject to this Ordinance, have jurisdiction in the following cases:—

Civil jurisdiction of courts.  
Vic. No. 2675, s. 64.

- (a) Upon a complaint against the assailant for an assault in which damages are claimed for a sum not exceeding One hundred pounds, it may make an order for the payment to the complainant by the defendant of any sum not exceeding the sum claimed;
- (b) Upon complaint made by any person claiming to be entitled to the property or possession of any goods which are detained by any other person within the jurisdiction of the court, the value of which is not greater than One hundred pounds—
  - (i) it may inquire into the title thereto or to the possession thereof; and
  - (ii) if it appears that the goods have been detained without just cause after due notice of the claim made by the person complaining or that

(7) Now the *Public Service Ordinance 1922-1940*.

(8) Now the *Ordinances Interpretation Ordinance 1934-1941*.

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the person detaining the goods has a lien or right to detain the same by way of security for payment of money or the performance of any act by the owner thereof, it may order the goods to be delivered to the owner thereof, within such time as is fixed by the order—

- (1) either absolutely, or
- (2) upon tender of the amount appearing to be due by the owner (which amount the court is authorized to determine), or
- (3) upon performance or upon tender and refusal of the performance of the act for the performance whereof the goods are detained as security, or
- (4) if the act cannot be performed, then upon tender of amends for the non-performance thereof (the nature or amount of which amends the court is authorized to determine),

and may at the same time order that, if any person neglects or refuses to deliver up the goods according to the order, he shall pay to the party aggrieved the full value of the goods, not greater than the sum of One hundred pounds, such value to be determined by the court on the hearing of the complaint:

Provided that no such order shall bar any person from recovering possession of the goods so delivered, or the amount of money so paid, by suit or action from the person to whose possession the goods or money may come by virtue of the order, provided the action is commenced within six months after the order is made;

- (c) Where the sum claimed does not exceed One hundred pounds, it may hear and determine the following causes of action whether on balance of account or otherwise and make the necessary orders therein (which causes of action are in this Ordinance referred to as civil debts recoverable summarily), that is to say—

- (i) For goods and chattels bargained and sold;
- (ii) For goods and chattels sold and delivered;

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- (iii) For money lent and interest thereon where the interest claimed does not exceed Six pounds per centum per annum;
- (iv) For money paid;
- (v) For money received;
- (vi) For work and labour done;
- (vii) For the use and hire of chattels or beasts;
- (viii) For work and labour done and materials for the same provided;
- (ix) For use and occupation of land house or apartment;
- (x) For board and lodging;
- (xi) For feeding and taking care of cattle;
- (xii) For warehouse room;
- (xiii) For the carriage of goods and chattels;
- (xiv) For money due upon a bill of exchange promissory note or cheque and interest thereon which may be allowed at the rate of Six pounds per centum per annum from the date of maturity to the date of recovery;
- (xv) For money due upon account stated;
- (xvi) For damages for trespass by cattle upon any land where trespass rates have been provided for or fixed under the provisions of any law for the time being in force relating to the impounding of cattle, to the extent that those rates do not, in the opinion of the court, afford sufficient compensation to the complainant for the trespass:  
Provided that the amount of the rates, together with the amount of damages awarded, shall not exceed One hundred pounds; and
- (xvii) For any tax or other money payable, under any law for the time being in force in the Territory, to the Administration or to any prescribed officer of the Administration.

Paragraph (xv)  
amended by  
No. 36 of 1933,  
s. 6.

Paragraph (xvii)  
added by  
No. 36 of 1933,  
s. 6.

(2.) Nothing in paragraph (c) of the last preceding sub-section shall limit the jurisdiction of courts in cases where by any Ordinance moneys may irrespective of amount be recovered before a court.

**30.** Where a court has concurrent jurisdiction with respect to any indictable offence, or where any complaint is made to it under this Ordinance with respect to any claim for debt or damages, if it is of opinion that in all the circumstances of the case the matter is a fit subject for determination by a superior court, the court shall

Proceedings of  
court in case  
of indictable  
offences or  
difficult cases.  
Vic. No. 2675,  
s. 65.

abstain from adjudication thereof, and in the case of an indictable offence shall direct the person charged with the offence to be tried and commit him to gaol or admit him to bail for trial.

*Ex parte*  
order may be  
set aside on  
terms.  
Vic. No. 2675,  
s. 66.

**31.** Any conviction or order made when one party does not appear may, on application to the court, be set aside on such terms as to costs or otherwise as the court thinks just, and the court may, upon service of such reasonable notice as the court directs upon the other party, proceed to hear and determine the information or complaint in respect of which the conviction or order was made; or may adjourn the hearing and determination thereof to such time and place as the court thinks fit, and may direct such notice as the court thinks fit of the adjourned hearing to be given to any party.

Cases  
excepted from  
court's  
jurisdiction.  
Vic. ib. s. 81.

**32.** No court shall have cognisance of any complaint under this Ordinance in any case in which the title to any land is bona fide in question.

Majority to  
decide.

**33.** Except as otherwise provided in this Ordinance, where two or more justices are present in court and acting at the hearing of any matter and do not agree, the decision of the majority shall be the decision of the court, and if they are equally divided in opinion, in case of an information, the case shall be reheard at a time to be appointed by the court, but in the case of a complaint the chairman of the court shall have a second or casting vote, and his decision shall be the decision of the court.

Proviso omitted  
by No. 36 of  
1933, s. 7.

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Sunday a  
court day.  
Inserted by  
No. 7 of 1935,  
s. 9.

**33A.** A District Court may hear and determine any information or complaint on a Sunday as on any other day.

#### PART IV.—COMMENCEMENT OF PROCEEDINGS.

##### *Division 1.—General.*

Informations  
and complaints.

**34.** Proceedings before a court shall be commenced by an information or a complaint, which may be laid or made by the complainant in person, or by his counsel or solicitor or other person authorized in that behalf.

##### *Division 2.—Informations.*

Information to  
be for only one  
matter.  
Proviso  
amended by  
No. 7 of 1935,  
s. 10.

**35.** Every information shall be for one matter only:  
Provided that—

- (i) in the case of indictable offences, if the matters of the information are such that they may be charged in one indictment; and

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(ii) in other cases, if the matters of the information are substantially of the same act or omission on the part of the defendant, those matters may be joined in the same information.

**36.** Such description of persons or things as would be sufficient in an indictment shall be sufficient in informations.

Description of persons and property.

**37.** The description of any offence in the words of the Ordinance, order, by-law, regulation, or other instrument creating the offence, or in similar words, shall be sufficient in law.

What is sufficient description of offence.

**38.** No objection shall be taken or allowed to any information or to any summons or warrant to apprehend a defendant issued upon any information for any alleged defect therein in substance or in form, or for any variance between it and the evidence in support thereof, and any such variance shall be amended by order of the court at the hearing.

Want of form or variance in information, &c.

**39.** If any such variance appears to the court to be such that the defendant has been thereby deceived or misled, it may, and at the request of the defendant shall, upon such terms as it thinks fit, adjourn the hearing of the case to some future day, and in the meantime may commit the defendant, or discharge him upon recognisance for his appearance at any time and place to which the hearing is adjourned.

Amendment.

**40.** Every order for the amendment of a variance shall be entered on the proceedings of the court, and a minute thereof, if required, shall be given to the party against whom it was made.

Minute of amendment.

**41.**—(1.) Where it is intended to issue a warrant in the first instance against the party charged, the information must be in writing and on oath, which oath may be made either by the informant or some other person.

Form of information.

(2.) Where it is intended to issue a summons instead of a warrant in the first instance, the information need not be in writing or on oath, but may be verbal merely, and without oath, whether any law under which the information is laid requires it to be in writing or not.

**42.** In any case of a simple offence, unless some other time is limited for laying an information by the law relating to the particular case, the information must be laid within twelve months after the time when the matter of the information arose.

Limitation of proceedings. Amended by No. 23 of 1924, s. 3.

*Division 3.—Complaints.*

**43.** A complaint may be for one or more matters of complaint: Provided that, except where otherwise provided, the sums claimed in respect of all such matters shall not, in the whole, amount to more than One hundred pounds.

Complaint may be for one or more matters. Vic. No. 2675, s. 85 (2).

COURTS—

Demands not to be divided into two suits or complaints. Vic. No. 2675, s. 82.

**44.**—(1.) No complainant shall divide any cause of action for the purpose of making two or more complaints before a court, but any complainant having cause of action for more than the amount for which a complaint may be made under this Ordinance, may abandon the excess by so stating in his particulars of demand, and thereupon may recover to an amount not exceeding the amount which the court has jurisdiction to award.

(2.) The order of the court upon the complaint shall be in all courts conclusive evidence of abandonment of the excess and shall be in full discharge of all demands in respect of the cause of action, and entry of the order of the court shall be made accordingly.

Infant may sue. Vic. lb. s. 80. Substituted by No. 36 of 1933, s. 8.

**45.** Any person under the age of twenty-one years may sue in a court in all respects as if he were of full age.

Copy of complaint. Vic. lb. s. 85 (5).

**46.** Any person against whom a complaint has been made may receive free of charge from the clerk in whose custody the complaint is, a copy of the complaint.

*Division 4.—Summonses.*

When justice may issue summonses. Sub-section (1.) amended by No. 23 of 1924, s. 4.

**47.**—(1.) Where an information is laid before a justice that any person, whether within the limits of the jurisdiction of the justice or not, is guilty of, or is suspected of, having committed any indictable offence or simple offence within the limits of the Territory, the justice may issue his summonses.

(2.) Where a complaint is made to any justice as to any matter, arising wholly or partly within the limits of his jurisdiction, upon which a court has authority to make an order, the justice may issue his summonses.

Person to whom summonses to be directed. Vic. lb. s. 20.

**48.**—(1.) A summons issued in the case of an information shall be directed to the defendant, and shall state shortly the matter of the complaint and require him to appear at a certain time and place before such justices as are then there, to answer to the complaint and to be further dealt with according to law.

(2.) A summons to answer to a complaint shall—

(a) be directed to the person named in the complaint as the person against whom the complaint is made;

(b) require that person to appear, at a time and place therein mentioned, before a court to answer to the complaint; and

(c) before the hearing is proceeded with, be lodged with the clerk of the court at the place at which the defendant is to appear, to be by the clerk kept and preserved.

*Ex parte* proceedings.

**49.** Nothing herein contained shall oblige any justice to issue a summons in any case where the application for an order of a justice is by law to be made *ex parte*.

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**50.**—(1.) Every summons shall be signed by the justice or clerk issuing it, and, unless it is a summons to give evidence or to produce documents, shall state shortly the offence or matter of the information or cause of complaint and shall name or otherwise describe the person against whom it is issued.

Signature and contents of summons.  
Vic. No. 2675, s. 21.

(2.) No summons or process shall be signed in blank.

**51.**—(1.) Notwithstanding anything contained in any Ordinance (including this Ordinance) any complaint may be made to, or any information laid before, and the summons issued thereon by, and any summons to give evidence or to produce documents may be signed and issued by, either the clerk or a justice, and, where by an Ordinance it is provided that any such summons may or shall be issued by a justice, the summons may also be issued by a clerk.

Summons may be issued by clerk.  
Vic. 1b. s. 22.  
Sub-section (1.) amended by No. 7 of 1935, s. 11.

(2.) Every summons issued on a complaint shall set out the address of the complainant at which all notices or documents shall be served.

**51A.** A justice or clerk may in the prescribed manner extend the time for hearing any summons.

Extension of return date of summons.  
Inserted by No. 7 of 1935, s. 12.  
Service.

**52.**—(1.) A summons shall be served, at least seventy-two hours before the time appointed in the summons for the hearing thereof, upon the person to whom it is directed, by delivering a copy thereof to him personally, or, if he cannot be found, by leaving it, at his last known place of abode, with some other person other than a native apparently an inmate thereof and apparently not less than sixteen years of age.

(2.) The person who serves a summons must, within three days after service, endorse on the summons the day and place of the service thereof, and his signature, and must, unless the summons has been served on the defendant personally, attend before the court, at the time and place mentioned in the summons, to depose, if necessary, to the service thereof.

(3.) If the summons has been served on the defendant personally, the person by whom it was served may attend before any justice and depose in writing, on oath, to the service thereof.

(4.) The deposition shall be endorsed on the summons, and, on production to the court before which the information or complaint is heard, shall be sufficient proof of the service of the summons on the defendant.

**52A.** If, by statement on oath or by affidavit, it is made to appear to a court before which the summons is returnable, or to any justice, that, from any cause, service in accordance with the last preceding section cannot be promptly effected, the court or justice may extend the time for hearing and make an order for substituted or other service or for the substitution for service of notice by advertisement or otherwise.

Substituted service.  
Inserted by No. 7 of 1935, s. 13.

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*Division 5.—Warrants of Arrest.*

Issue of warrants of arrest.  
Paragraph (a) amended by No. 23 of 1924, s. 5.

- 53.—**(1.) Where an information is laid before a justice—
- (a) that a person is suspected of having committed an indictable offence within the limits of the Territory;
  - or
  - (b) that a person charged with having committed an indictable offence of which cognisance may be taken by the courts of the Territory, is suspected of being within the limits of the Territory,

the justice may issue his warrant for the arrest of that person and to cause him to be brought before a court to answer to the information and to be further dealt with according to law:

Provided that the justice, if he thinks fit, instead of issuing his warrant in the first instance for the arrest of the person charged, may proceed by summons and issue a summons against him accordingly.

(2.) Notwithstanding the issue of a summons, any justice may issue his warrant at any time before or after the time mentioned in the summons for the appearance of the defendant.

Warrant in the first instance.  
Substituted by No. 23 of 1924, s. 6.

**54.** Where an information is laid before a justice that any person is guilty of, or is suspected of having committed any simple offence within the limits of the Territory, the justice may, upon oath being made before him substantiating the matter of the information to his satisfaction, instead of issuing a summons, issue in the first instance his warrant to apprehend the defendant, and to cause him to be brought before a court to answer to the information and to be further dealt with according to law.

Direction of warrant.

**55.** A warrant to apprehend a defendant that he may answer to an information may be directed either to any police officer by name or generally to all police officers within the Territory, without naming them, or to both.

Any police officer may execute warrant.

**56.** When a warrant is directed to all police officers, any police officer may execute the warrant as if it were directed specially to him by name.

Form of warrant.

**57.** A warrant shall state shortly the offence or matter of the information on which it is founded, and shall name or otherwise describe the person against whom it is issued, and it shall order the police officers to whom it is directed to apprehend the defendant, and to bring him before a court to answer to the information and to be further dealt with according to law.

Endorsement on warrant as to release on bail.  
Section 58 substituted by No. 23 of 1924, s. 7; resubstituted by No. 7 of 1935, s. 14.

**58.—**(1.) A justice, on issuing a warrant for the arrest of any person, may, by endorsement upon the warrant, direct that the person named in the warrant be, on arrest, released upon his entering into a recognisance, with or without sureties, for his

appearance as is specified in the endorsement; and the endorsement shall fix the amounts in which the principal and sureties (if any) are to be bound.

(2.) When such an endorsement is made, the recognisance in accordance with the endorsement may be taken as provided in section eighty-nine of this Ordinance, and the defendant shall thereupon be discharged.

**59.** A person taken into custody for an offence shall be brought before a court or a justice as soon as practicable after he is taken into custody.

Person arrested to be taken before court.

Substituted by No. 7 of 1935, s. 14.

**60.**—(1.) Where any person is taken into custody for an offence and has not been brought before a court, a justice may—

Bail of person arrested.

Section 60 substituted by No. 7 of 1935, s. 14.

(a) commit the person to gaol until he can be brought before a court to be dealt with according to law; or

(b) discharge the person upon his entering into a recognisance, with or without sureties, for such amount as in the discretion of the justice appears reasonable, to appear before a court at the time and place named in the recognisance.

(2.) Where a person is taken into custody for an offence, a clerk or a police officer who is in charge of a police station may inquire into the case, and, except where the offence appears to the clerk or police officer to be of a serious nature, may, if he thinks fit, discharge the person upon his entering into a recognisance, with or without sureties, for such amount as appears reasonable, to appear before a court at the time and place named in the recognisance.

Sub-section (2.) substituted by No. 31 of 1937, s. 2.

## PART V.—HEARING.

### *Division 1.—General.*

**61.** The room or place in which a court sits to hear and determine any information or complaint shall be deemed an open and public court, to which all persons may have access so far as the same can conveniently contain them:

Open court.

Provided that, in any case in which, in the opinion of the court, the interests of public morality require that all or any persons should be excluded from the court, the court may exclude those persons therefrom accordingly:

Provided further that that power shall not be exercised for the purpose of excluding the counsel or solicitor for the defendant.

**62.** The room or place in which a court takes the examinations and statements of persons charged with indictable offences for the purpose of committal for trial, and the depositions of the witnesses in that behalf, shall not be deemed an open court, and the court

Exclusion of strangers.

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may order that no person shall be in that room or place without its permission; but it shall not make such order unless it appears to it that the ends of justice require it so to do.

Assistance of  
solicitor, &c.  
Section 63  
substituted by  
No. 36 of 1933,  
s. 9.

**63.**—(1.) Any complainant may himself, or by his solicitor or other person empowered by law to appear for him, conduct his case, and may examine and cross-examine the witnesses giving evidence for or against him.

(2.) Any defendant may himself, or by his solicitor or other person empowered by law to appear for him, make full answer and defence, and may examine and cross-examine the witnesses giving evidence for or against him, and may give evidence himself.

(3.) Upon the hearing of a complaint for a civil debt recoverable summarily, any party thereto may appear by any person in his exclusive employment.

(4.) Upon the hearing before a court of an information, the informant may appear by any police officer.

Where both  
parties present  
court to hear  
case.  
Vic. No. 2875,  
s. 88 (2.).

**64.**—(1.) If both parties appear either personally or by their respective counsel or solicitors or other persons empowered by law to appear for them before the court which is to hear and determine the information or complaint, the court shall proceed to hear and determine the information or complaint.

(2.) Nothing in this Ordinance shall be deemed—

(a) to dispense with the personal attendance before the court of any defendant who is charged with an indictable offence; or

(b) to authorize the court to proceed to hear and determine any charge of an indictable offence in the absence of the defendant.

Sub-section (2.)  
added by No. 7  
of 1935, s. 15.

*Division 2.—Evidence.*

Examination to  
be on oath.  
Vic. ib. s. 88  
(7.).

**65.**—(1.) Every person appearing to give evidence shall be examined on oath.

(2.) The court or any justice may administer or cause to be administered to every person so appearing the usual or other lawful oath:

Provided that it shall not be necessary to administer an oath to any person who appears solely for the purpose of producing documents.

Power to order  
witnesses out  
of court.  
Vic. ib. s. 88  
(11).

**66.**—(1.) The court may, if it thinks fit, and shall, if required by any party, except in so far as in particular cases and for special circumstances it sees fit otherwise so to do, at any time during the hearing, order that all witnesses, other than the complainant

and the defendant, and the witnesses under examination to go and remain outside and beyond the hearing of the court until required to give evidence.

\* \* \* \* \*

Sub-section (2.) omitted by No. 36 of 1933, s. 10.

67. Upon any information of an indictable offence or simple offence the prosecutor or complainant shall be a competent witness to support the information.

