ST. HELENA

CHAPTER 23

CRIMINAL PROCEDURE ORDINANCE

Non-authoritative Consolidated Text

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Whilst it is intended that this version accurately reflects the current law, users should refer to the authoritative texts in case of doubt. Enquiries may be addressed to the Attorney General at Essex House, Jamestown
[Telephone (+290) 2270; Fax (+290 2454; email pa.lawofficers@legalandlands.gov.sh][1]

Visit our LAWS page to understand the St. Helena legal system and the legal status of this version of the Ordinance.

This version contains a consolidation of the following laws—

No Subsidiary Legislation has been made under this Ordinance

[1] These contact details may change during 2011 or early in 2012. In case of difficulty, email shgwebsite@sainthelena.gov.sh or telephone (+290) 2470.

CHAPTER 23

CRIMINAL PROCEDURE ORDINANCE

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CHAPTER 23

CRIMINAL PROCEDURE ORDINANCE

(Ordinances 9 of 1977, 8 of 1976, 3 of 1982, 1 of 1985, 16 of 1985, 22 of 1987, 4 of 2001, 9 of 2001, 8 of 2003, 9 of 2004, 2 of 2005, 8 of 2007, Legal Notice 26 of 2009 and Ordinances 17 of 2011, 6 of 2016, 7 of 2016, 10 of 2016, 12 of 2016 and 14 of 2017)

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

Commencement
[1 January 1976]

PART I
PRELIMINARY

Short title

1. This Ordinance may be cited as the Criminal Procedure Ordinance.

1A. *Repealed.*

Interpretation

2[2]**.** In this Ordinance, unless the context otherwise requires—

"appearing before a court" in relation to bail, means surrendering into the custody of the court;

"bail in criminal proceedings" means—

(a) bail grantable in or in connection with proceedings for an offence to a person who is accused or convicted of the offence; or

(b) bail grantable in connection with an offence to a person who is under arrest for the offence or for whose arrest for the offence a warrant (endorsed for bail) is being issued;

"committal proceedings"[3] means proceedings held by the Magistrates' Court under Part VII;

"complaint" means an allegation that some person known or unknown has committed or is guilty of an offence, and **"complainant"** shall be construed accordingly;

"conviction" includes—

(a) a finding of guilt;

(b) a finding that a person is not guilty by reason of insanity;

(c) a conviction of an offence for which an order is made placing the offender on probation or discharging him absolutely or conditionally,

and **"convicted"** shall be construed accordingly;

"court" includes a judge of a court, a justice of the peace or a coroner and, in the case of a specified court, includes a judge or (as the case may be) justice having powers to act in connection with proceedings before that court;

"Crown Prosecutor" has the meaning given in section 51A;

[2] *Section 2 amended by Ord. 22 of 1987*
[3] *Definition of "committal proceedings" amended by Ord. 8 of 2007*

"magistrate" means a justice of the peace;
"Magistrates' Court" means the Magistrates' Court established under the provisions of the Magistrates' Court Ordinance[4];
"police officer" means any member of the St. Helena Police Force other than a police cadet;
"public prosecutor" means the Crown Prosecutor and any person appointed under the provisions of section 52 of this Ordinance;
"Registrar" means the Registrar of the Supreme Court, and includes a deputy registrar;
"summary trial" means a trial held by the Magistrates' Court under Part VI of this Ordinance;
"surrender to custody" means, in relation to a person released on bail, surrendering himself into the custody of the court or of the police officer (according to the requirements of the grant of bail) at the time and place for the time being appointed for him to do so;
"Trial Judge" means any person authorised by law to hold the Supreme Court;
"vary", in relation to bail, means imposing further conditions after bail is granted, or varying or rescinding conditions;
"young person" in relation to bail, means a person who has attained the age of fourteen and is under the age of seventeen.

Trial of offences

3. All criminal offences shall be inquired into, tried, and otherwise dealt with according to the provisions of this Ordinance, subject, however, to any written law for the time being in force regulating the manner or place of inquiring into, trying or otherwise dealing with such offences:

Provided that notwithstanding anything in this Ordinance contained, a court may, subject to the provisions of any law for the time being in force in St. Helena, in exercising its criminal jurisdiction in respect of any matter or thing to which the procedure prescribed by this Ordinance is inapplicable, or for which no provision is made, exercise such jurisdiction according to the course of procedure and practice observed by and before courts of justice in England.