Prosecutor's and complainant's witnesses. Amended by No. 7 of 1935, s. 16.

68. Upon any information of a simple offence the defendant and the wife or husband of the defendant shall be competent witnesses on his or her behalf.

Defendant and wife or husband, when competent.

69.—(1.) Where any person is charged before a court with a simple offence, any exception, exemption, proviso, excuse, or qualification (whether it accompanies the description of the offence in the section of the law creating the offence or not) need not be specified or negatived in the information.

Proof of exceptions, &c. Section 69 substituted by No. 7 of 1935, s. 17.

(2.) Any such exception, exemption, proviso, excuse, or qualification may be proved by the defendant, but, whether it is specified or negatived in the information or not, proof in relation to it shall not be required on the part of the complainant.

70. The depositions of the witnesses shall be reduced to writing and shall be read over to and signed respectively by the witnesses, and shall be signed also by the justices constituting the court.

Mode of taking evidence.

71. If it is made to appear to a justice that any person within his jurisdiction is likely to give material evidence, and will not voluntarily appear for the purpose of being examined as a witness at the hearing of any information or complaint, the justice shall issue his summons to that person, requiring him to be and appear at a time and place mentioned in the summons before a court, to testify what he knows concerning the matter of the information or complaint.

Power of justice to summon witnesses to attend and give evidence.

72. A summons to a witness must be served, and a memorandum of service must be endorsed thereon, and proof of service may be given, in the same manner and within the same time as provided in section fifty-two of this Ordinance in the case of a summons to a defendant.

Service, &c., of summons on witness.

73.—(1.) If a person summoned as a witness refuses or neglects to appear at the time and place appointed by the summons, and no just excuse is offered for the refusal or neglect, then (after proof upon oath that the summons was duly served upon that person, and, except in the case of indictable offences, that a reasonable sum was paid or tendered to him for his costs and expenses of attendance)

Warrant to attend.

## COURTS—

the court before which that person should have appeared may then and there impose upon him in his absence a penalty not exceeding Twenty pounds, which may be recovered in the same manner as penalties imposed upon a summary conviction as provided in section one hundred and seventy-three of this Ordinance.

(2.) The court may also issue its warrant to bring and have that person at a time and place to be therein mentioned, before the court so to testify.

Warrant in  
the first  
instance.

**74.** If a justice is satisfied by evidence upon oath that it is probable that a person whose evidence is desired will not attend to give evidence without being compelled to do so, then, instead of issuing a summons, he may issue a warrant in the first instance.

Refusal of  
witness to be  
examined.  
Vic. No. 2675,  
s. 88 (12).

**75.**—(1.) Where any person appears to give evidence or produce documents, either in obedience to a summons or by virtue of a warrant, or being present is orally required by the court to give evidence or produce documents if that person—

- (a) without lawful excuse, refuses to be examined on oath touching the matter of the information or complaint;  
or
- (b) refuses to take the oath; or
- (c) having taken the oath, refuses, without lawful excuse, to answer any question concerning the matter that is put to him; or
- (d) refuses or neglects to produce any documents mentioned in the summons or warrant or orally required to be produced (without offering sufficient excuse for any such refusal or neglect),

the court may adjourn the proceedings for any period not exceeding eight clear days, and may in the meantime by warrant commit that person to gaol.

(2.) If that person upon being brought up on the adjourned hearing again so refuses or neglects, the court if it thinks fit may again adjourn the proceedings and commit the person for the like period, and so again from time to time until he consents to be sworn, or to give evidence or to produce the documents:

Provided that no such imprisonment shall in any case in the whole exceed one month.

Production of  
documents  
before justices

**76.** Where a justice has authority to summon any person as a witness he shall have the like authority to require and compel him to bring and produce for the purposes of evidence all documents and writings in his possession or power, and to proceed against him in case of neglect or refusal so to do in the same manner as in case of neglect or refusal to attend or refusal to be examined:

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Provided that no person shall be bound to produce any document or writing not specified or otherwise sufficiently described in the summons, or which he would not be bound to produce upon a subpoena *duces tecum* in the Supreme Court.

Proviso amended by No. 16 of 1934, s. 2.

**77.** Where, by evidence on oath, a District Officer is satisfied that any person is able to give material evidence or to produce relevant or material documents relating to any complaint pending before a court, and that that person is likely to be absent from the Territory when the case comes on for hearing, the District Officer may, on the application of any party, order that the evidence of that person be taken or the documents be produced before him, at any time before the hearing, in the same manner as the evidence would be taken or the documents be produced at the hearing, and after reasonable notice of the intended examination or production is given to the other party.

Person about to leave Territory may be ordered to be examined or produce documents. Vic. No. 2675, s. 75.

**78.** Upon service on any person of an order in pursuance of the last preceding section, together with the payment or tender of a reasonable sum for expenses, that person shall attend at the time and place thereby appointed, and shall have all the rights and liabilities which he would have if he was duly summoned to appear to give evidence or to produce documents on the hearing.

Witnesses' rights and liabilities. Vic. ib. s. 76.

**79.—(1.)** The depositions of any such person shall be signed by him and the District Officer and the depositions and any documents produced shall be delivered by the District Officer to the clerk.

Depositions to be signed and filed and documents produced to be delivered to the clerk. Vic. ib. s. 77.

(2.) Where documents are produced by a person not giving evidence the documents shall, on delivery to the clerk, be accompanied by a certificate signed by the District Officer stating the name of the person producing them.

(3.) Where the court is satisfied that the person who made the depositions is not in the Territory his depositions may be read by any party.

(4.) Any documents so delivered to the clerk may, subject to all just exceptions, be put in at the hearing as if produced at the hearing by the person producing them.

*Division 3.—Remand.*

**80.** Where a person is charged before a court with an indictable offence, if, from the absence of witnesses or from any other reasonable cause, it becomes necessary or advisable to defer the hearing of the case, the court before whom the accused person appears or is

Remand of defendant. Substituted by No. 7 of 1935, s. 18.

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brought may, from time to time, adjourn the hearing for such time as the court in its discretion deems reasonable, but not exceeding fifteen clear days at any one time, and may—

- (a) by warrant remand the defendant to some gaol, lock-up, or other place of security, to be there kept until the time appointed for continuing the hearing; or
- (b) subject to this Ordinance, order the discharge of the defendant upon his entering into a recognisance.

Verbal remand.

**81.** If the remand is for a time not exceeding three clear days, the court may verbally order the person in whose custody the defendant then is, or any other person named by the court in that behalf, to keep the defendant in his custody, and to bring him before the court at the time and place appointed for continuing the hearing.

Bringing up during remand.

**82.** The court may order the defendant to be brought before it at any time before the expiration of the time for which he was so remanded, and the officer in whose custody he then is shall duly obey the order.

Section 83 repealed by No. 7 of 1935, s. 19.

\* \* \* \* \*

*Division 4.—Committal and Recognisance.*

Place of committal or detention.

**84.** Where a court commits a defendant by way of remand or upon adjournment, or at any time before the decision, it may commit to the gaol or lock-up, or any other place of security in the place in which it has jurisdiction, or to such other safe custody as it thinks fit.

Place to which committal to be made.

**85.** Where a court commits a witness or person sought to be made a witness, and when it commits a defendant after the decision, it shall commit to a gaol or lock-up.

Witnesses may be discharged on recognisance.

**86.** A witness or person sought to be made a witness may be discharged upon recognisance.

Recognisances. Amended by No. 7 of 1935, s. 20.

**87.** Subject to the provisions of this Ordinance, where a court or justice is authorized to discharge the defendant, witness, or other person, upon recognisance, the court or justice may order his discharge upon his entering into a recognisance, with or without a surety or sureties at the discretion of the court or justice, conditioned for his appearance at the time and place to which the hearing is adjourned, or which is named in the recognisance.

Continuous bail. Inserted by No. 7 of 1935, s. 21.

**87A.** Where any person is remanded or discharged upon recognisance, the recognisance may be conditioned for his appearance at every time and place to which, during the course of the proceed-

ings, the hearing may be from time to time adjourned, without prejudice, however, to the power of the court to vary the order at any subsequent hearing.

**88.** If the defendant, witness, or other person, does not appear at the time and place mentioned in the recognisance, the court may adjourn the hearing, and may issue a warrant for his apprehension in accordance with the provisions of Division 5 of Part IV. of this Ordinance.

Issue of  
warrant for  
non-appearance.

**89.** Where a court or justice has fixed as regards any recognisance the amount in which the principal and sureties (if any) are to be bound, the recognisance, notwithstanding anything in this or any other Ordinance, need not be entered into before the court or justice, but may be entered into by the parties before any justice or before any clerk, or before a police officer who is in charge of a police station, or where any one of the parties is in gaol, before the keeper of the gaol; and thereupon all the consequences of law shall ensue, and the provisions of this Ordinance with respect to recognisances taken before courts or justices shall apply, as if the recognisance had been entered into before the court or justice in accordance with the provisions of section eighty-seven of this Ordinance.

Recognisances  
taken out of  
court.

Amended by  
No. 7 of 1935,  
s. 22.

**90.** Where, as a condition of his release, any person is required to enter into a recognisance with sureties, the recognisances of the sureties may be taken separately and either before or after the recognisance of the principal, and, if so taken, the recognisances of the principal and sureties shall be as binding as if they had been taken together and at the same time.

Recognisances  
taken  
separately.

Substituted by  
No. 7 of 1935,  
s. 23.

**91.**—(1.) Where a recognisance is conditioned for the appearance of a person on a certain day before a court or to take his trial before the Supreme Court, a police officer, having reasonable grounds for suspecting that the person will not voluntarily appear or surrender himself, may, before the day so appointed, apprehend the person and bring him before a court.

Arrest of  
person released  
on bail.

Section 91  
amended by  
No. 16 of 1934,  
s. 2; substituted  
by No. 7 of  
1935, s. 23.

(2.) The court before which the person is brought may—

(a) commit him to gaol to be brought before the court or the Supreme Court (as the case may be) at the time and place named in the recognisance for his appearance before the court or the Supreme Court (as the case may be); or

(b) discharge him upon his entering into a recognisance, with or without sureties, to appear before the court or the Supreme Court (as the case may be) at the time and place named in such recognisance,

and shall, in either case, order that the first-mentioned recognisance be discharged.

Conveying  
prisoners to  
gaol.

**92.** The person to whom a warrant of commitment is directed shall convey the person therein named or described to the gaol or other place mentioned in the warrant, and there deliver him together with the warrant to the keeper of the gaol or place, who shall thereupon give the person delivering the prisoner into his custody a receipt for the prisoner, setting forth the state and condition in which the prisoner was when he was delivered into the custody of the keeper.

*Division 5.—Adjournment of Proceedings.*

Justices may  
adjourn Court  
generally.  
Vic. No. 2675,  
s. 89 (1).  
Amended by  
No. 7 of 1935,  
s. 24.

**93.** Where all the cases have not been heard and determined at any sitting of a court, the court may adjourn the cases remaining unheard or undetermined, either to the next day appointed for the holding of the court or to such other time as it thinks fit.

Particular  
cases may be  
adjourned.  
Vic. ib. s. 89  
(2).

**94.—(1.)** Where before or during the hearing or further hearing of any information (other than an information of an indictable offence) or complaint it appears advisable, the court may, in its discretion, adjourn the hearing or further hearing to a certain time and place to be then appointed and stated in the presence and hearing of the parties or their respective counsel or solicitors or other persons appearing for them.

Sub-section (1.)  
amended by  
No. 7 of 1935,  
s. 25.

(2.) In the case of an information (other than an information of an indictable offence) the court may, in the meantime suffer the defendant to go at large or commit him to gaol or a place of security or to such other safe custody as it thinks fit, or may discharge him upon his entering into a recognisance for a reasonable amount, with or without sureties at the discretion of the court, conditioned for his appearance at the time and place to which the hearing or further hearing is adjourned.

Sub-section (2.)  
amended by  
No. 7 of 1935,  
s. 25.

Section 95  
repealed by  
No. 7 of 1935,  
s. 26.

\* \* \* \* \*

Proceedings  
when both  
parties are  
present at  
adjourned  
hearing.  
Cf. Vic. ib.  
s. 89 (3).

**96.** If, at the time and place to which the hearing or further hearing is so adjourned, the parties appear personally or by their respective counsel, solicitors, or other persons appearing for them—

- (a) if the court includes any justice before whom the hearing up to the time of the adjournment did not take place that justice shall withdraw, or the justices present may proceed with the hearing as if it had not been commenced; and
- (b) if the court does not include any such justice, the court may, subject to the provisions of this Ordinance, proceed with the further hearing.

**97.** All persons whose attendance has been required by summons in any cases which have been adjourned or postponed shall attend at the time and place to which the case has been adjourned or postponed without the issue or service of any further summons, but shall nevertheless be entitled to their additional expenses for so attending.

Witnesses to attend adjourned sittings. Vic. No. 2675, s. 89 (4).

**98.** If, on the return of any summons or at any adjournment of the hearing or at the time to which the hearing is postponed there is not present any justice or a sufficient number of justices legally competent to hear and determine the subject-matter of the summons, any justice present, or, if no justice is present, the clerk, may, and after the lapse of an hour, at the request of the complainant or informant, shall, postpone the hearing until the next day on which a court will be held at the place mentioned in the summons or to which the case has been so adjourned.

Postponement of hearing. Vic. lb. s. 89 (5).

## PART VI.—PROCEEDINGS IN CASE OF INDICTABLE OFFENCES.

### *Division 1.—Committal where Information is Presented in Supreme Court.*

Heading amended by No. 16 of 1934, s. 2.

**99.** Where an information is presented in the Supreme Court against any person then at large, the Registrar of the Supreme Court shall at any time after the end of the sessions at which the information was presented, if the person has not already appeared and pleaded to the information, grant to the prosecutor upon his application a certificate of the information having been presented.

Certificate where information is presented. Amended by No. 16 of 1934, s. 2.

**100.** Upon production of the certificate to any justice for any jurisdiction or place in which the offence is in the information alleged to have been committed, or in which the person informed against is supposed or suspected to be, the justice shall issue his warrant for the arrest of the person, and to cause him to be brought before a court to be dealt with according to law.

Issue of warrant.

**101.** If the person is thereupon arrested and brought before it, the court, upon its being proved upon oath before it that the person so apprehended is the same person who is so informed against, shall without further inquiry or examination commit him for trial, or discharge him on recognisances.

Committal.

**102.** If the person so informed against is at the time of the application and production of the certificate to the justice confined in any gaol for any other offence than that charged in the information, the justice upon proof upon oath that the person so informed against and the person so confined are one and the same, shall issue his warrant, directed to the keeper of the gaol in which the

Detainer of prisoner in gaol.

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person so informed against is then confined, commanding him to detain the person in his custody until he is lawfully removed therefrom for the purpose of being tried upon the information, or until he is otherwise removed or discharged out of his custody by due course of law.

Heading amended by No. 7 of 1935, s. 27.

Disobedience of summons.

### *Division 2.—Proceedings in other Cases.*

**103.** Where a person charged with an indictable offence against whom a summons has been issued does not appear before the court at the time and place mentioned in the summons, and it is made to appear to the court by oath that the summons was duly served upon him a reasonable time before the time therein appointed for appearing to it, the court, upon oath being made before it substantiating the matter of the information to its satisfaction, may issue its warrant for the arrest of the defendant and to bring him before a court to answer to the information and to be further dealt with according to law.

Taking of evidence for prosecution.  
Section 104 substituted by No. 7 of 1935, s. 28.

**104.—(1.)** Whenever any person appears or is brought before a court charged with an indictable offence, the court, before it directs the defendant to be tried or admits him to bail for trial, shall, in the presence and hearing of the accused person, take the statement of those who know the facts and circumstances of the case.

(2.) The statement of every witness shall be taken down in writing, and his deposition shall, in the presence and hearing of the defendant, be read over to the witness and signed by him and by the justices constituting the court taking the same.

On completion of evidence for the prosecution court to consider whether *prima facie* case made.

Section 104A inserted by No. 7 of 1935, s. 28.

**104A.—(1.)** When all the evidence offered upon the part of the prosecution has been heard, the court shall consider whether it is sufficient to put the defendant upon his trial.

(2.) If the court is of opinion that the evidence is not sufficient to put the defendant upon his trial for an indictable offence, it shall forthwith order the defendant, if in custody, to be discharged as to the information then under inquiry.

(3.) If the court is of opinion that the evidence is sufficient to put the defendant upon his trial for an indictable offence, it shall proceed with the examination as hereinafter provided.

Accused to be asked whether he desires to give evidence.

Section 104B inserted by No. 7 of 1935, s. 28.

**104B.—(1.)** Where the court proceeds with the examination, the court or the chairman of the court shall read the charge to the accused and explain its nature in ordinary language and shall say to him these words, or words to the like effect: "Having heard the evidence for the prosecution, do you wish to be sworn and give

evidence on your own behalf, or do you desire to say anything in answer to the charge? You are not obliged to be sworn and give evidence, nor are you required to say anything, unless you desire to do so; but whatever evidence you may give upon oath, or anything you may say, will be taken down in writing, and may be given in evidence upon your trial. You are clearly to understand that you have nothing to hope from any promise of favour, and nothing to fear from any threat, which may have been held out to you to induce you to make any admission or confession of your guilt; but whatever you now say may be given in evidence upon your trial, notwithstanding any such promise or threat."

(2.) Whatever the defendant then says in answer thereto shall be taken down in writing and read to him, and shall be signed by the justices constituting the court and by the defendant if he desires, and shall be kept with the depositions of the witnesses and transmitted with them to the Crown Law Officer.

**105.** Upon the trial of the defendant for the offence for which he has been committed for trial or for any other offence arising out of the same transaction or set of circumstances as that offence, any such statement made by him may, if necessary, be given in evidence without further proof thereof, if the same purports to be signed by the justices, by or before whom it purports to have been taken, unless it is proved that it was not in fact signed by the justices by whom it purports to be signed.

Statement may be put in evidence at trial.

Amended by No. 7 of 1935, s. 29.

**106.** Nothing in this Ordinance shall prevent the prosecutor in any case from giving in evidence any admission or confession or other statement of the defendant made at any time, which by law would be admissible as evidence against that person.

Saving.

\* \* \* \* \*

Division heading omitted by No. 7 of 1935, s. 30.

**107.—(1.)** When the defendant has given evidence or made his statement, or has declined to do so, the court shall ask the defendant whether he desires to call any witness.

Defendant may call witnesses.

Section 107 amended by No. 16 of 1934, s. 2; substituted by No. 7 of 1935, s. 31.

(2.) Any witness whom the defendant desires to call shall then be called, and the statement of the witness relating to the facts and circumstances of the case, or tending to prove the innocence of the defendant, shall be taken in the manner provided in sub-section (2.) of section one hundred and four of this Ordinance.

**108.—(1.)** When the examination is completed the court shall consider whether the evidence is sufficient to put the defendant upon his trial.

Discharge or committal of defendant.

Section 108 substituted by No. 7 of 1935, s. 31.

(2.) If, in the opinion of the court, the evidence is not sufficient to put the defendant upon his trial, it shall forthwith order the defendant, if in custody, to be discharged as to the information then under inquiry.

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(3.) If, in the opinion of the court, the evidence is sufficient to put the defendant upon his trial, the court shall—

- (a) by warrant commit the defendant to gaol, to be there safely kept until the sittings of the Supreme Court before which he is to be tried, or until he is delivered by due course of law; or
- (b) admit him to bail as provided in Division 3 of this Part.

Justices need not be present during the whole examination. Substituted by No. 7 of 1935, s. 31.

**109.** Subject to the provisions of section thirty-three of this Ordinance, a Stipendiary Magistrate or a District Officer may make, or a justice may join in making, an order of committal or dismissal although he has not been present during the whole time during which the examinations have been taken.

Depositions of witnesses dead, &c. Substituted by No. 7 of 1935, s. 31.

**110.** Where a person has been committed for trial for an offence, the deposition of any person taken before the examining court and purporting to be signed by the justices constituting the court before which it was taken may with the consent of the Supreme Court, 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, upon proof—

- (a) that the witness is dead or insane, or so ill as not to be able to travel, or is kept out of the way by means of the procurement of the accused or on his behalf, or that the witness is a medical practitioner and cannot conveniently attend the court; and
- (b) either by a certificate purporting to be signed by the court or by one of the justices before which or whom the deposition purports to have been taken, or by the oath of a credible witness that the deposition was taken in the presence of the accused and that the accused or his solicitor had full opportunity of cross-examining the witness.

If defendant admits guilt and does not wish witnesses to appear against him again, he may be committed for sentence. Sub-section (1.) amended by No. 7 of 1935, s. 32.

**111.—(1.)** If the defendant upon being asked in accordance with section one hundred and four B of this Ordinance whether he wishes to say anything in answer to the charge, says that he is guilty of the charge, the court shall further say to him the words following, or words to the like effect:—"Do you wish the witnesses again to appear to give evidence against you at the court to which you will be committed? If you do not, you will now be committed for sentence instead of being committed for trial, and you will not afterwards be able to deny your guilt."

(2.) If the defendant then says that he does not wish the witnesses again to appear to give evidence against him, his statement shall be taken down in writing, and read to him, and shall be

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signed by the justices constituting the court, and by the defendant if he so desires, and shall be kept with the depositions of the witnesses and shall be transmitted with them to the Crown Law Officer of the Territory.

(3.) In any such case the court, instead of committing the defendant for trial, shall order him to be committed for sentence before the Supreme Court, and in the meantime shall, by their warrant, commit him to gaol, to be there safely kept until the sittings of that court, or until he is delivered by due course of law, or admit him to bail to appear for sentence as provided in Division 3 of this Part.

Sub-section (3.)  
amended by  
No. 16 of 1934,  
s. 2, and by  
No. 7 of 1935,  
s. 32.

*Division 2A.—Preservation of Testimony in Certain Cases.*

Division 2A  
inserted by  
No. 7 of 1935,  
s. 33.

**111A.**—(1.) Whenever it appears to any justice that—

Taking of  
statement of  
person  
dangerously  
ill.

- (a) any person is dangerously ill and is not likely to recover from the illness; and
- (b) the person is able and willing to give material information relating to any indictable offence; and
- (c) it is not practicable for any court to take the deposition of the person in accordance with the provisions of this Part,

Section 111A  
inserted by  
No. 7 of 1935,  
s. 33.

the justice may take the statement upon oath of the person.

(2.) The justice taking the statement shall thereupon subscribe the statement, and shall add thereto a statement of his reason for taking it, and of the day and place when and where it was taken, and of the names of the persons (if any) present at the taking of the statement.

(3.) If the statement relates to an indictable offence for which any person is already committed for trial the justice shall transmit the statement, with the addition mentioned in the last preceding sub-section, to the Crown Law Officer.

**111B.** A statement taken under section one hundred and eleven A of this Ordinance may be read in evidence upon the hearing of an information against or upon the trial of any person or persons accused of an indictable offence to which the statement relates, if—

Use of  
statement in  
evidence.  
Inserted by  
No. 7 of 1935,  
s. 33.

- (a) the statement purports to be signed by the justice by or before whom it purports to be taken; and
- (b) it is proved that the person who made the statement is dead, or that there is no reasonable probability that he will ever be able to travel or give evidence; and
- (c) it is proved that reasonable notice of the intention to take the statement was served upon the person

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(whether prosecutor or defendant) against whom it is proposed to be read in evidence, and that the person or his solicitor, had, or might have had if he had chosen to be present, full opportunity of cross-examining the person who made the statement.

Provision for prisoner being present at taking of statement. Inserted by No. 7 of 1935, s. 33.

**111c.** Whenever any prisoner in custody causes to be served or receives notice of an intention to take a statement under section one hundred and eleven A of this Ordinance, a Judge or justice may by order in writing direct the keeper of the gaol or police officer in whose custody the prisoner is to convey him to the place mentioned in the notice for the purpose of being present at the taking of the statement and that officer shall convey or cause to be conveyed the prisoner accordingly.

Heading amended by No. 7 of 1935, s. 34.

*Division 3.—Bail.*

Bail in capital offences.

**112.** No person charged with a capital offence shall be admitted to bail except by order of the Supreme Court or a judge thereof.

Amended by No. 16 of 1934, s. 2.

Definition of "for trial".

**112A.** In this Division, unless the contrary intention appears, "for trial" includes "to appear for sentence".

Inserted by No. 7 of 1935, s. 35.

Bailing persons charged with crime and misdemeanours.

**113.—(1.)** Where any person is charged before a court with—

- (a) crime other than a capital crime;
- (b) assault with intent to commit a crime;
- (c) attempt to commit a crime;
- (d) obtaining or attempting to obtain property by false pretences;
- (e) misdemeanour in receiving property stolen or obtained by false pretences;
- (f) perjury or subornation of perjury;
- (g) concealing the birth of a child by secret burying or otherwise;
- (h) wilful or indecent exposure of the person;
- (i) riot;
- (j) assault in pursuance of a conspiracy to raise wages;
- (k) assault upon a police officer in the execution of his duty or upon any person acting in his aid; or
- (l) neglect or breach of duty as a police officer,

the court may—

- (a) admit him to bail instead of committing him for trial as provided in section one hundred and eight or section one hundred and eleven of this Ordinance; or
- (b) commit him for trial, and certify for his admission to bail.

Sub-section (1.) amended by No. 7 of 1935, s. 36.

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(2.) Where a person charged with any such crime or misdemeanour is committed to gaol to take his trial for the same, then at any time before the first day of the sitting or session at which he is to be tried or before the day to which the sitting or session is adjourned, the justices who have signed the warrant for his commitment may admit the defendant to bail.

Bail after commitment for trial.

**114.** Where the defendant is charged with any indictable offence, other than those mentioned in sections one hundred and twelve and one hundred and thirteen of this Ordinance, the court shall—

Bail for persons charged with other misdemeanours. Substituted by No. 7 of 1935, s. 37.

- (a) admit him to bail instead of committing him for trial; or  
(b) commit him for trial, and certify for his admission to bail.

**115.** When a defendant, charged with an offence for which bail is authorized or required to be granted, is committed for trial, the justices constituting the court by which he is committed for trial may admit the defendant to bail, or certify for his admission to bail, at any time before the first day of the sitting or session at which he is to be tried, or before the day to which the sitting or session is adjourned.

Bail after commitment for trial. Substituted by No. 7 of 1935, s. 37.

**116.**—(1.) Where in this Division a court is or justices are authorized or required to admit any defendant to bail, it or they shall do so only upon the defendant entering into a recognisance, with or without a surety or sureties, to ensure his appearance at the time and place when and where he is to be tried.

Amount and form of recognisance. Section 116 substituted by No. 7 of 1935, s. 37.

(2.) The recognisance shall be conditioned for the appearance of the defendant at the time and place when and where he is to be tried, and that he will then surrender and take his trial, and not depart from the court without leave from the court.

**117.**—(1.) The certificate for the admission of a defendant to bail shall fix the amount in which the defendant and sureties (if any) are to be bound.

Certificate for bail. Section 117 substituted by No. 7 of 1935, s. 37.

(2.) Upon the certificate the recognisance may be entered into as provided by section eighty-nine of this Ordinance.

(3.) Upon the production of the certificate and the recognisance or recognisances taken thereunder any justice may release the defendant upon bail.

**118.** When a defendant is in gaol charged with the offence for which he is admitted to bail, the court or justice which or who so admits him shall send to, or cause to be lodged with, the keeper of the gaol, a warrant of deliverance requiring the keeper to discharge the defendant if he is detained for no other offence, and upon the warrant being delivered to or lodged with the keeper, he shall forthwith obey the warrant.

Warrant of deliverance. Substituted by No. 7 of 1935, s. 37.

Transmission of recognisances. Substituted by No. 7 of 1935, s. 37.

**119.** When a defendant is admitted to or released upon bail the recognisance or recognisances of bail shall be transmitted to the Crown Law Officer.

Heading inserted by No. 7 of 1935, s. 38. Recognisances of witnesses, &c. Sub-section (1.) substituted by No. 7 of 1935, s. 39.

*Division 4.—Recognisances of Witnesses to Appear at Trial.*

**120.**—(1.) The court before which any witness who, in the opinion of the court, gives evidence in any way material to the case or tending to prove the guilt or innocence of the accused person, is examined, shall bind the witness by recognisance to appear at the court at which the defendant is to be tried, then and there to give evidence at the trial of the defendant.

(2.) The recognisance shall particularly specify the profession, trade, or calling of every person who enters into it, together with his Christian name and surname, and the place of his residence.

Signature of justices. Notice to witnesses.

**121.**—(1.) Every such recognisance shall be duly acknowledged by every person who enters into it, and shall be subscribed by the justices before whom it is acknowledged, and a notice thereof signed by the justices shall at the same time be given to every person bound thereby.

Sub-section (2.) added by No. 7 of 1935, s. 40.

(2.) The recognisances of all or any two or more of the persons who are bound in the same sum or penalty may be included in one form or document, and the recognisance shall be as valid and effectual in respect of every such person as if it had been entered into by a separate form or document.

Court may commit refractory witness.

**122.**—(1.) If a witness refuses to enter into the recognisance, the court may by warrant commit him to gaol, there to be safely kept until after the trial of the defendant, unless in the meantime the witness duly enters into the recognisance before a justice:

Provided that if afterwards, from want of sufficient evidence in that behalf or other cause, the court before which the defendant has been brought does not commit him or admit him to bail for the offence with which he is charged, or if the duly appointed officer declines to file an information against the defendant for the offence, any justice, upon being duly informed of the fact, may, by his order in that behalf, order and direct the keeper of the gaol where the witness is in custody to discharge him from the same, and the keeper shall thereupon forthwith discharge him accordingly, as to that warrant.

Sub-section (2.) added by No. 7 of 1935, s. 41.

(2.) Where a witness has been committed to gaol in pursuance of this section, the court or the clerk shall notify the Crown Law Officer in writing of the name of the witness who has been so committed.

Detention of native witnesses. Inserted by No. 7 of 1935, s. 42.

**122A.** Notwithstanding anything contained in this Division, if, in the opinion of the court before which any native is examined,

it is desirable that a native witness should be kept in safe custody, the court may by warrant commit the witness to gaol or may, by order in writing, authorize his detention in the custody of any police officer, or officer in charge of a compound or other place of security, without naming the officer, to be safely kept until after the trial of the defendant.

*Division 5.—Offences Committed in Remote Places.*

**123.** Where a person is charged before a court with an indictable offence alleged to have been committed in any place remote from it or not within its jurisdiction, but within the jurisdiction of the Supreme Court, it shall receive such evidence in proof of the charge as is produced before it and, if, in the opinion of the court, the evidence for the prosecution is sufficient to put the defendant upon his trial, shall proceed as provided in Division 2 of this Part.

Indictable offences committed in places outside jurisdiction of court or in remote places.  
Substituted by No. 7 of 1935, s. 43.

**124.—(1.)** If in any such case as in the last preceding section mentioned the evidence is not in the opinion of the court sufficient to put the defendant upon his trial for the offence with which he is charged, then it may bind over such witnesses as it has examined by recognisance to give evidence, and may by warrant order the defendant to be taken before a court having jurisdiction in or near the place where the offence is alleged to have been committed, or in any other place in the Territory where any of the witnesses to be examined are, or may order his release upon recognisance to appear before the court named in the recognisance.

Remand to another place.  
Sub-section (1.) amended by No. 7 of 1935, s. 44.

(2.) Where an order is made under the last preceding subsection, the court shall transmit the information, and the depositions and recognisances taken by or before it, to the court before which the defendant is to be taken or is to appear.

Sub-section (2.) added by No. 7 of 1935, s. 44.

**125.** The depositions and recognisances shall be deemed to be taken in the case, and shall be treated as if they had been taken by or before the last-mentioned court, and shall, together with the depositions and recognisances taken by the last-mentioned court in the matter of the charge against the defendant, be transmitted to the Crown Law Officer of the Territory in the manner and at the time mentioned in section one hundred and twenty-seven of this Ordinance if the defendant is committed for trial upon the charge or discharged upon recognisances:

Effect of depositions, &c.

Provided that if the last-mentioned court does not think the evidence against the defendant sufficient to put him upon his trial, and discharge him without recognisances every recognisance so taken by the first-mentioned court shall be null and void.

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Section 126 repealed by No. 7 of 1935, s. 45.

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### *Division 6.—Miscellaneous.*

Transmission of depositions, &c., to Crown Law Officer.  
Vic. No. 2675, s. 59.

**127.** Where a defendant is committed for trial or for sentence the court shall as soon as possible after the conclusion of the case before it, transmit to the Crown Law Officer of the Territory all informations, examinations, depositions, statements, recognisances and other documents sworn taken or acknowledged in the case.

How dealt with after transmission.  
Vic. ib. s. 59.

**128.—(1.)** After the transmission of the documents and before the day of trial the Crown Law Officer shall have and be subject to the same duties and liabilities with respect to the documents upon a *certiorari* directed to him or upon a rule or order directed to him in lieu of that writ as the court would have had and been subject to upon a *certiorari* to it if the documents had not been transmitted.

(2.) The Crown Law Officer, or the officer in any case prosecuting on behalf of the Crown, shall at any time after the opening of the court at the sitting at which the trial is to be had, deliver or cause to be delivered the documents or any of them to the proper officer of the court if the presiding judge so directs.

Copies of depositions may be obtained by accused.  
Vic. ib. s. 59.

**129.—(1.)** Where any person charged with any indictable offence is by any court directed to be tried, if that person at any time after the examinations in his case have been concluded and before the first sitting of the court at which he is to be tried makes application to the officer having the custody thereof, that person shall receive from the officer copies of the depositions on which he has been directed to be tried, and of the evidence given on the cross-examination or the examination of any witnesses that have been cross-examined or called and examined by or on behalf of that person.

(2.) Any gaoler or officer having that person in his custody shall convey or cause to be conveyed any such application to the officer having the custody of the depositions and evidence.

## PART VII.—PROCEEDINGS IN CASE OF SIMPLE OFFENCES.

### *Division 1.—Venue.*

Where summary cases to be heard.  
Amended by No. 31 of 1937, s. 3.

**130.** Except as otherwise provided in this Part, informations of simple offences shall be heard and determined at a place appointed for holding courts within the district in which the offence or breach of duty was committed or in which the defendant usually resides or may be at the time the information is laid:

Provided that if the offence was committed outside a district, but within twenty miles of the boundary thereof, the information may be heard and determined at a place appointed for holding courts either within that district or within the district in which the offence was committed:

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Provided further that if the offence was committed on a vessel within territorial waters, or in any case with the consent of the defendant, the information may be heard and determined at any place appointed for holding courts within any district:

Proviso added by No. 16 of 1934, s. 5.

Provided also that an information of a simple offence against the *Companies Ordinance* 1912-1926 of the Territory of Papua in its application to the Territory of New Guinea, as amended, or the *Companies Ordinance* 1933-1936<sup>(9)</sup> may be heard and determined in the district in which the registered office of the company is situated or at Rabaul.

Proviso added by No. 31 of 1937, s. 3.

**131.** Where two or more places are appointed for holding courts in a district, and in any other case in which an information of a simple offence may lawfully be heard and determined at any one or two<sup>(10)</sup> or more places, then, if, at the hearing of the information at one of those places, it appears to the court that the hearing would more conveniently take place at another of those places, the court may adjourn the matter to that other place, and may commit the defendant in the meantime or discharge him upon recognisance conditioned for his appearance at the time and place to which the hearing is so adjourned; and the defendant and every witness summoned to give evidence shall be bound to attend at the time and place accordingly.

Adjournment to different place.

*Division 2.—Hearing.*

**132.** If upon the day and at the place appointed by the summons for hearing and determining an information of a simple offence, the defendant attends voluntarily in obedience to the summons, or is brought before the court by virtue of a warrant, and the complainant (having had notice of the day and place) does not appear by himself, his counsel, or solicitor, the court shall dismiss the information unless for some reason it thinks proper to adjourn the hearing of the same to some other day.

Dismissal or adjournment in absence of complainant.

**133.** If at the time and place so appointed the defendant does not appear when called, and proof is made to the court upon oath, or by deposition made as prescribed in section fifty-two of this Ordinance of due service of the summons upon the defendant a reasonable time before the time appointed for his appearance, the court may either—

*Ex parte* hearing in absence of defendant.

- (a) proceed *ex parte* to hear and determine the case in the absence of the defendant; or
- (b) upon oath being made before it, substantiate the matter of the information to its satisfaction, issue its warrant for the arrest of the defendant and to bring him before a court to answer to the information and to be further dealt with according to law.

(9) Now the *Companies Ordinance* 1933-1938.

(10) The words "one or two" appeared in the original Ordinance. The word "or" has now been omitted and the word "of" inserted in its stead by the First Schedule of the *Ordinances Reprint and Revision Ordinance* 1947 of the Territory of Papua-New Guinea.

Justices may adjourn the case.

**134.** Where the court upon the non-appearance of the defendant issues its warrant, it shall adjourn the hearing of the information until the defendant is arrested, and if the defendant is afterwards arrested under the warrant he shall be detained in safe custody until he can be brought up before the court at a convenient time and place of which the complainant shall have due notice.

Both parties appearing.

**135.** If both parties appear either personally or by counsel or solicitor, the court shall proceed to hear and determine the information.

Proceedings at the hearing on defendant's confession.

**136.** Where the defendant is present at the hearing, the substance of the information shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted or why an order should not be made against him, and if he has no cause to show, the court may convict him, or make an order against him accordingly.

Where defendant does not admit the case.

**137.** If the defendant does not admit the truth of the information, the court shall proceed to hear the complainant and his witnesses and also the defendant and his witnesses and also such witnesses as the complainant may examine in reply, if the defendant has given any evidence other than as to his general character; and the court having heard what each party has to say, and the evidence so adduced, shall consider the whole matter and determine the same, and shall convict or make an order upon the defendant or dismiss the information as justice requires.

Court may proceed to hearing in absence of both or either of the parties.  
Amended by No. 7 of 1935, s. 46.

**138.** If at the time or place to which a hearing or further hearing is adjourned, either or both of the parties does not or do not appear personally or by counsel or solicitor or other person empowered by law to appear, the court may proceed to the hearing or further hearing as if the party or parties were present, or if the complainant does not appear the court may dismiss the information with or without costs.

Conduct of summary proceedings regulated.  
Amended by No. 16 of 1934, s. 2.