PART II
POWERS OF COURTS

Powers of Supreme Court

4. The Supreme Court shall have jurisdiction to try any offence under any law and may pass any sentence authorised by law.

Powers of Magistrates' Court

5. The jurisdiction of the Magistrates' Court in respect of the trial of offences shall be that for which provision is made by the Magistrates' Court Ordinance, or by any other written law for the time being in force in St. Helena.

Combination of sentences

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

[4] Cap. 10

Sentences in cases of conviction of several offences at one trial

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

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

PART III
GENERAL PROVISIONS

Arrest, Escape and Retaking

Arrest

8. (1) A police officer or other person making an arrest shall touch or confine the body of the person to be arrested, unless such person submits to custody by word or action.

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

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

Search of place entered by person sought to be arrested

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

(2) If ingress to such place cannot be obtained under subsection (1) of this section, it shall be lawful in any case for a person acting under a warrant, and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity to escape, for a police officer, to enter such place and search therein, and in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance.

Power to break out for purposes of liberation

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

No unnecessary restraint

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

12. *Repealed.*
13. *Repealed.*
14. *Repealed.*
15. *Repealed.*
16. *Repealed.*
17. *Repealed.*
18. *Repealed.*
19. *Repealed.*
20. *Repealed.*
21. *Repealed.*
22. *Repealed.*
23. *Repealed.*
24. *Repealed.*
25. *Repealed.*

Recapture of person escaping

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

Provisions of sections 9 and 10 to apply to arrests under section 26

27. The provisions of sections 9 and 10 of this Ordinance shall apply to arrests under section 26 of this Ordinance, although the person making any such arrest is not acting under a warrant and is not a police officer having authority to arrest.

Assistance to magistrate or police officer

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

(a) in the taking or preventing the escape of any other person whom such magistrate or police officer is authorised to arrest;

(b) in the prevention or suppression of a breach of the peace, or in the prevention of any injury attempted to be committed to any public property.

Prevention of Offences

Summons or warrant to prevent breach of the peace

29.[5] **(1)** Where it appears to a Magistrate, on consideration of any written complaint, that any person has committed a breach of the peace and that there is reason to believe that such person is likely to commit a further breach of the peace, or to do any act whereby a breach

[5] *Section 29 amended by Ord. 22 of 1987*

of the peace is likely to be occasioned, such Magistrate may issue a summons requiring such person to appear before the Magistrates' Court to show cause why an order should not be made under section 30.

(2) Where such a complaint as is mentioned in subsection (1) is substantiated on oath, and it appears to the Magistrate that the commission of a breach of the peace or of such an act as is described in subsection (1) cannot be prevented otherwise than by detaining the person complained against, such Magistrate may issue a warrant for the arrest of such person.

(3) A warrant issued under subsection (2) shall require the person arrested to be brought before the first available sitting of the Magistrates' Court, there to show cause why an order should not be made under section 30.

Recognisance to be of good behaviour

30.[6] **(1)** Where it appears to the Magistrates' Court that a person before the court (whether before the court as a party to proceedings, a witness, or otherwise, and whether or not a summons or warrant has previously been issued under section 29) is likely to commit a breach of the peace, or to do any act whereby a breach of the peace may be occasioned, such court may order such person to enter into a recognisance, in such sum and for such period of time not exceeding two years as the court may direct, to keep the peace and be of good behaviour.

(2) An Order shall not be made under subsection (1), upon a complaint made under the last preceding section unless—

(a) the defendant admits the complaint; or

(b) the court, having followed as nearly as may be the procedure applicable to a charge alleging an offence to which a plea of not guilty has been entered, finds the complaint proved.

(3) If a person ordered to enter into a recognisance in accordance with subsection (1) fails to execute such recognisance within such time as may be prescribed in the order, the Magistrates' Court may commit such person to prison for such period not exceeding six months as the court thinks fit:

Provided that a warrant of commitment issued under this section shall direct that the prisoner be forthwith released upon his executing the recognisance referred to in the original order.