**139.** The practice before a court upon the hearing of an information of a simple offence shall, in respect of the examination and cross-examination of witnesses and the right of addressing the court upon the case in reply or otherwise, be in accordance as nearly as may be with the practice for the time being of the Supreme Court upon the trial of an issue of fact in an action of law.<sup>(11)</sup>

## PART VIII.—PROCEEDINGS IN CONNEXION WITH COMPLAINTS.

### *Division 1.—General.*

Particulars of demand and set-off.

Vic. No. 2675, s. 94 (1).

**140.—(1.)** Concise particulars of the complainant's demand with dates, items and prices or value shall be endorsed upon or

(11) The words "action of law" appeared in the original Ordinance. They have now been omitted and the words "action at law" inserted in their stead by the First Schedule of the *Ordinances Reprint and Revision Ordinance 1947* of the Territory of Papua-New Guinea.

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annexed to the summons on every complaint made in respect of a civil debt recoverable summarily and shall be deemed to be part of the summons.

(2.) Concise particulars of the defendant's set-off (if any) with dates, items and prices or value shall be endorsed upon or annexed to the notice in writing of the set-off.

(3.) No inaccuracies or omissions which in the opinion of the court are not likely to mislead shall vitiate such particulars of demand or set-off, and no evidence shall be given in support of any debt not mentioned in the particulars if the opposite party objects to it.

(4.) The court may, at any time before an order is made, allow either party to alter or amend the particulars of his demand or set-off upon such terms as to costs, adjournment or otherwise as appear just.

**141.** Notwithstanding anything contained in the last preceding section, where, on a complaint made in respect of a civil debt recoverable summarily, a sum of money is claimed and particulars of the debt with dates, items and prices or value have at any time prior to the date of the complaint been delivered to the defendant or duly entered in a pass-book in the possession of the defendant, it shall be sufficient if the particulars of the demand to be endorsed upon or annexed to the summons as required by that section are in one of the forms in the Second Schedule to this Ordinance for that purpose provided or as near thereto as applicable.

Particulars of demand for sums due to be in forms in Second Schedule.  
Vic. No. 2675, s. 94 (2).

**142.—**(1.) At the hearing of a complaint under the last preceding section the court, on the application of the defendant, may, if it thinks fit, order the complainant to deliver further and fuller particulars, wholly or in part, and with dates, items and prices or value to the defendant or his solicitor within such time and upon such terms as to costs or otherwise as the court thinks just.

Further particulars may be ordered where necessary for purposes of defence.  
Vic. ib. s. 94 (3).

(2.) The court shall not make an order for particulars unless it is satisfied that the particulars are necessary for the purposes of the defence, and not demanded for the purpose of delay, and the court may adjourn the hearing of the complaint and stay all proceedings therein until the order has been complied with.

**143.** The provisions of the last two preceding sections shall, with the necessary modifications, apply to a set-off as if it were a complaint.

Particulars of set-off.  
Vic. ib. s. 94 (4).

**144.** No evidence of any demand or cause of action shall be given on behalf of the complainant on the hearing of any complaint except such as is stated in the summons issued on the complaint or in the summons as amended.

Nothing to be proved that is not stated in summons.  
Vic. ib. s. 95.

General power of amendment.  
Vic. No. 2875, s. 96.

**145.** Upon the hearing of a complaint the court may allow any amendment of the summons which it thinks just, and upon such terms as it thinks just, and all such amendments shall be made as are necessary for the purpose of determining the real questions in controversy between the parties.

Defendant if required to state defence to complaint.  
Vic. ib. s. 88 (3).

**146.** In any complaint, at the close of the opening of the complainant's case and before any evidence is taken, the defendant, if so required on behalf of the complainant, shall by himself or his counsel or solicitor, give a concise statement of his defence to the complaint and of the points on which he relies, and he shall not, except by leave of the court, enter or rely upon or give evidence as to any other matters than those included in the defence and points so stated.

Proceedings at hearing when facts are admitted.  
Vic. ib. s. 88 (4).

**147.**—(1.) The substance of the complaint shall be stated to the defendant and he shall be asked if he has any cause to show why an order should not be made against him.

(2.) If he thereupon admits the truth of the complaint and shows no sufficient cause why an order should not be made against him, the court shall, after hearing such evidence as it thinks fit with respect to the subject-matter of the complaint, make an order against him accordingly.

Proceedings when facts not admitted.  
Vic. ib. s. 88 (5).

**148.** If the defendant does not admit the truth of the complaint, or if he gives a statement of defence as provided in section one hundred and forty-six of this Ordinance, the court shall proceed—

- (a) to hear the complainant and such witnesses as are examined on his behalf, and such other evidence as is adduced in support of the complaint;
- (b) to hear the defendant and such witnesses as are examined on his behalf, and such other evidence as is adduced in his defence; and
- (c) to hear such witnesses as the complainant examines in reply, if any evidence has been given on behalf of the defendant.

Conduct of proceedings.  
Substituted by No. 7 of 1935, s. 47.

**149.** The practice before a court upon the hearing of a complaint with respect to the examination and cross-examination of witnesses and the right of addressing the court in reply, or otherwise, shall be in accordance, as nearly as may be, with the practice for the time being of the Supreme Court upon the trial of an action.

Where defendant does not appear in complaint.  
Vic. ib. s. 88 (8).

**150.** Where, in the case of any complaint, the defendant does not appear at the place mentioned in the summons and at the time mentioned therein or at the time to which the hearing thereof was adjourned or postponed (as the case may be), if it appears to the

court on oath that the summons was duly served at least seventy-two hours before the time therein appointed for appearing or that any order for substituted or other service or for the substitution for service of notice by advertisement or otherwise was duly complied with, and if no sufficient grounds are shown for an adjournment, the court may either proceed *ex parte* to hear and determine the complaint or may adjourn the hearing to a future day.

**151.** Where at the time and place appointed the defendant attends in obedience to the summons in that behalf served upon him if the complainant does not appear by himself, his counsel or solicitor or other person empowered by law to appear, the court shall either dismiss the complaint, and hear and determine the defendant's set-off in case he has given notice of set-off, or if it thinks proper, shall adjourn the hearing or further hearing of the complaint and set-off to some other day upon such terms as it thinks fit.

**152.—(1.)** The court shall, in every case where the defendant is required to give and gives a statement of his defence and the points on which he relies, cause the statement and points to be taken down in writing and the court shall preserve the writing.

(2.) The court shall cause the evidence to be taken down in writing and signed by the respective witnesses, and all exhibits put in evidence to be marked so as to be thereafter clearly identified as those exhibits, and shall cause the clerk to make and preserve a list of the exhibits so marked.

(3.) The court may, if it thinks fit, order the exhibits or any of them to be retained by the clerk until the further order of the court.

(4.) Upon any appeal from an order of the court it shall be deemed, in case the statement and points were taken down in writing, that no other defence and points were relied on at the hearing, and, in case the evidence was taken down and signed and the exhibits marked, that no evidence other than that so taken down in writing and signed was given at the hearing, and that no exhibits other than those so marked or mentioned in the list were put in evidence at the hearing.

**153.** The court, having heard what each party has to say and the evidence adduced by each, shall consider and determine the whole matter, and shall either make an order against the defendant or dismiss the complaint, or make an order against the complainant or dismiss the set-off, as the case may be.

**154.** Upon the hearing of any complaint or set-off the complainant, or, in case of set-off, the defendant, in order to avoid

Adjournment or dismissal in absence of complainant.  
Vic. No. 2675, s. 88 (10).

Amended by No. 7 of 1935, s. 48.

Statement of defence and evidence in certain cases to be taken in writing.

Vic. ib. s. 88 (13).

Sub-section (1.) amended by No. 36 of 1933, s. 11.

Sub-section (2.) amended by No. 36 of 1933, s. 11.

Court to decide case.  
Vic. ib. s. 88 (14).

Complainant may discontinue in certain cases.  
Vic. ib. s. 88 (17).

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a dismissal thereof may, upon the immediate payment to the defendant or complainant, as the case may be, of such reasonable costs as are fixed by the court, withdraw or discontinue the complaint or set-off before it is determined and thereupon the complaint or set-off shall not be dismissed, and the complainant or defendant, as the case may be, may thereupon respectively sue afresh in respect of the same matter.

Jurisdiction in case of stranger about to leave Territory.  
Vic. No. 2675, s. 78.

**155.** If any person complains on oath to any justice that he has a cause of action, whether it did or did not arise within the Territory, which, if it arose in the Territory, would be cognisable by a court, against any other person for any debt or damages of not more than One hundred pounds and that that person does not usually reside in the Territory, and is about to leave the Territory without paying the debt or satisfying the damages, any court may hear and determine the matter of the complaint in a summary way, and may make an order for the payment of the debt or so much thereof as appears to be due, or of any sum in the way of damages not exceeding One hundred pounds.

One of several persons liable may be sued.  
Vic. ib. s. 79.

**156.**—(1.) Where a complainant has any demand recoverable under this Ordinance against two or more persons jointly answerable it shall be sufficient if any of those persons is served with process.

(2.) An order may be made and enforced against the person so served notwithstanding that others jointly liable have not been served or sued or are not in the Territory.

Sub-section (3.) amended by No. 16 of 1934, s. 2.

(3.) Every person against whom any such order has been made and who has satisfied the order shall have the same rights and remedies as if he had been sued in the Supreme Court.

(4.) The process and order shall not prevent the complainant from afterwards proceeding in respect of the demand against the other persons jointly liable in case the order is not satisfied provided that the complainant does not obtain in all more than the amount recovered by the order.

Proceedings to be had at nearest court.  
Vic. ib. s. 86.

**157.** Upon the hearing before any court of any complaint if the defendant objects that he is brought to the wrong court, and if, before any evidence is given in support of the complaint, he satisfies the court either by the admission of the complainant or by the oath of a credible witness that there is a place at which a court is held more easy of access than the place where the court is sitting not only from the place of abode of the defendant, but also from the place where the subject-matter of the complaint arose, the court shall not further proceed with the hearing of the complaint but the justices present shall, by memorandum signed by them or one of them, adjourn the complaint to the court held at the place more easy of access, which court shall hear and determine the complaint.

**158.**—(1.) Where any such objection as is mentioned in the last preceding section is established to the satisfaction of the court and the person making the objection at once complains to the court that he has been brought to the wrong court vexatiously and oppressively, the court shall forthwith and without any further summons or notice proceed to hear and determine the matter in a summary way.

In vexatious cases compensation may be awarded.  
Vic. No. 2875, s. 87.

(2.) If the court is of opinion that the matter complained of by the person making the objection is the fact, it may order the complainant to pay the person making the objection by way of compensation or amends such reasonable sum as the court directs and the costs of the order.

**159.** When any complaint or set-off for a civil debt or damages has been heard and determined by a District Court no action shall be maintainable in any other court for the recovery of the debt or damages.

Determination of court final.  
Vic. ib. s. 98.

*Division 2.—Set-off.*

**160.**—(1.) No defendant in any complaint for any civil debt recoverable summarily shall, without the permission of the court, be allowed to set-off any debt or demand claimed or recoverable by him from the complainant, or to set up by way of defence and to claim and have the benefit of illegality, infancy, coverture, or any Statute of Limitations or of his discharge under any law relating to bankrupts or insolvent debtors, unless a reasonable time before the hearing of the complaint notice in writing thereof has been given to the complainant personally or by the post or by causing it to be delivered at his usual or last-known place of abode or business or at his address for service set out in the summons upon the complaint.

Special defences to be notified to complainant.  
Vic. ib. s. 92.

(2.) The defendant shall produce on the hearing a duplicate of the notice, and unless it is admitted, shall prove that it was given in the manner provided by the last preceding sub-section, and in default of that proof no such defence shall be set up except by consent.

**161.** In every complaint in which the defendant is allowed to set-off any debt or demand claimed or recoverable by him from the complainant, the defendant may recover in the complaint the amount (if any) by which the debt or demand so set-off exceeds the debt or demand claimed and proved by the complainant, and shall have an order for the amount accordingly:

Proceedings where defendant's set-off exceeds complainant's claim.  
Vic. ib. s. 93.

Provided that if the debt or demand so set-off exceeds the amount over which the court has jurisdiction (and the court is satisfied that the set-off is claimed *bona fide*) and the defendant does not abandon the excess (which he is hereby allowed to do), no order whatsoever shall be made on the complaint.

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*Division 3.—Default Summonses.*

Default  
summons.  
Vic. No. 2675,  
s. 99 (1).

**162.** Notwithstanding anything contained in this Ordinance, upon complaint made in respect of any one or more of the causes of action specified in paragraph (c) of section twenty-nine of this Ordinance, where the sum claimed does not exceed One hundred pounds (except a complaint for damages for trespass by cattle) the justice or clerk before whom the complaint is made instead of issuing a summons to the defendant in the ordinary form shall, if so required by the person making the complaint, subject to the provisions of this division, issue a summons to the defendant to be called a "Default Summons".

Service of  
default  
summons.  
Vic. ib. s. 99  
(2).

**163.—(1.)** A default summons issued under the provisions of this division shall be in the form prescribed for that purpose in the Second Schedule to this Ordinance or to the like effect, and there shall be attached thereto two notices of intention to defend in the form in that Schedule, and it shall be served not less than six clear days before the day of return by delivering a true copy thereof to the defendant personally, with true copies of the two notices of intention to defend in the form in that Schedule attached to it.

(2.) The member of the police force or other person who has served the summons shall make an affidavit endorsed on the original summons stating that the true copy of the summons with true copies of the two notices attached was personally served on the defendant and the time at which it was so served and shall forthwith transmit the original summons to the clerk for production at the time and place and before the court therein mentioned; and every document purporting to be such an affidavit shall be received by any court as prima facie evidence of the service of the summons and notices.

(3.) If the defendant or his solicitor does not give notice of his intention to defend the complaint by leaving or causing to be left the notice, at least forty-eight hours before the time appointed for the return of the summons, for the complainant at his address set out in the summons, or with his solicitor at his address if there set out, and for the clerk at the place where the court sits, or by posting the notice to complainant at his address set out in the summons, or to his solicitor at his address if there set out, and to the clerk (the proper postage rate being duly prepaid) in time to reach the complainant or his solicitor and the clerk respectively in due course of post at least forty-eight hours before the time appointed for the return of the summons, the complainant need not attend either personally or otherwise, or prove his claim, and an order in his favour may be made by the court, notwithstanding his absence.

*District Courts Ordinance 1924-1938.*

(4.) Service upon a body corporate in the manner provided by any law of the Territory relating to any such body corporate shall be deemed personal service within the meaning of this section.

Sub-section (4.)  
added by  
No. 7 of 1935,  
s. 49.

**164.** If the defendant has not given notice to defend within the time mentioned in the last preceding section he shall not be allowed on the hearing of the complaint to make any defence to the claim unless by permission of the court and then only on such terms as to costs as the court determines, and, if permission to defend is given, the hearing of the complaint may be adjourned to some other day to be fixed by the court if the complainant or his counsel or solicitor so desires, or if the court thinks fit so to do, and, if the complainant or his counsel or solicitor is not present, shall be adjourned, in which case the clerk shall forthwith give notice in writing thereof to the complainant by post or otherwise.

Where notice  
to defend not  
given no  
defence allowed  
except by  
permission of  
court.  
Vic. No. 2675,  
s. 99 (4).

**165.** For the purpose of carrying into effect the provisions of this division any one justice sitting at the time and place appointed for the holding of courts shall be deemed to be a duly constituted court:

Court may  
consist of one  
justice.  
Vic. ib. s. 99  
(5.).

Provided that, where notice of intention to defend is duly given or where a defendant is permitted to defend the complaint shall be heard before a court constituted in manner provided by section twenty-five of this Ordinance.

**166.**—(1.) Where an order under the provisions of section one hundred and sixty-three of this Ordinance is made, the court, whether consisting of the same justice or justices or not, may at any time after the making of the order, upon being satisfied by an affidavit or statutory declaration that the defendant has a good defence, set aside the order and reinstate the complaint and appoint a time and place for the hearing thereof, and if necessary it may stay or set aside any warrant of execution upon the order and give leave to defend upon such terms as to costs or otherwise as to it seem just.

Court may set  
aside order  
when made.  
Vic. ib. s. 99  
(6).

(2.) Notice of any application to set aside any order shall be given by the defendant in writing to the complainant or his solicitor stating the time and place where the application is to be made, to which shall be attached a copy of the affidavit or statutory declaration in support thereof.

(3.) The notice and copy of affidavit or declaration shall be served on the complainant or his solicitor not less than forty-eight hours before the time when the application is to be made and may be served in the manner provided for the service of notice of intention to defend a complaint in respect of which a default summons has been issued and the court may entertain any answering affidavit or statutory declaration submitted to it by the complainant in reply.

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PART IX.—ENFORCEMENT OF DECISIONS.

*Division 1.—General.*

Minute of decision to be made and served on defendant.

**167.**—(1.) Where a court convicts or makes an order against a defendant, a minute or memorandum of the conviction or order shall be made and signed by the justices constituting the court.

(2.) The minute shall not form any part of the warrant of commitment or of execution.

(3.) A document purporting to be a copy of the minute or memorandum signed by the clerk shall be *prima facie* evidence in all courts of law of the making of the conviction or order.

Formal convictions and orders.

**168.** The conviction or order shall afterwards, if required, be drawn up by the court in proper form, and it shall cause the same to be lodged with the clerk, to be by him filed among the records of the court:

Proviso amended by No. 16 of 1934, s. 2.

Provided that it shall not be necessary for a court formally to draw up a conviction or order or any other record of a decision, unless the same is demanded by a party to the proceedings for the purpose of an appeal against the decision, or is required for the purpose of a return to a writ of *habeas corpus* or other writ from the Supreme Court.

Proceedings in case of dismissal. Vic. No. 2875, s. 88 (17).

**169.**—(1.) If the court dismisses the information, complaint or set-off, the court shall make an order of dismissal, and shall, on application, give the defendant or complainant, as the case may be, a certificate thereof signed by one or more of the adjudicating justices or the clerk.

(2.) The certificate, without further proof, shall, on its production be a bar to any other information, complaint or legal proceeding in any court (other than<sup>(12)</sup> proceedings on appeal) for the same matters respectively against the same party.

Convictions not to be set aside for amendable errors. Inserted by No. 7 of 1935, s. 50.

**169A.** A conviction, order, or adjudication shall not be void or voidable, or liable to be quashed, annulled, or set aside in any manner, by reason of any defect or error in form or substance, if it is shown to the satisfaction of the Supreme Court that sufficient grounds were in proof before the District Court making the conviction, order, or adjudication to have authorized the drawing up thereof free from the defect or error, and in that case the Supreme Court may, upon such terms as to payment of costs as it thinks fit, amend the conviction, order or adjudication.

Copies of proceedings in summary cases.

**170.** Where a conviction or order is made or an information or a complaint is dismissed by a court all parties interested therein shall be entitled to demand and have copies of the information or complaint and depositions, and of the conviction or order, on payment to the clerk of the amount prescribed.

(12) The word "then" appeared in the original Ordinance. It has now been omitted and the word "than" inserted in its stead by the First Schedule of the *Ordinances Reprint and Revision Ordinance* 1947 of the Territory of Papua-New Guinea.

*District Courts Ordinance 1924-1938.*

**171.**—(1.) Where, by a conviction or order, any fine, sum of money, or costs are ordered to be paid, the court may do all or any of the following things:—

- (a) allow time for the payment;
- (b) direct the payment to be made by instalments; or
- (c) direct that the person liable to pay shall be at liberty to give security for the payment thereof.

Court may allow time for payment or direct payment by instalments.  
**Section 171 substituted by No. 7 of 1935, s. 51.**

(2.) Where a fine, sum of money, or costs are directed to be paid by instalments, the instalments shall be paid to the clerk or to such other person as the court orders, and if default is made in the payment of any one instalment, the same proceedings may be taken to recover the amount then remaining due as if an order for payment by instalments had not been made.

**172.**—(1.) Where a court, upon making a conviction or order for a simple offence, sentences the defendant to be imprisoned, and the defendant has previously been adjudged to be imprisoned upon a conviction or order for any other offence (whether an indictable offence or not), or breach of duty, or is adjudged at the same court to be imprisoned for any other offence, the court may, if it thinks fit (whether the defendant is actually undergoing imprisonment or not), adjudge that the imprisonment for the subsequent offence shall commence at the expiration of the term of imprisonment which the defendant is then undergoing, or liable to undergo, or of any term of imprisonment to which he is sentenced at the same court.

Imprisonment for a subsequent offence.

(2.) Subject to the last preceding sub-section, every term of imprisonment imposed by a court under this Ordinance shall commence to run from the time when the defendant is first imprisoned under the warrant of commitment.

*Division 2.—Warrants of Execution and Commitment.*

**173.**—(1.) Notwithstanding anything contained in any other law of the Territory, where any fine or costs are adjudged by a court to be paid by a conviction, payment of the fine or costs shall, except where the conviction is made against a corporate body, be enforced by imprisonment.

Imprisonment to be alternative of non-payment of fine.  
**Section 173 substituted by No. 7 of 1935, s. 52.**

(2.) Whenever any corporate body is, by any conviction, adjudged to pay any fine or costs, the conviction shall operate as an order for payment of a sum of money or costs and shall be enforceable as provided in section one hundred and eighty-one of this Ordinance.

**174.**—(1.) When a court by a conviction adjudges the payment of any fine or costs, it shall, except where the conviction is made against a corporate body, in and by its conviction impose a term of imprisonment in default of payment.

Conviction shall impose imprisonment in default of payment of fine, &c.  
**Section 174 substituted by No. 7 of 1935, s. 52.**

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(2.) If the law under which the conviction is made directs or appoints any manner or term of imprisonment, the conviction shall be framed accordingly.

(3.) If the manner or term of imprisonment is not so directed or appointed, imprisonment may be imposed with or without hard labour and for any term which the court thinks fit not exceeding the time prescribed by section two hundred and eight of this Ordinance with reference to the amount to be recovered.

(4.) Whenever a justice is satisfied that default has been made in payment of the fine or costs, he may issue a warrant of commitment.

Proof of default.  
Substituted by No. 7 of 1935, s. 52.

**175.** In or upon any application made to a justice to issue a warrant of commitment to enforce the payment of any fine or costs adjudged by a conviction, a certificate, purporting to be signed by the clerk of the court that made the conviction, that the fine or costs or a portion thereof have not been paid to him shall be sufficient evidence of the facts therein stated, unless the justice requires further evidence of the facts.

Form of warrant of commitment to enforce payment of fine, &c.  
Substituted by No. 7 of 1935, s. 52.

**176.** Every warrant of commitment to enforce the payment of any fine or costs, adjudged by any conviction to be paid, shall order the defendant to be imprisoned with or without hard labour, for such time as the conviction directs, unless the sum or sums adjudged to be paid are sooner paid.

Warrant of commitment in other cases.  
Section 177 substituted by No. 7 of 1935, s. 52.

**177.—**(1.) Whenever—

(a) a conviction does not adjudge the payment of a fine, but that the defendant be imprisoned, or imprisoned and kept to hard labour, for his offence; or

(b) a court orders the doing of some act other than the payment of a fine or sum of money or costs and directs that, in case of the defendant's neglect or refusal to do the act, he shall be imprisoned, or imprisoned and kept to hard labour, and the defendant neglects or refuses to do the act,

the court or any justice may issue a warrant of commitment for the imprisonment, or the imprisonment with hard labour (as the case may be), of the defendant for such time as the conviction directs.

(2.) If by any such conviction or order any costs are also adjudged to be paid by the defendant to the complainant, and the defendant does not pay the costs in accordance with the terms of the conviction or order, any justice may, by warrant, commit him to prison, there to be kept according to the terms in that behalf of the conviction or order, unless he sooner pays the costs.

Sections 178 and 179 repealed by No. 7 of 1935, s. 52.

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*District Courts Ordinance 1924-1938.*

**180.** Any court or justice to which or whom the application is made, either to issue a warrant of execution for any sum ordered to be paid by a decision or order, or to issue a warrant of commitment for non-payment of any sum ordered to be paid by a conviction, may, if it or he deems it expedient so to do, postpone the issue of the warrant until such time or on such conditions (if any) as to it or him seems just.

Power to postpone issue of warrant applied for. Amended by No. 7 of 1935, s. 53.

**181.** Where an order of a court requires the payment of a sum of money or costs, the sum shall be recoverable (without the direction of the court making the order) by execution against the goods and chattels of the person liable to make the payment, and a warrant of execution may be issued for the purpose of levying the same.

Enforcement of order by warrant of execution. Substituted by No. 7 of 1935, s. 54.

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Sections 182 and 183 repealed by No. 7 of 1935, s. 54.

**184.**—(1.) A warrant of execution issued by a court or justice shall be executed by a seizure and sale of the goods and chattels of the person against whom the warrant is issued, and shall be executed by or under the direction of a police officer, or by or under the direction of some other person in the Public Service of the Territory to be named in the warrant.

Procedure on execution.

(1A.) The wearing apparel and bedding of the defendant and his family, and the tools and implements of the defendant's trade, the whole not exceeding in value the sum of Twenty pounds, shall not be taken under a warrant of execution.

Sub-section (1A.) inserted by No. 7 of 1935, s. 55.

(2.) Except so far as the person against whom the execution is issued otherwise consents in writing, the goods and chattels seized shall be sold by public auction, and five clear days, at least, shall intervene between the making of the levy and the sale, of which due and public notice shall be given, except in the case of perishable goods, which may be sold at the expiration of twenty-four hours after seizure after such notice as is practicable; but where written consent is so given, the sale may be made in accordance with the consent.

(3.) Subject to the last preceding sub-section, the goods and chattels seized shall be sold within the period fixed by the warrant, and if no period is so fixed, then within the period of fourteen days after the date of making the levy, unless the sum for which the warrant was issued, together with the charges of the execution, is sooner paid.

(4.) Subject to any directions to the contrary given by the warrant of execution, where household goods are seized, the goods shall not, except with the consent in writing of the person against whom the execution is issued, be removed from the house until the

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day of sale; but so much of the goods as is, in the opinion of the person executing the warrant, sufficient to satisfy the execution shall be impounded by affixing to the articles impounded a conspicuous mark; and any person who removes any goods so marked, or defaces or removes the mark, shall be guilty of an offence.

Penalty: Five pounds.

(5.) Where a person charged with the execution of a warrant of execution wilfully retains from the produce of any goods sold to satisfy the execution, or otherwise exacts, any greater costs and charges than those to which he is for the time being entitled by law, or makes any improper charge, he shall be liable to a penalty not exceeding Twenty pounds; and the court before which he is convicted may order him to pay any sum so retained, exacted, or improperly charged, to the person entitled thereto.

(6.) A written account of the costs and charges incurred in respect of the execution of any warrant of execution shall be sent by the police officer or other person charged with the execution of the warrant, as soon as practicable, to the clerk; and the person against whom the warrant was issued may, at the time within one month after the levy, inspect the account without fee or reward at any reasonable time, and take a copy of the account.

(7.) The police officer or other person charged with the execution of a warrant of execution shall cause the goods and chattels seized under it to be sold, and may deduct out of the amount realized by the sale all costs and charges actually incurred in effecting the sale, and shall render to the owner the overplus (if any) after retaining the amount of the sum for which the warrant was issued, and the proper costs and charges of the execution of the warrant.

(8.) Where a person pays or tenders to the police officer or other person charged with the execution of a warrant of execution the sum mentioned in the warrant, or produces the receipt of the clerk for the same, and also pays the amount of the costs and charges of the execution up to the time of the payment or tender, the officer or other person shall not execute the warrant.

(9.) Any police officer or other person by whom a warrant of execution is executed may, after the levying of the distress, leave the house or place in which any goods on which he has levied then are, and at all reasonable times re-enter therein.

(10.) Any such officer or person leaving and subsequently returning to any such house or place shall not be deemed thereby to have abandoned the distress.

**186.** Where this or any other Ordinance or any warrant of a justice directs any sum to be levied by execution against the goods and chattels of any person—

- (a) any money or bank notes belonging to that person may be seized, taken and applied towards satisfaction of the warrant but need not be sold; and
- (b) any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money belonging to that person may be seized and taken and held as a security or securities for the amount directed to be levied or so much thereof as has not been otherwise levied or raised for the benefit of the person on whose behalf the warrant has issued; and when the time of payment has arrived that person may demand and receive payment thereof, and may sue in any proper court in the name of the person against whom the warrant has issued or in the name of any person in whose name the person against whom the warrant has issued might have sued for the recovery of the sum or sums secured or made payable thereby.

Money and bank notes may be seized and choses in action may be seized, sued on and sold.  
Vic. No. 2675, s. 112 (1).

**186A.**—(1.) A warrant of execution shall order the police officer or other person to whom it is directed to pay the amount of the sum to be levied thereunder to the clerk of the court by which the order was made.

To whom payments to be made.  
Section 186A inserted by No. 7 of 1935, s. 57.

(2.) If any defendant who has been adjudged by any conviction to pay a fine or costs pays the same to any police officer or other person, the police officer or other person shall forthwith pay the same to the clerk of the court by which the conviction was made.

**186B.** Upon receipt of any sum of money adjudged to be paid by a conviction, or of any part thereof, the clerk shall forthwith pay the same—

Application by clerk of money paid under a conviction.  
Section 186B inserted by No. 7 of 1935, s. 57.

- (a) firstly, in or towards satisfaction of any costs ordered by the court to be paid to any party;
- (b) secondly, in accordance with the terms (if any) in that behalf of the conviction; and
- (c) lastly, in accordance with the direction of the law under which the information was laid, or, if the law contains no directions for the payment thereof to any person, then to the Treasurer.

*Division 3.—Adverse Claims.*

**187.**—(1.) If any claim is made to or in respect of any goods or chattels distrained under any warrant of execution or in respect of the proceeds or value thereof by any person not being a party

Adverse claims to goods seized.  
Vic. ib. s. 113.

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against whom the warrant has issued, any justice, upon application of the police officer or other person charged with the execution of the warrant, may issue a summons in the form contained in the Second Schedule to this Ordinance, directed to the party obtaining the warrant and the party making the claim.

(2.) Upon the issue of the summons, any action brought in respect of the claim shall, by the mere fact of service of the summons upon the plaintiff in any such action, be stayed, and the court in which the action has been brought, on proof of the service and that the goods and chattels were so distrained, may order the party bringing the action to pay the costs of all proceedings had in the action after the service.

(3.) Any court may adjudicate in the claim and make an order in the form or to the effect contained in the Second Schedule to this Ordinance.

(4.) Subject to any appeal under this Ordinance every such order shall be final and conclusive upon all parties.

**188.** The following rules shall be observed with regard to claims made under the provisions of the last preceding section:—

(a) The claimant shall within twenty-four hours after making his claim, deliver to the person charged with the execution of the warrant of execution, or leave at the office of the clerk, particulars—

(i) of any goods and chattels alleged to be the property of the claimant and the grounds of his claim; or

(ii) in the case of a claim for rent, of the demand thereof, and for what period and in respect of what premises the same is claimed to be due; and

(iii) the name, address and description of the claimant shall be fully set out in the particulars,

and money or bank notes paid to the clerk under the execution shall be retained by the clerk until the claim has been adjudicated upon, and, by leave of the court, the particulars may, at any stage of the case, be amended, or, by consent, may be altogether dispensed with;

(b) the summons may be made returnable on any day fixed by the justice issuing it and shall be served in the same manner as an ordinary summons upon a complaint not less than forty-eight hours before the time appointed in the summons for the hearing thereof, but by consent in writing endorsed on the summons

Rules in  
interpleader  
summons.  
Vic. No. 2675,  
s. 114.

it may be made returnable forthwith so soon as it can be heard and service may by like consent be dispensed with; and

- (c) where the claim to any goods or chattels taken in execution, or the proceeds or value thereof, is decided against the claimant, the costs of the person charged with the execution of the warrant of execution allowed by the court shall be retained by him or the clerk on his behalf out of the amount levied unless the court otherwise orders, but without prejudice to the right of the execution creditor against the claimant for the sum so retained, if the court orders the sum to be paid by the claimant to the execution creditor.

*Division 4.—Attachment of Debts.*

**189.**—(1.) Where an order of a court has been made for the recovery or payment of money with or without costs, or for costs alone (including costs ordered to be paid by an informant), the party entitled to enforce it may, upon summons (which summons may be issued by a justice or clerk), apply to a court or justice for an order that the person liable under the order for the recovery or payment of money or costs (in this Division referred to as “the debtor”), or, in the case of a corporation that any officer thereof be orally examined as to whether any and what debts are owing to the debtor, and whether the debtor has any and what other property or means of satisfying the order.

Oral examination of debtor as to debts owing to him.  
Vic. No. 2875, s. 125.  
Sub-section (1.) amended by No. 7 of 1935, s. 58.

(2.) The debtor shall be examined on oath, and any person may be summoned to give evidence or produce documents and may be examined on oath as in any case of summary jurisdiction.

**190.**—(1.) A court or any justice may, upon the *ex parte* application of any person who has obtained any such order for the recovery or payment of money or costs, and upon affidavit by himself or his solicitor stating that the order has been made and that it is still unsatisfied and to what amount, and that any other person is indebted to the debtor and is within the Territory, order that all debts owing or accruing from the other person (in this Division referred to as “the garnishee”) to the debtor shall be attached to answer the order.

Order nisi for attachment of debt.  
Vic. ib. s. 126.

(2.) By the same or any subsequent order, the court or justice may order that the garnishee shall appear before the court named in the order to show cause why he should not pay, to the person who has obtained the order for the recovery or payment of money or costs, the debt due from him to the debtor, or so much thereof as is sufficient to satisfy the order.

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(3.) Upon any application under this section the court or justice may, if it or he thinks fit, refuse to make an order where, from the smallness of the amount to be recovered or of the debt sought to be attached or otherwise, the remedy sought would in its or his opinion be worthless or vexatious.

Service of  
order nisi to  
bind debts.  
Vic. No. 2875,  
s.127.

**191.**—(1.) Service of a true copy of an order that debts due or accruing to a debtor shall be attached, or notice thereof to the garnishee in such manner as the court directs, shall bind the debts in his hands.

(2.) In the absence of any direction the service shall be personal or may be made by leaving a true copy of the order with a person apparently an inmate and apparently not less than sixteen years of age at the last or most usual place of abode or of business of the garnishee:

Provided that no place of business shall be deemed to be the place of business of the garnishee unless he is the master or one of the masters thereof.

Where  
garnishee does  
not dispute  
debt.  
Vic. ib. s. 128.

**192.** If the garnishee does not—

(a) forthwith pay to the clerk the amount due from him to the debtor or an amount equal to the order, and does not dispute the debt due or claimed to be due; or

(b) appear upon the order directing him to appear, the court may order a warrant of execution to issue and it may issue accordingly, without any previous writ or process, to levy the amount due from the garnishee or so much thereof as is sufficient to satisfy the order.

Where  
garnishee  
disputes debt.  
Vic. ib. s. 129.

**193.**—(1.) If the garnishee disputes his liability the court instead of making an order that a warrant shall issue may make an order that any issue or question necessary for determining his liability be tried and determined between the person who has obtained the order for the recovery or payment of money or costs and the garnishee in any manner and in any court in which the issue or question might be tried or determined if a complaint were laid or an action commenced in respect of the same by the debtor against the garnishee.

(2.) The court in which the issue or question shall be tried or determined shall be specified in the order.

Issue may be  
filed.  
Vic. ib. s. 130.

**194.** The party obtaining the order for the trial or determination of the issue or question may within the time fixed by the order, or such further time as the court allows, file it in the court mentioned in the order, and thereupon the issue or question shall be tried and determined in that court and the judgment order or other determination of the court may be enforced and all subsequent proceedings taken therein as nearly as may be according to the usual practice thereof.

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**195.** Whenever in proceedings to obtain an attachment of debt it is suggested by the garnishee that the debt sought to be attached belongs to any third person, or that any third person has a lien or charge upon it, the court may order the third person to appear and state the nature and particulars of his claim (if any) upon the debt.

Where third party claims lien or charge on debt.  
Vic. No. 2675, s. 131.

**196.** After hearing the allegations of any third person under an order made in pursuance of the last preceding section and of any other person whom the court orders to appear, or, in the case of that third person or other person not appearing when ordered, the court may—

Court may order warrant to levy amount or issue to be tried.  
Vic. ib. s. 132.

- (a) order a warrant of execution to issue to levy the amount due from the garnishee; or
- (b) order any issue or question to be tried and determined; and
- (c) order the determination to be enforced and subsequent proceedings to be taken as provided in section one hundred and ninety-four of this Ordinance; and
- (d) bar the claim (if any) of the third or other person to an extent not greater than the amount due from the garnishee to the debtor; and
- (e) make any such order upon such terms, in all cases, with respect to the lien or charge (if any) of the third or other person and to costs as the court thinks just and reasonable.

**197.** Payment made by, or warrant of execution levied upon, the garnishee under any such proceeding as is mentioned in this Division shall be a valid discharge to him as against the debtor to the amount paid or levied although the proceedings may be set aside or order reversed.

Payment by debtor under order to be valid discharge.  
Vic. ib. s. 133.  
Amended by No. 7 of 1935, s. 59.

**198.**—(1.) The clerk shall keep a debt attachment book and shall make therein entries of the attachment and proceedings thereon with names, dates and statements of the amounts recovered and otherwise.

Debt attachment book.  
Vic. ib. s. 134.

(2.) On application to the clerk any person may take copies of entries in the debt attachment book.

**199.** The costs of any application for an attachment of debts and of any proceedings arising from or incidental to the applications shall be in the discretion of the court determining the application, and the costs of the party who has obtained the order for the recovery or payment of money or costs mentioned in section one hundred and eighty-nine of this Ordinance shall, unless otherwise directed, be retained out of the money recovered by him under the garnishee order and in priority to the amount due under the order so mentioned.

Costs of attachment.  
Vic. ib. s. 135.

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*Division 5.—Imprisonment of Fraudulent Debtors.*

Defendants in civil cases not to be imprisoned except under certain circumstances. Vic. No. 2867, s. 22.

**200.**—(1.) An order made by a court—

- (a) for the payment of any civil debt recoverable before it or of any instalment thereof and whether with or without costs; or
- (b) for the payment of damages for an assault or for trespass by cattle or of any instalment thereof or for the payment of damages summarily recoverable and not enforceable as a fine or any instalment thereof, and in every such case whether with or without costs; or
- (c) for costs ordered to be paid by an informant to a defendant on the dismissal of an information, or any instalment of those costs; or
- (d) for the delivery of goods detained without just cause after due notice, and, in the event of neglect or refusal to deliver up the goods according to the order, for the payment of the value of the goods to the party aggrieved,

Paragraph (c) substituted by No. 7 of 1935, s. 60.

shall not in default of distress or otherwise be enforced by imprisonment—

- (i) unless it is proved to the satisfaction of the court that the person making default in payment of the civil debt, damages, instalment or costs either—
  - (1) has then, or has had since the date of the order, sufficient means and ability to pay the sum of which he has made default or any instalment thereof, where an order has been made to pay by instalments, and has refused or neglected or refuses or neglects to pay the same; or
  - (2) is about to leave the Territory without paying the debt, damages, costs or money or instalment or so much thereof as is still unsatisfied; or
  - (3) is about to depart elsewhere within the Territory with intent to evade payment thereof; or
  - (4) has neglected or refused to comply with any order under this Ordinance for the delivery of goods detained without just cause after due notice, and has not paid the value thereof to the party aggrieved; or

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(ii) unless it is proved to the satisfaction of the court that that person if a defendant incurring the liability which is the subject of the proceedings in which the order was made—

- (1) obtained credit or contracted the liability under false pretences or by means of fraud or breach of trust; or
- (2) wilfully contracted the liability without having at the same time a reasonable expectation of being able to discharge the same; or
- (3) has made or caused to be made any gift delivery or transfer of any property or has charged, removed or concealed the same with intent to defraud his creditors or any of them.

(2.) Proof of any of the matters mentioned in the last preceding sub-section may be given in such manner as the court to which application is made for the commitment to prison thinks just, and for the purposes of that proof the person making default may be personally served with a summons in Form 80 in the Second Schedule to this Ordinance, and may be examined on oath on the return thereof as to any of the matters mentioned in this section and set out in the summons, and any witnesses (including the person making default) may be summoned and examined on oath according to the provisions relating to the summoning and examination of witnesses in cases of summary jurisdiction.

(3.) If any of the matters mentioned in sub-section (1.) of this section are proved to the satisfaction of the court, the court may if it thinks fit make an order in Form 81 in the Second Schedule to this Ordinance or to the like effect that, unless the person making the default pays to the clerk, either forthwith or within the time limited in the order, and either in one sum or by such instalments as the court orders, the money so unsatisfied, together with such costs of, and occasioned by the summons and examination as are directed by the order, he shall be committed to prison for a term of not more than two months:

Provided that no such order for commitment shall be made against any person against whom, since the order under which the money was recoverable was made, adjudication of insolvency has been made.

**200A.**—(1.) Notwithstanding anything contained in this Ordinance, the court shall not issue any such order as is referred to in the last preceding section to commit any debtor or other person about to leave the Territory for any destination in the Commonwealth unless the court is satisfied that the debtor or other

Person leaving the Territory for the Commonwealth not to be imprisoned as fraudulent debtor except under certain circumstances.

Section 200A inserted by No. 7 of 1935, s. 61.

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person is able to earn sufficient remuneration in the Territory to maintain himself and his wife and family and is possessed of means exceeding the value of Five pounds in addition to—

- (a) his fare; or the amount of his fare, and the value of his clothing;
- (b) the fares (or the amount of the fares) and the value of the clothing of his wife (if about to leave the Territory with him) and any other members of his family who are about to leave the Territory with him; and
- (c) means to the value of Five pounds each in respect of his wife (if about to leave the Territory with him) and any other members of his family who are about to leave the Territory with him.

(2.) The onus of proving to the satisfaction of the court that the debtor or other person is not possessed of means exceeding the value of Five pounds in addition to the things referred to in paragraphs (a), (b), and (c) of the last preceding sub-section shall be upon the debtor or other person.

(3.) Before deciding to issue or not to issue an order in pursuance of the last preceding section, the court may, if it thinks fit, by order in writing addressed to any European member of the Police Force, order the debtor or other person to be brought before it forthwith.

(4.) Where the debtor or other person appears or is brought before the court pursuant to an order referred to in the last preceding sub-section, the court may proceed to examine the debtor or other person on oath or otherwise in the same manner as if the debtor or other person were a person who had appeared in pursuance of a summons and was being examined in the manner referred to in sub-section (2.) of the last preceding section, and thereupon the debtor or other person shall be subject to the same obligation to undergo examination by the court as he would be subject to if he were a person appearing in court in pursuance of a summons and undergoing examination in the manner referred to in sub-section (2.) of the last preceding section.

Warrant in  
default of  
compliance.  
Vic. No. 2667,  
s. 23.

**201.** Where any order for commitment has been made under the provisions of the last preceding section, and the money and costs or any instalment of the money or costs named therein has or have not been paid in pursuance thereof, the clerk shall, without any previous notice or summons to the party required to pay the same, issue a warrant in Form 82 in the Second Schedule to this Ordinance or to the like effect, and the keeper of the gaol to whom the warrant is directed shall execute and obey the warrant, and all police officers shall aid and assist in the execution of the warrant.

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**202.**—(1.) Any order for commitment under the foregoing provisions of this division may, if the special circumstances of the case appear to the court to warrant it, be made by the court *ex parte* and without notice, upon proof by affidavit only of any of the matters mentioned in section two hundred of this Ordinance.

*Ex parte*  
order of  
commitment.  
Vic. No. 2067,  
s. 24.

(2.) Any order made under the last preceding sub-section under the hands of the justices constituting the court or of any one of them may be filed in the court, and the person against whom the order is made may be dealt with as if an order for commitment had been made as provided in section two hundred of this Ordinance, and the warrant to be issued by the clerk in that case shall be in Form 83 in the Second Schedule to this Ordinance or to the like effect.

**203.**—(1.) Any person imprisoned by virtue of any warrant under this division who pays or satisfies the sum mentioned in the order of commitment shall be discharged out of custody upon the certificate of the payment or satisfaction signed by the clerk.

Debtor, how  
discharged.  
Vic. ib. s. 25.

(2.) Notwithstanding anything contained in this division, the court may at any time by order under the hands of any two justices (if under the special circumstances of the case it thinks fit so to do) direct that any person in gaol or custody under any order made under this division shall be forthwith discharged, and that person shall be forthwith discharged accordingly.

**204.** The examination of a person in default as mentioned in this division and of all other witnesses examined in the matter shall be taken down in writing, and a copy thereof may be used on the hearing of any appeal from any order of commitment.

Examination  
to be taken  
down in  
writing.  
Vic. ib. s. 26.

**205.** The examination of any person examined under the provisions of this division shall be deemed to be a judicial proceeding, and any person in any such examination wilfully knowingly and corruptly giving or making any untrue or false statement or declaration shall be deemed to have committed wilful and corrupt perjury.

Examination  
to be a judicial  
proceeding.  
Vic. ib. s. 27.

**206.** Imprisonment under the division shall not operate as a satisfaction or discharge of the amount due on any order, but notwithstanding the imprisonment a fresh warrant against the property or other proceedings to recover the amount may be issued on the order and executed in due course of law.

Imprisonment  
for fraud no  
satisfaction of  
debt.  
Vic. ib. s. 28.

*Division 6.—Miscellaneous.*

**207.**—(1.) Where in a case when either imprisonment or fine is imposed there is prescribed a requirement for the defendant to enter into his recognisance and to find sureties for keeping the

Mitigation of  
payment by  
court.

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peace, or being of good behaviour, and observing some other condition, or to do any of such things, the court may dispense with any such requirement or any part thereof.

(2.) Where a court has authority under an Ordinance other than this Ordinance, whether past or future, to impose imprisonment for an offence punishable on summary conviction, and has no authority to impose a fine for that offence, it may notwithstanding, when adjudicating on that offence if it thinks that the justice of the case will be better met by a fine than by imprisonment, impose a penalty not exceeding Twenty-five pounds, and not being of such an amount as will subject the offender under the provisions of this Ordinance in default of payment of the penalty, to any greater term of imprisonment than that to which he is liable under the Ordinance authorizing the imprisonment.

**208.** Whenever the payment of any fine or costs adjudged to be paid by a conviction is, by this Ordinance or any other law of the Territory, authorized to be enforced by imprisonment but a term of imprisonment is not prescribed by the law authorizing the making of the conviction, the imprisonment shall be for such period as the court in its discretion thinks fit, but not exceeding the maximum fixed by the following scale:—

Where the sum adjudged to be paid, including the costs—	The period shall not exceed—
Does not exceed One pound ..	seven days.
Exceeds One pound, but does not exceed Two pounds .. ..	fourteen days.
Exceeds Two pounds, but does not exceed Five pounds .. ..	one month.
Exceeds Five pounds, but does not exceed Twenty pounds ..	two months.
Exceeds Twenty pounds, but does not exceed Fifty pounds ..	four months.
Exceeds Fifty pounds, but does not exceed One hundred pounds	eight months.
Exceeds One hundred pounds ..	twelve months.

**209.**—(1.) When a conviction adjudges the payment of any fine or costs and any term of imprisonment is imposed upon the defendant in default of payment, the term of imprisonment so imposed shall, upon payment or satisfaction of any part of the fine or costs, be reduced by a number of days bearing, as nearly as possible, the same proportion to the total number of days in the term as the sum paid bears to the sum adjudged to be paid.

(2.) Payment under this section may be made to—

- (a) the clerk; or
- (b) the keeper of any gaol in which the defendant is imprisoned under a warrant of commitment issued in respect thereof.

Scale of imprisonment for non-payment of money. Substituted by No. 7 of 1935, s. 62.

Reduction of imprisonment on part payment of sum adjudged to be paid. Section 209 substituted by No. 7 of 1935, s. 62.

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(3.) When a warrant of commitment has been issued against a defendant in respect of the non-payment of any fine or costs and payment is made of any part of the fine or costs to the clerk, the clerk shall give the person making the payment a certificate thereof under his hand.

(4.) Upon the receipt of the certificate, or of any sum paid under this section, the keeper of any gaol in which the defendant is imprisoned under the warrant of commitment shall endorse a memorandum of the payment, and of the reduction thereby effected, upon the warrant of commitment, which shall thereupon be deemed to have been amended accordingly.

**209A.**—(1.) When a defendant is imprisoned under a warrant of commitment for non-payment of a fine or other sum, he may pay or cause to be paid to the keeper of the gaol in which he is so imprisoned the sum mentioned in the warrant of commitment, and the keeper shall receive the sum, and shall thereupon discharge the defendant, if he is in his custody for no other matter.

Discharge on payment in full.  
Section 209A inserted by No. 7 of 1935, s. 62.

(2.) All sums received by the keeper of a gaol under a warrant of commitment shall forthwith be paid to the clerk of the court of the district in which the gaol is situated, who shall forthwith notify the clerk of the court by which the conviction was made.

**210.** Every clerk and every keeper of a gaol shall keep a true and exact account of all moneys received by him under or by virtue of any conviction or order, showing the persons from whom and the time when the sums were received and to whom and when the sums were paid.

Accounts to be kept.  
Amended by No. 7 of 1935, s. 63.

Penalty: Two pounds for every default.

**211.** The Administrator may remit the whole or any part of any fine, penalty, forfeiture, or costs imposed by a conviction, whether any part thereof is payable to any person other than His Majesty or not, and upon the remission the conviction shall cease to have effect either wholly or partially as the case may be.

Remission of penalty.

**212.**—(1.) Where an order for the recovery or payment of money with or without costs or for costs ordered to be paid on a conviction or for costs alone (including costs ordered to be paid by an informant) has been made, and the party entitled to enforce the order dies, his executor or administrator, after filing with the clerk an affidavit showing that he is the executor or administrator, may enforce the order to the same extent and by the like means and in the same circumstances as the party might have done if living.

Executors and administrators may enforce orders in civil matters.  
Vic. No. 2875, s. 105.

(2.) In all such cases, where necessary, there may be substituted for the name of the party the name of the executor or administrator as the executor or administrator of the party deceased.

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Forfeited goods may be sold.  
Vic. No. 2675,  
s. 107.

**213.** Except where otherwise provided, all forfeitures, not pecuniary, which are incurred in respect of an offence triable by a court or which may be enforced by a court, may be sold or disposed of or dealt with in such a manner as the court directs, and the proceeds of the sale shall be applied in like manner as if the proceeds were a fine imposed under the Act<sup>(13)</sup> on which the proceeding for the forfeiture is founded.

Warrant of commitment or distress not to be void for form only.  
Vic. Ib. s. 104.

**214.** A warrant of commitment or of execution shall not be held void by reason only of any defect or error therein if there is a conviction or order which is good and valid or which may be amended and made good and valid under this Ordinance to sustain it.

Convictions, &c., to be transmitted to Registrar of Supreme Court.  
Amended by No. 16 of 1934, s. 2 and by No. 7 of 1935, s. 64.

**215.** The court before which any person is convicted or an information is dismissed in respect of any prosecution for an indictable offence which may be dealt with by a court in a summary manner, shall forthwith thereafter transmit the conviction and recognisances, or a copy of the certificate of dismissal (if any), as the case may be, to the Registrar of the Supreme Court, to be kept by him among the records of the court; and the court shall also cause all such decisions to be registered in a book to be kept for the purpose.

### PART X.—SURETY OF THE PEACE AND FOR GOOD BEHAVIOUR.

Information praying for surety of the peace.

**216.** Where an information in writing is laid before a justice, that any person has threatened to do to the complainant or to his wife or child, or any person under his care or charge, any bodily injury, or to burn or injure his house, or otherwise to commit a breach of the peace towards him or his wife or child or such other person, or to procure others to commit any such breach of the peace or do any such injury or has used any language indicating an intention to commit any such breach of the peace or to do any such injury, or procure it to be committed or done, and that the complainant is in fear of the defendant, and the complainant therefore prays that the defendant may be required to find sufficient sureties to keep the peace, such proceedings may be had as are in this Part mentioned.

Information praying for surety for good behaviour.

**217.** Where an information in writing on oath is laid before a justice that any person is a person of evil fame, and the complainant therefore prays that the defendant may be required to find sufficient sureties to be of good behaviour, such proceedings may be had as are in this Part mentioned.

(13) The word "Act" appeared in the original Ordinance. It has now been omitted and the word "Ordinance" inserted in its stead by the First Schedule of the *Ordinances Reprint and Revision Ordinance* 1947 of the Territory of Papua-New Guinea.

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**218.** Upon the laying of any such information mentioned in the last two preceding sections, the justice may receive corroborating affidavits of third persons, in support of the matters stated in the information.

Evidence in support.

**219.** Upon the laying of any information mentioned in sections two hundred and sixteen and two hundred and seventeen of this Ordinance, the justice may issue such and the same process to procure his attendance before a court as is provided in this Ordinance in the case of persons charged with simple offences, and may, if he thinks fit, and if the information is laid on oath, issue a warrant in the first instance:

Warrant.  
Amended by  
No. 7 of 1935,  
s. 65.

Provided that if the justice is satisfied that the information is laid from malice or for vexation only, he may refuse to issue any process.

**220.** Subject to this Part, when the defendant appears or is brought before a court the procedure and the powers of the court shall be the same, and the provisions of this Ordinance shall apply, as upon an information of a simple offence.

Proceedings on appearance of defendant.  
Substituted by  
No. 7 of 1935,  
s. 66.

\* \* \* \* \*

Section 221 repealed by  
No. 7 of 1935,  
s. 66.

**222.** After hearing the evidence produced, the court may dismiss the case, or may require the defendant forthwith, or at some time to be specified by the court to enter into a recognisance with or without sureties in such reasonable amount as the court thinks fit, to keep the peace or be of good behaviour, as the case may be, for such time as it thinks fit, or in default may commit the defendant to gaol for such time as the court thinks fit, not exceeding six months, unless in the meantime the required recognisance is given.

Case to be dismissed, or surety of the peace, &c., required.

**223.** Notice of any such recognisances shall be given to the parties bound in the same manner as of other recognisances.

Notice of recognisances.

**224.** If the defendant is in gaol under commitment for want of sureties at the time he enters into a recognisance, the justice taking the same shall issue a warrant to the keeper of the gaol to discharge him.

Discharge.

**225.** Where a recognisance to keep the peace or be of good behaviour is entered into by any person as principal or surety, any court, upon application made to it to declare the recognisance to be forfeited, and upon proof of a conviction of the principal bound by the recognisance of any offence which is in law a breach of the condition of the recognisance, and upon further proof that a notice in writing signed by the person seeking to put the recognisance in force has, seven clear days before the date of making the application, been personally served upon or left at the usual place of abode

Estreating recognisance.  
Amended by  
No. 7 of 1935,  
s. 67.

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of the person, or each of the persons (if more than one) bound by the recognisance, that an application will then and there be made that the recognisance be declared forfeited, may declare the same forfeited accordingly, and may make an order for payment of any amount due thereunder.

Costs.

**226.** Costs may be awarded upon proceedings under this Part in the same manner and to the same extent, and recoverable by the same process, as upon an information of a simple offence.

PART XI.—APPEALS FROM THE DECISIONS OF DISTRICT COURTS.

Appeal to Supreme Court.

Substituted by No. 36 of 1933, s. 12; amended by No. 16 of 1934, s. 2.

**227.** Any person aggrieved by any conviction, order, or adjudication of a court (including an adjudication or order dismissing an information or complaint) may appeal to the Supreme Court from the conviction, order, or adjudication, as in this Part provided.

Institution of appeal.

Section 228 substituted by No. 36 of 1933, s. 12.

**228.**—(1.) The appeal shall be instituted by notice, and by entering into a recognisance on appeal, or by giving other security, as provided by section two hundred and thirty of this Ordinance.

(2.) Notice of appeal shall be given within one month from the day when the decision is pronounced.

Notice of appeal.

Section 229 substituted by No. 36 of 1933, s. 12.

**229.**—(1.) The notice of appeal shall be in writing and shall be served upon the party interested in maintaining the conviction, order, or adjudication, and shall state the nature of the grounds of the appeal.

(2.) A copy of the notice of appeal shall be served upon the clerk of the court by which the conviction, order, or adjudication was made.

Recognisance on appeal.

Section 230 substituted by No. 36 of 1933, s. 12.

Sub-section (1.) amended by No. 16 of 1934, s. 2.

**230.**—(1.) An appellant shall enter into a recognisance with a surety before a justice in such sum as the justice thinks fit, conditioned duly to prosecute the appeal and to abide the order of the Supreme Court thereon and to pay such costs as are awarded by the Supreme Court; or the appellant may, instead of entering into a recognisance, deposit with the clerk of the court by which the conviction, order, or adjudication was made such sum of money as a justice in writing directs:

Provided that the security required by the recognisance or the money deposited with the clerk shall not in any case be less than Ten pounds.

(2.) The recognisance shall be forwarded to the clerk of the court by which the conviction, order, or adjudication was made.

Release of appellant from custody.

Substituted by No. 36 of 1933, s. 12; amended by No. 16 of 1934, s. 6.

**231.** Where the appellant is in custody, a justice may, if the appellant is not detained for any other cause, on the certificate of the clerk of the court by which the conviction, order, or adjudication was made that a copy of the notice of appeal has been served upon

him and that the appellant has entered into recognisance or given security as provided by the last preceding section, by order in writing, release the appellant from custody.

**232.** The clerk of the court whose decision is appealed against shall forward to the Registrar of the Supreme Court a copy, certified by him to be a true copy, of the conviction, order, or adjudication, the information or complaint, depositions, and other proceedings before the court.

**233.—(1.)** Within forty days after the institution of the appeal, the appellant shall enter the appeal for hearing.

(2.) An entry shall be made by delivering to the Registrar of the Supreme Court a memorandum signed by the appellant or by his solicitor containing the particulars and in the form prescribed.

(3.) The fee for entering the appeal shall be Ten shillings.

**234.** If, within forty days after the institution of the appeal, the appellant does not enter the appeal for hearing, a court or justice shall have the same authority to enforce the conviction, order, or adjudication as if it had not been appealed against.

**234A.** Notice of hearing of the appeal shall be given to the respondent party not less than seven days before the day fixed for the hearing of the appeal.

**234B.** Evidence other than the evidence and proceedings before the court by which the conviction, order, or adjudication was made shall not be received on the hearing of the appeal, except by consent of the parties or by order of the Supreme Court.

**234c.** Upon the hearing of the appeal the Supreme Court shall inquire into the matter, and may—

- (a) adjourn the hearing from time to time;
- (b) mitigate or increase any penalty or fine;
- (c) affirm, quash, or vary the conviction, order, or adjudication appealed from, or substitute or make any conviction, order, or adjudication which ought to have been made in the first instance;
- (d) remit the case for hearing or for further hearing before the court which made the conviction, order, or adjudication or any other competent court;
- (e) exercise any power which the court which made the conviction, order, or adjudication might have exercised; and
- (f) make such further or other order as to costs or otherwise as the case requires.

Depositions, &c., to be forwarded to Registrar of Supreme Court.  
Substituted by No. 36 of 1933, s. 12; amended by No. 16 of 1934, s. 2.

Appellant to set down appeal and give notice.  
Section 233 substituted by No. 36 of 1933, s. 12.

Sub-section (2), amended by No. 16 of 1934, s. 2.

Failure to enter appeal for hearing.  
Substituted by No. 36 of 1933, s. 12.

Notice of hearing.  
Inserted by No. 36 of 1933, s. 12.

Other evidence not to be received on hearing without consent or order.

Inserted by No. 36 of 1933, s. 12; amended by No. 16 of 1934, s. 2.

Power of Supreme Court on appeal.

Inserted by No. 36 of 1933, s. 12; amended by No. 16 of 1934, s. 2.

Power of Supreme Court to dispense with conditions precedent to appeal where compliance impracticable, &c.

Section 234d inserted by No. 36 of 1933, s. 12; amended by No. 16 of 1934, s. 2.

**234D.** The Supreme Court may—

- (a) dispense with compliance with any condition precedent to the right of appeal as prescribed by this Ordinance, if, in its opinion, the appellant has done whatever is reasonably practicable to comply with the provisions of this Ordinance; and
- (b) on application, made *ex parte* by the party appealing, extend the time for compliance with any condition precedent to the right of appeal as prescribed by this Ordinance.

Amendment of notice of appeal. Inserted by No. 36 of 1933, s. 12; amended by No. 16 of 1934, s. 2.

**234E.** An appeal shall not be defeated merely by reason of any defect, whether of substance or of form, in any notice or statement of the grounds of appeal, but if upon the hearing thereof the Supreme Court is of opinion that any objection raised to such notice or statement is valid, it may cause the notice or statement to be forthwith amended:

Provided that if the notice or statement appears to have been misleading, or to have occasioned expense, or to have prejudiced the respondent, the amendment shall be allowed only upon such terms as to costs or postponement, or both, as the Supreme Court thinks just.

Decision to be notified to clerk.

Inserted by No. 36 of 1933, s. 12; amended by No. 16 of 1934, s. 2.

**234F.** After an appeal from a conviction, order, or adjudication is decided, the Registrar of the Supreme Court shall forthwith send to the clerk of the court from whose conviction, order, or adjudication the appeal was made, for entry in his register, a memorandum of the decision of the Supreme Court.

Costs.

Section 234g inserted by No. 36 of 1933, s. 12. Sub-section (1.) amended by No. 16 of 1934, s. 2.

**234G.**—(1.) When the Supreme Court makes any order as to the costs of the appeal it shall direct them to be paid to the Registrar of the Supreme Court, to be by him paid over to the party entitled thereto, and may state a time within which the costs are to be paid.

(2.) If the costs are not paid within the time so limited (or if no time is so limited, then within seven days), the Registrar, upon application of the party entitled to the costs, or of his solicitor, and on payment of the fee of Two shillings, shall give to the party applying a certificate that the costs have not been paid.

Enforcement of payment of costs of appeal. Section 234h inserted by No. 36 of 1933, s. 12.

**234H.**—(1.) Upon production of the certificate referred to in the last preceding section to a justice, the payment of the costs may be enforced in the same manner as an order of a court for the payment of a sum of money, or by putting the recognisance (if any) in suit, or in both of such modes.

Sub-section (2.) amended by No. 16 of 1934, s. 2.

(2.) Where the appellant has made a deposit under section two hundred and thirty of this Ordinance, the Supreme Court may order the money so deposited to be applied, so far as it extends, firstly, in

payment of the costs both of the appeal and of the conviction, order, or adjudication and, secondly, in payment of the sum adjudged to be paid by the court; and the residue, if any, or, if the conviction, order, or adjudication be quashed or set aside, the whole, of such money shall be repaid to the appellant.

**234I.**—(1.) When any conviction, order, or adjudication has been affirmed, amended, or made by the Supreme Court upon any appeal, any court or justice shall have the same authority to enforce the conviction, order, or adjudication as if it had not been appealed from or had been made in the first instance.

Power of court, &c., to enforce decision on appeal.  
Section 234i inserted by No. 36 of 1933, s. 12.  
Sub-section (1.) amended by No. 16 of 1934, s. 2.

(2.) No action or proceeding whatsoever shall be commenced or had against any court or justice for enforcing the conviction, order, or adjudication referred to in the last preceding sub-section by reason of any defect in the same respectively.

**234J.** In all cases where an information has been laid for an offence punishable by a court, if it is made to appear upon oath to a justice that any person who has instituted an appeal under the provisions of this Part is about to leave the Territory, the justice may issue his warrant for the apprehension of the appellant and may commit him to prison, there to be kept until the determination of the appeal, unless he in the meantime enters into a recognisance with a surety or sureties sufficient, in the opinion of a justice, to secure his appearance to abide the judgment of the Supreme Court.

Arrest of appellant.  
Inserted by No. 36 of 1933, s. 12; amended by No. 16 of 1934, s. 2.

**234K.**—(1.) Any notice, process, or document required or authorized by this Part to be served upon any person may be served upon that person by—

- (a) delivering it to him personally; or
- (b) leaving it for him at his last or most usual place of abode or business with some person (other than a native) apparently an inmate thereof or employed thereat, and apparently not less than sixteen years of age.

Service and proof of service of notice, &c., under this Part.  
Section 234k inserted by No. 36 of 1933, s. 12.

(2.) The service on any person of any notice, process, or document referred to in the last preceding sub-section may be proved by affidavit:

Provided that the Supreme Court may require the person who served the notice, process, or document to be called as a witness, or require further evidence of the facts.

Proviso amended by No. 16 of 1934, s. 2.

**235.**—(1.) No person brought before the Supreme Court, or a judge thereof, on *habeas corpus*, shall be discharged from custody by reason of any defect or error in a warrant of commitment of any court exercising a summary jurisdiction, unless the court, or one

Control of Supreme Court over summary convictions.  
Sub-section (1.) amended by No. 16 of 1934, s. 2.

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of the justices constituting the court, and the prosecutor or other party interested in supporting the warrant have received reasonable and sufficient notice of the intention to apply for the discharge.

(2.) The notice shall require them to transmit or cause to be transmitted to the court or judge the conviction, or order, if any, on which the commitment was founded, together with the depositions and information or complaint, if any, intended to be relied on in support of the conviction or order, or certified copies thereof.

Amendment.

**236.** If any such conviction or order, information or complaint, and depositions or certified copies, are so transmitted, and the offence charged or intended to be charged thereby or the cause of action mentioned therein appears to have been established, and the judgment of the court thereupon to have been in substance warranted, and the defects or errors appear to be defects of form only, or mistakes not affecting the substantial merits of the proceedings before the District Court, the court or judge shall allow the warrant of commitment, and may allow the conviction or order also, to be forthwith amended in all necessary particulars in accordance with the facts, and the person committed shall thereupon be remanded to his former custody.

In cases of  
*certiorari*.

**237.** The like proceedings as in the last two preceding sections mentioned shall be had and the like amendments may and shall be allowed to be made in respect of every order brought before the court or a judge by writ of *certiorari*, and after amendment in any such case the order may be enforced in the proper manner, and shall in all respects and for all purposes be regarded and dealt with as if it had been drawn up originally as amended.

Notice  
dispensed with.

**238.** The notice prescribed by section two hundred and thirty-five of this Ordinance may be given either before or after the issue of the writ of *habeas corpus* or *certiorari*:

Provided that when at the time of applying for the writ—

(a) copies of the conviction or order and depositions are produced; or

(b) in cases of committal for trial or for sentence all informations, depositions, and statements have been transmitted, as provided in section one hundred and twenty-seven of this Ordinance, to the Crown Law Officer of the Territory,

the court or judge may dispense with the notice.

Power to court  
or judge to  
admit to bail.

**239.—**(1.) Where any person committed to gaol by virtue of a summary conviction or order is brought up by writ of *habeas corpus*, and the court or judge postpones the final decision of the case, the court or judge may discharge the person upon his recognisance with or without sureties for his appearance at such time and place, and upon such conditions, as the court or judge appoints.

(2.) If the judgment of the court or judge is against any person so brought up, the court or judge may remand him to his former custody, there to serve the rest of the term for which he was committed.

**240.**—(1.) Whenever the facts or evidence appearing by the depositions in substance support the decision of the court, if the decision does not extend beyond the information, and if the facts or evidence would have justified the court in making any necessary allegation or finding omitted in the decision, or in the formal conviction or order, or any warrant issued in pursuance of the adjudication, the powers of amendment conferred by section two hundred and thirty-six of this Ordinance may be exercised, and where in a conviction there is some excess which may (consistently with the merits of the case) be corrected, the conviction shall be amended accordingly and shall stand good for the remainder.

Respecting the amendment of convictions, &c.

(2.) All amendments shall be subject to such order as to costs and otherwise as the court or judge thinks fit.

**241.** Where the person convicted, or against whom an order has been made, or any person whose goods have been condemned or directed to be sold as forfeited, was present at the hearing of the case, the conviction or order shall be sustained, although there may have been no information or complaint or summons or amendment thereof unless he objected at the hearing that there was no information or complaint or summons or amendment thereof.

Want of summons or information.

**242.** No conviction or order shall be defeated for the want of any distribution, or for a wrong distribution of the penalty or forfeiture.

Distribution of penalty.

**243.** The Supreme Court may make Rules of Court<sup>(14)</sup> for regulating the practice and procedure under this Part.

Power to make Rules.  
Substituted by No. 36 of 1933, s. 13; amended by No. 16 of 1934, s. 2.

\* \* \* \* \*

Sections 244-254 repealed by No. 36 of 1933, s. 13.

**PART XII.—PROTECTION OF JUSTICES IN THE EXECUTION OF THEIR OFFICE.**

**255.** Any person injured by an act done by a justice in a matter of which by law he has not jurisdiction or in which he has exceeded his jurisdiction, or by an act done under any conviction or order made or warrant issued by a justice in any such matter, may maintain an action against the justice without alleging in his statement of claim or plaint that the act complained of was done maliciously and without reasonable and probable cause:

Justice sued for act not within his jurisdiction.

(14) No Rules of Court have been made.

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Provided that no such action shall be maintainable for anything done under any such conviction or order until after the conviction or order has been quashed or set aside upon appeal:

Provided further that no such action shall be maintainable for anything done under any such warrant which was issued by the justice to procure the appearance of the person charged, and which has been followed by a conviction or order in the same matter, until after the conviction or order has been so quashed or set aside:

Provided also that if the last-mentioned warrant has not been followed by a conviction or order, or if it is a warrant upon an information of an alleged indictable offence, and if a summons was issued previously to the warrant being issued, and the summons was served upon the person charged either personally or by leaving it for him with some person at his last known place of abode, and he did not appear according to the exigency of the summons, in that case no action shall be maintainable against the justice for anything done under the warrant.

Section 256  
repealed by  
No. 36 of 1933,  
s. 14.

Warrant by  
one justice upon  
an order of a  
court.

\* \* \* \* \*  
**257.** Where a conviction or order is made by a court and a warrant of execution or of commitment is granted thereon by a justice bona fide and without collusion, no action shall be maintainable against the justice who granted the warrant by reason of any defect in the conviction or order, or for any want of jurisdiction in the court which made it, but the action (if any) shall be brought against the justices constituting the court which made the conviction or order.

No action for  
acts done under  
order of  
Supreme Court.  
Amended by  
No. 16 of 1934,  
s. 2.

**258.** Where a justice does an act in obedience to an order of the Supreme Court or a judge thereof, no action shall be maintainable against him for obeying the order and doing the act thereby required.

No action  
where  
proceeding  
confirmed on  
appeal.

**259.** Where a warrant of execution or of commitment is granted by a justice upon a conviction or order which, either before or after the granting of the warrant, is confirmed upon appeal, no action shall be maintainable against the justice who granted the warrant for anything done under it by reason of any defect in the conviction or order.

Actions in  
cases prohibited.

**260.** If any action is brought against a justice which by this Ordinance is declared to be not maintainable, a judge of the court in which the action is brought, upon application of the defendant and upon affidavit of the facts, may set aside or stay the proceedings in the action with or without costs.

Limitation of  
actions.

**261.** No action shall be brought against a justice for anything done by him in the execution of his office unless the same is commenced within six months next after the act complained of was

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committed, or within two months next after the conviction or order under which the act complained of was done, or which followed upon the warrant under which the act was done, has been quashed or set aside, whichever is the later period.

**262.** No such action shall be commenced against a justice until one calendar month at least after a notice in writing of the intended action has been delivered to him or left for him at his usual place of abode by the party intending to commence the action, or by his solicitor or agent, in which notice the cause of action and the court in which it is intended to be brought shall be clearly and explicitly stated, and upon the back thereof shall be endorsed the name and place of abode of the party intending to sue, and also the name and place of abode or of business of his solicitor or agent, if the notice is served by a solicitor or agent.

Notice of actions.

**263.**—(1.) In every such case after notice of action has been so given and before the action is commenced the justice to whom the notice is given may tender to the party complaining, or to his solicitor or agent, such sum of money as he thinks fit by way of amends for the injury complained of in the notice; and after the action has been commenced, and at any time before issue joined therein, the defendant, if he has not made the tender, or in addition to the tender, shall be at liberty to pay into court such sum of money as he thinks fit.

Tender and payment of money into court.

(2.) If the court at the trial is of opinion that the plaintiff is not entitled to damages beyond the sum so tendered or paid into court, judgment shall be given for the defendant; and the sum of money (if any) so paid into court, or so much thereof as is sufficient to pay or satisfy the defendant's costs in that behalf, shall thereupon be paid out of court to him, and the residue (if any) shall be paid to the plaintiff.

(3.) If when money is so paid into court the plaintiff elects to accept the same in satisfaction of his damages in the action, he may apply to a judge for an order for the payment of the money out of court to him, with or without costs, and the judge may make the order, and thereupon the action shall be determined and the order shall be a bar to any other action for the same cause.

**264.** No action shall be brought in a District Court against a justice in respect of anything done by him in the execution of his office.

No action against justices for judicial acts in District Courts.

**265.** In an action against a justice for any act done by him in the execution of his duty as a justice with respect to any matter within his jurisdiction as a justice, it must be expressly alleged in the statement of claim or plaint that the act was done maliciously

Justice sued for acts within his jurisdiction only liable in case of malice and absence of reasonable and probable cause.

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and without reasonable and probable cause, and if the allegations are denied, and at the trial of the action the plaintiff fails to prove them, judgment shall be given for the defendant.

Verdict for defendant.

**266.** If, at the trial of any action against a justice, the plaintiff—

(a) does not prove that the action was brought within the time limited by section two hundred and sixty-one of this Ordinance in that behalf; or

(b) does not prove that such notice as prescribed by section two hundred and sixty-two of this Ordinance was given one calendar month before the action was commenced; or

(c) does not prove the cause of action stated in the notice, judgment shall be given for the defendant.

Damages.

**267.** Where the plaintiff in an action against a justice is entitled to recover, and he proves the levying or payment of any penalty or sum of money under a conviction or order as parcel of the damages which he seeks to recover, or proves that he was imprisoned under the conviction or order, and seeks to recover damages in respect of the levying or payment or imprisonment, if it is proved that he was actually guilty of the offence of which he was so convicted, or that he was liable by law to pay the sum which he was so ordered to pay, and, in case of imprisonment, that he has undergone no greater punishment than that assigned by law for the offence of which he was so convicted, or for non-payment of the sum which he was so ordered to pay, he shall not be entitled to recover the amount of the penalty or sums so levied or paid, or any sum beyond the sum of twopence as damages for the imprisonment, or any costs of the suit whatsoever.

Protection of clerk.  
Inserted by  
No. 7 of 1935,  
s. 68.

**267A.** The provisions of this Ordinance relating to the protection of a justice with respect to any act done by him as a justice shall, with such alterations, modifications, and adaptations as are necessary, extend and apply with respect to any like act done by a clerk as a clerk in pursuance of the powers given to or conferred upon him by this Ordinance.

## PART XIII.—COSTS.

Award of costs.  
Vic. No. 2675,  
s. 102.

**268.**—(1.) The power of a court to award costs and the award of costs by any such court shall be subject to the following provisions:—

(a) Where the court makes a conviction or order in favour of the complainant, it may in its discretion award and order that the defendant shall pay to the informant or complainant such costs as it thinks just and reasonable;

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- (b) Where the court dismisses the information or complaint, or makes an order in favour of the defendant, it may in its discretion award and order that the informant or the complainant shall pay to the defendant such costs as it thinks just and reasonable;
- (c) The sums so allowed for costs shall in all cases be specified in the conviction or order or order of dismissal;
- (d) Any sum awarded or ordered to be paid, whether to a complainant or to a defendant, for costs (other than costs adjudged by a conviction to be paid by the defendant to the informant) shall be recoverable (without the direction of the court making the order) by execution under the provisions of Division 2 of Part IX. of this Ordinance;
- (e) Where any case is adjourned the court may in its discretion order that the costs of and occasioned by the adjournment be paid by any party to any other party;
- (f) The costs of persons present to give evidence or produce documents, whether they have been examined or not, or have or have not produced documents shall, unless otherwise ordered by the court, be allowed to them though they have not been summoned; but their allowance for attendance shall in no case exceed the highest rate of allowance prescribed;
- (g) The amount of costs to be paid by one party to another, whether for the attendance of those persons or otherwise, shall in all cases be fixed by the court; and
- (h) Where the court convicts a defendant and orders the payment of costs to the informant, the payment of costs shall be enforced as provided in section one hundred and seventy-four of this Ordinance.

Paragraph (d) substituted by No. 7 of 1935, s. 69.

Paragraph (f) amended by No. 7 of 1935, s. 69.

Paragraph (h) inserted by No. 7 of 1935, s. 69.

(2.) Costs awarded in pursuance of this section upon proceedings upon a complaint shall not exceed the amounts respectively specified in the Sixth, Seventh, and Eighth Schedules to this Ordinance.

Sub-section (2.) amended by No. 7 of 1935, s. 69.

**268A.** Nothing in this Ordinance contained shall empower a court to adjudge the payment by the complainant to the defendant of costs upon an adjudication of dismissal of a charge of an indictable offence.

No costs on dismissal of charge of indictable offence.

Inserted by No. 36 of 1933, s. 15.

Court and Bailiffs' fees.

**269.—(1.)** The fees specified in the Sixth Schedule to this Ordinance shall be paid in respect of the matters respectively specified in that Schedule, and those fees shall be paid in the first instance and in advance by the party in whose behalf the proceedings are taken.

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Sub-section (2.)  
added by  
No. 36 of 1933,  
s. 16.

(2.) The fees referred to in the last preceding sub-section shall not be demanded, received, or taken from any officer of the Administration, or any police officer, acting in the execution of his duty.

Agents' fees.

**270.** No attorney or agent shall be allowed or be entitled to receive more by way of fees for the work done by him than the sums respectively specified in the Seventh Schedule to this Ordinance.

Witnesses' fees  
and expenses.

**271.** The costs and mileage which may be allowed for the attendance of witnesses to give evidence before a court shall be such amounts, not exceeding those specified in the Eighth Schedule to this Ordinance, as the court allows.

Costs in  
garnishee  
proceeding.

**272.—(1.)** The costs of an application for a garnishee order and of any proceedings arising from or incidental to the application, shall be in the discretion of the court.

(2.) Where the garnishee pays into court, five days before the return day of the summons, all debts due, owing or accruing from him to the judgment debtor or so much of the debts as is sufficient to satisfy the judgment debt, he shall not be liable for any costs incurred by the judgment debtor.

PART XIV.—SECURITIES.

Securities taken  
in pursuance of  
Ordinance.  
Vic. No. 2675,  
s. 122 (1).

**273.—(1.)** A person shall give security under this Ordinance, whether as principal or surety, either by the deposit of money with the clerk, or by an oral or written acknowledgment of the undertaking or condition by which, and of the sum for which, he is bound, in such manner and form as is prescribed.

(2.) Record of the security having been made may be provided by entry thereof in the register under this Ordinance or proceedings of a court or as is prescribed.

Recovery of  
sum due from  
surety.  
Vic. ib. s. 122  
(2).  
Amended by  
No. 7 of 1935,  
s. 70.

**274.** Any sum which becomes due, in pursuance of a security under this Ordinance, from a surety shall be recoverable summarily in manner directed by this Ordinance with respect to a civil debt on complaint by a police officer or by the clerk of the court directing the security to be given or by some other person authorized for the purpose by that court.

Enforcement of  
payment of  
sum due by  
principal.  
Vic. ib. s. 122  
(3).  
Amended by  
No. 7 of 1935,  
s. 71.

**275.** A court may enforce payment of any sum due by a principal in pursuance of a security under this Ordinance which appears to the court to be forfeited, as if it were a payment mentioned in section one hundred and eighty-one of this Ordinance:

Provided that before a warrant of execution for the sum is issued notice of the forfeiture shall be served on the principal by the court authorizing the security or by any court to which application is made for the issue of the warrant.

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**276.** Any sum paid by a surety on behalf of his principal in respect of a security under this Ordinance, together with all costs, charges and expenses incurred by the surety in respect of the security, shall be deemed to be a debt due to him from the principal, and may be recovered before a court in manner directed by this Ordinance.

Sums paid by surety may be recovered from principal.  
Vic. No. 2675, s. 122 (4).

**277.** Where security is given under this Ordinance for payment of a sum of money, the payment shall be enforced by means of the security in substitution for other means of enforcing the payment.

Payment enforced by security.  
Vic. ib. s. 122 (5).

**278.** Whenever the conditions or any of the conditions mentioned in any recognisance are not complied with, any court or justice may certify on the back of the recognisance in what respect the conditions have not been observed, and such certificate shall be *prima facie* evidence of such non-compliance, and of the recognisance having been forfeited.

Justice's certificate evidence of non-compliance with conditions of recognisance.  
Substituted by No. 7 of 1935, s. 72.

**278A.**—(1.) Except as otherwise provided in this Ordinance, upon proof of any breach of the conditions, or any of the conditions, of any recognisance, or upon other proof of the forfeiture thereof, any court may make an order adjudging the recognisance to be forfeited and for payment of any amount due thereunder.

Enforcement of recognisance.  
Section 278A inserted by No. 7 of 1935, s. 72.

(2.) An order shall not be made under this section in the absence of any person sought to be bound thereby unless it is proved, to the satisfaction of the court, that a summons was duly served upon the person at least seven clear days before the return thereof:

Provided that, in the case of a recognisance conditioned for the appearance of any person before a court, the order may be made by the court *ex parte* forthwith upon the non-appearance of the person.

(3.) Where a recognisance entered into under the provisions of this Ordinance is conditioned for the appearance of any person before the Supreme Court, the Supreme Court may, upon the non-appearance of the person, make an order *ex parte* adjudging the recognisance to be forfeited and for the payment of any amount due thereunder.

(4.) Any order under this section may be enforced by warrant of execution.

(5.) All sums paid in respect of a recognisance declared in pursuance of this section to be forfeited, shall be paid to the clerk.

**278B.** When application is made for an adjudication of the forfeiture of any recognisance, or when a recognisance has, under the last preceding section, been adjudged to be forfeited by any

Suspension or mitigation of forfeiture.  
Inserted by No. 7 of 1935, s. 72.

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court, the court may, at any time before sale under a warrant of execution, suspend, cancel, or mitigate the forfeiture, on such conditions as seem just.

### PART XV.—MISCELLANEOUS.

Duty of police officers.

**279.** All police officers shall obey the warrants, orders and directions of justices which in that behalf are granted, given, or done, and do and perform their several offices and duties in respect thereof under the pains and penalties to which a police officer is liable for neglect of duty.

Duty of police officers on arrest.

**280.** Any such police officer, or any other person who arrests a person offending against law, and whom he lawfully may and ought to arrest by virtue of his office or otherwise, may lawfully take and convey the person so arrested to and before any justice.

Power to order delivery of possession of goods alleged to have been stolen or fraudulently obtained and in custody of police officer.

**281.** Where property alleged to have been stolen or fraudulently obtained is in the custody of a police officer, in the course of the prosecution of any person for an indictable offence in regard to the stealing, obtaining of the property, and the prosecution has terminated, or the defendant cannot be found, any justice may make an order for the delivery of the property to the person who appears to be the rightful owner thereof, but no such order shall be a bar to the right of any person to recover the property by action from the person to whom it is delivered by virtue of the order provided that the action is brought within six months after the order is made.

Punishment of juvenile offenders.  
Section 281A inserted by No. 16 of 1934, s. 7.

**281A.**—(1.) Notwithstanding the provisions of any law to the contrary, a court may order that any male person convicted of an offence punishable on summary conviction by imprisonment, whose age does not in the opinion of the court exceed the age of fourteen years, shall be once privately whipped in lieu of any imprisonment which may be lawfully awarded for that offence.

(2.) The number of strokes which a court may order under this section shall not exceed eight.

(3.) A person sentenced under this section to a whipping may be detained in a prison or some other convenient place for such time as may be necessary for carrying the sentence into effect.

(4.) A sentence of whipping under this section shall be inflicted with a cane or birch rod.

Contempt of court.  
Section 282 substituted by No. 36 of 1933, s. 17.

**282.**—(1.) Any person who—

- (a) wilfully interrupts the proceedings of any court;
- (b) conducts himself disrespectfully to the court during the sittings thereof;
- (c) obstructs or assaults any person in attendance, or any officer thereof, in view of the court; or

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(d) wilfully disobeys any order made by the court under section sixty-six of this Ordinance, may be excluded from the court and shall be guilty of an offence.

Penalty: Ten pounds.

(2.) Any person who, in the opinion of the court, wilfully prevaricates in giving evidence shall be guilty of an offence.

Penalty: Ten pounds.

(3.) The court in the presence of which any offence under this section is committed may forthwith convict the person guilty of the offence, either on its own view or on the oath of some credible witness.

(4.) If any person convicted of an offence under sub-section (1.) of this section, makes to the court, before its rising, such apology as it deems satisfactory, the court may remit the fine either wholly or in part.

Sub-section (4.)  
amended by  
No. 16 of 1934,  
s. 8.

**283.**—(1.) The Administrator in Council may make rules<sup>(15)</sup> or regulations, not inconsistent with this Ordinance, prescribing all matters which by this Ordinance are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for giving effect to this Ordinance, and in particular prescribing matters providing for and relating to—

Rules and  
Regulations.  
Vic. No. 2675,  
s. 5.  
Sub-section (1.)  
amended by  
No. 12 of 1938,  
s. 2.

- (a) the practice and procedure before justices and in courts;
- (b) the permitting and regulating of the payment of money into court in satisfaction of claims made in any complaint or set-off under this Ordinance; the permitting of any such payment or the tender to the complainant or his agent before the issue of a complaint, of a sum of money as amends for the injury complained of, to be relied upon as a defence; and the regulation of the conditions thereof;
- (c) the giving of security under this Ordinance;
- (d) the forms to be used under this Ordinance including the forms of any recognisance mentioned in this Ordinance;
- (e) the fees, costs and charges under this Ordinance or under any other Ordinance for the time being in force so far as the same relates to any matter or proceeding as to which a court or any one or more justices has or have jurisdiction;
- (f) the repealing, amending, altering or adding to the fees, costs or charges set forth in the Sixth, Seventh, and Eighth Schedules to this Ordinance; and

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(15) See the *District Courts Rules*, printed on p. 1151.

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(g) the regulating of the form of account to be rendered by clerks of fines, fees and other sums received by them.

Sub-sections (2.) and (3.) omitted by No. 12 of 1938, s. 2.

Substitution for forms in Second Schedule.

Inserted by No. 7 of 1935, s. 73.

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**284.** Where, in this Ordinance, the use of the forms in the Second Schedule to this Ordinance is prescribed, the forms prescribed by rules or regulations for the time being in force under this Ordinance shall be used in substitution therefor.

THE SCHEDULES.

THE FIRST SCHEDULE.

REPEAL OF ORDINANCES.

Ordinances affected.	Extent of Repeal.
<i>Judiciary Ordinance</i> 1921 (No. 3 of 1921) ..	Sections 32-38 (both inclusive)
<i>Judiciary Ordinance</i> 1922 (No. 11 of 1922) ..	Sections 4-6 (both inclusive)
<i>Judiciary Ordinance</i> 1923 (No. 18 of 1923) ..	The whole

Second Schedule repealed by No. 7 of 1935, s. 74.

THE THIRD SCHEDULE.

OATH OF ALLEGIANCE.

I, A.B., do swear that I will be faithful and bear true allegiance to His Majesty, King George the Fifth, His heirs and successors, according to law. So help me God.

AFFIRMATION OF ALLEGIANCE.

I, A.B., do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to His Majesty King George the Fifth, His heirs and successors, according to law.

OATH OF OFFICE.

I, A.B., do sincerely swear that, as a Justice of the Peace for the Territory of New Guinea, I will at all times and in all things do equal justice to the poor and rich and discharge the duties of my office according to the laws of the Territory of New Guinea to the best of my knowledge and ability without fear, favour, or affection. So help me God.

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AFFIRMATION OF OFFICE.

I, A.B., do solemnly and sincerely affirm and declare that, as a Justice of the Peace for the Territory of New Guinea, I will at all times and in all things do equal justice to the poor and rich and discharge the duties of my office according to the laws of the Territory of New Guinea to the best of my knowledge and ability without fear, favour, or affection.

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Fourth and Fifth Schedules repealed by No. 7 of 1935, s. 75.

SIXTH SCHEDULE

FEES IN DISTRICT COURTS AND IN PROCEEDINGS BEFORE A JUSTICE OR JUSTICES

*Preliminary Costs*

Civil Cases

	£	s.	d.
For every summons, including copy but not service .. .. .	0	2	6
Additional when such summons is prepared by the Clerk of a District Court .. .. .	0	1	0
For every copy beyond one prepared by the Clerk of a District Court .. .. .	0	1	0
For every order under Part IX., Division 4, of the <i>District Courts Ordinances-1924</i> .. .. .	0	1	0
Additional when such order is prepared by the Clerk of a District Court .. .. .	0	1	0
For service or attempted service on each defendant or other person to be served of a summons or order, if the distance from the residence of the serving member of the Police Force does not exceed 3 miles .. .. .	0	3	0
If the place of service be beyond 3 miles from the residence of the serving member of the Police Force, for every additional mile for each defendant or other person served .. .. .	0	3	0
For this service fee the serving member of the Police Force will, if necessary, pay two visits to the defendant's place of abode or business (according to the address supplied on the complainant's behalf) to effect service; if more than two visits are desired, then for each defendant or other person to be served a further fee of 3s. and 3s. for each additional mile beyond 3 miles from the residence of the serving member of the Police Force for each further visit must be paid.			
For every payment of money into Court before or at the hearing .. .. .	0	1	0
For every notice of special defence lodged with the Clerk of a District Court .. .. .	0	1	0
For every security for sum adjudged to be paid .. .. .	0	2	6
Additional when such security is prepared by the Clerk of a District Court .. .. .	0	2	0
For every certificate of judgment .. .. .	0	5	0
For every warrant under the <i>Tenements Recovery Ordinance 1936</i> .. .. .	0	5	0
Additional when such warrant is prepared by the Clerk of the District Court .. .. .	0	1	0
For executing or attempting to execute any warrant under the <i>Tenements Recovery Ordinance 1936</i> , if the distance to be travelled does not exceed 3 miles from the residence of the executing member of the New Guinea Police Force .. .. .	0	3	0
If beyond that distance, for each additional mile .. .. .	0	3	0

Criminal Cases

For every summons for an offence punishable summarily, including copy and service .. .. .	0	2	6
Additional when such summons is prepared by the Clerk of a District Court .. .. .	0	1	0

Sixth Schedule substituted by r. 43, District Courts Rules (inserted by Rules gazetted on 31.8.1925, and amended by 1936, No. 34, r. 5.)

## COURTS—

### SIXTH SCHEDULE—*continued.*

	£	s.	d.
For every copy beyond one prepared by the Clerk of a District Court, including service .. .. .	0	1	0
For every warrant of apprehension for any offence punishable summarily, including execution thereof .. .. .	0	2	6
Additional when such warrant is prepared by the Clerk of a District Court .. .. .	0	1	0

#### Civil and Criminal Cases

For every summons to witness in any case in which there is summary jurisdiction, including any number of names ..	0	1	0
Additional when such summons is prepared by the Clerk of a District Court .. .. .	0	1	0
For every copy thereof prepared by the Clerk of a District Court ..	0	1	0
For service or attempted service thereof, if required to be served by a member of the Police Force, on each witness, if the distance from the residence of the serving member of the Police Force does not exceed 3 miles .. .. .	0	3	0
If the place of service be beyond 3 miles from the residence of the serving member of the Police Force, for every additional mile for each witness to be served .. .. .	0	3	0
For this service the serving member of the Police Force will, if necessary, pay two visits to the witness's place of abode or business to effect service; if more than two visits are desired, then for each witness to be served a further fee of 3s. and 3s. for each additional mile beyond 3 miles from the residence of the serving member of the Police Force for each such further visit must be paid.			
For every certified copy of an extract from the register of a District Court .. .. .	0	2	0

#### *Costs and Charges of Execution*

##### Civil Cases

For every warrant of execution .. .. .	0	2	6
Additional when such warrant is prepared by the Clerk of the District Court .. .. .	0	1	0
For executing or attempting to execute any such warrant, not including the expenses of removal, possession, or sale, if the distance does not exceed 3 miles from the residence of the executing member of the Police Force, for each defendant ..	0	3	0
If beyond that distance, for each additional mile for each defendant .. .. .	0	3	0

##### Civil and Criminal Cases

For expenses of possession under a warrant of execution, not exceeding, per day .. .. .	0	10	0
For expenses of removal (including storage) of goods not exceeding 20s. or fraction of 20s. of the price realized .. .. .	2	10	0
Expenses of sale, for every 20s. or fraction of 20s. of the price realized .. .. .	0	0	6

#### *Costs of Commitment*

For warrant of commitment under Part IX., Division 5, of the <i>District Courts Ordinances 1924</i> , but for no other warrant of commitment .. .. .	0	5	0
Additional when such warrant is prepared by the Clerk of a District Court .. .. .	0	1	0
For executing or attempting to execute any such warrant, if the distance to be travelled does not exceed 3 miles from the residence of the serving member of the Police Force .. .. .	0	3	0
If beyond that distance, for every additional mile .. .. .	0	3	0

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SIXTH SCHEDULE—*continued.*

*Miscellaneous Fees*

Civil and Criminal Cases

	£	s.	d.
For every copy of any complaint, information, summons, warrant, or deposition obtained after any hearing or examination, and not exceeding one common law folio, not otherwise provided for, prepared by the Clerk of a District Court .. .. .	0	1	6
For every folio or fraction beyond the first folio .. .. .	0	1	0
For every recognisance to keep the peace .. .. .	0	2	6
For every certified copy of an order or conviction .. .. .	0	2	6

SEVENTH SCHEDULE

ATTORNEY'S AND AGENT'S COSTS

For drawing and copying information or complaint .. .. .	0	5	0
For summons .. .. .	0	2	0
For an advocate's fee in a case not exceeding £10 .. .. .	2	2	0
For an advocate's fee in each day's attendance in Court in a case exceeding £10 but not exceeding £50 .. .. .	3	3	0
For an advocate's fee in each day's attendance in Court in a case exceeding £50 .. .. .	6	6	0
For an advocate's fee in each day's attendance in Court in any proceedings under the <i>Tenements Recovery Ordinance 1936</i> .. .. .	6	6	0
For solicitors' or agents' fees getting up case for trial .. .. .	1	1	0
In undefended default summonses under section 162 of the Ordinance if a legal practitioner is employed, the following professional costs shall be allowed:—			
Where the amount recovered does not exceed £10 .. .. .	1	1	0
Where the amount recovered exceeds £10 .. .. .	2	2	0

Seventh Schedule substituted by r. 43, District Courts Rules (inserted by Rules gazetted on 31.8.1925, and amended by 1936, No. 34, r. 5).

EIGHTH SCHEDULE

*Witnesses' Expenses*

For Travelling

1. Mileage for each mile (over the first 2 miles) to be allowed one way only, a sum not exceeding per mile .. .. .	0	2	0
2. To every witness who may travel by ship, the sum actually and properly paid for fares both in going and returning from the Court at which he may be required to attend.			

Eighth Schedule substituted by r. 43, District Courts Rules (inserted by Rules gazetted on 31.8.1925, and amended by 1936, No. 34, r. 1.)

For Attendance

Witnesses' expenses (including attendance of complainant and defendant) per day a sum not exceeding .. .. .	0	15	0
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