Breach of recognisance

31.[7] **(1)** Every recognisance executed under section 30 shall be a recognisance to keep the peace and be of good behaviour; and such recognisance shall be breached if the person executing the same commits any breach of the peace, or if he commits, aids, abets, counsels, procures or incites any criminal offence.

(2) An allegation that a person is in breach of the terms of a recognisance shall be made by way of complaint, which (for procedural purposes) shall be treated as a complaint alleging a criminal offence.

(3) Where it appears to the Magistrates' Court, either upon inquiring into a complaint under subsection (2) or upon convicting a person of any criminal offence, that a person is in breach of a recognisance, such court shall order the whole amount of the recognisance to be forfeit, and may proceed to enforce payment thereof in all respects as if a fine of the like amount had been imposed on conviction for an offence:

[6] *Section 30 amended by Ord. 22 of 1987*
[7] *Section 31 amended by Ord. 22 of 1987*

Provided that the court may, for special reasons which shall be recorded in writing, order the forfeiture of less than the whole amount of the recognisance (or make no order at all), in which event the recognisance shall remain in force to the extent that the amount thereof has not been forfeit.

32. *Repealed.*
33. *Repealed.*
34. *Repealed.*
35. *Repealed.*
36. *Repealed.*
37. *Repealed.*
38. *Repealed.*
39. *Repealed.*
40. *Repealed.*
41. *Repealed.*

Preventive Action of the Police

Police to prevent offences

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

Information of design to commit offences

43. Every police officer receiving information of a design to commit any offence shall communicate such information to the police officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognisance of the commission of any such offence.

Prevention of injury or damage to public property, landmark or navigation aid

44.[8] A police officer may of his own authority intervene to prevent any injury or damage attempted to be committed in his view to, or the removal, damage or injury of—

(a) any public property, movable or immovable;
(b) any public landmark; or
(c) any buoy, aid, equipment or other mark used for navigation.

PART IV
PROVISIONS RELATING TO
ALL CRIMINAL TRIALS AND INQUIRIES

Place of Inquiry or Trial

General authority of courts

45. Every court has authority to cause to be brought before it any person who is within the limits of its jurisdiction and is charged with an offence committed within St. Helena, or

[8] *Section 44 substituted by Ord. 6 of 2016*

which according to law may be dealt with as if it had been committed within St. Helena, and to deal with the accused person according to its jurisdiction.

Powers of Supreme Court

46. The Supreme Court may inquire into and try any offence subject to its jurisdiction.

Place and date of sessions of Supreme Court

47.[9] **(1)** For the exercise of its original criminal jurisdiction the Supreme Court shall hold sittings at such places and on such days as the Chief Justice or Trial Judge may direct.

(2) The Registrar shall ordinarily give public notice beforehand of all such sittings.

Supreme Court to decide in cases of doubt

48. Whenever any doubt arises in the Magistrates' Court whether it has jurisdiction to inquire into or try an offence it may, in its discretion, report the circumstances to the Supreme Court, and the Supreme Court shall decide by which court the offence shall be inquired into or tried. Any such decision of the Supreme Court shall be final and conclusive:

Provided that it shall be open to an accused person to show that no court in St. Helena has jurisdiction in the case.

Court to be open

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

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

(2) Any court may sit for the purpose of inquiring into or trying any offence on a Sunday or a public holiday, and no finding, sentence or order made or passed by a court of competent jurisdiction shall be reversed or altered by reason only of the fact that the same was made or passed on a Sunday or a public holiday:

Provided that the court shall not sit on a Sunday or a public holiday unless in the opinion of the court the omission to do so would cause an amount of delay, expense, or inconvenience which in the circumstances of the case would be unreasonable.

Control by the Attorney General

Power to enter *nolle prosequi*

50. (1)[10] In any case committed for trial to the Supreme Court, and at any stage thereof before judgment, the Attorney General may enter a *nolle prosequi*, either by stating in court or by informing the court in writing that the Crown intends that the proceedings shall not continue, and thereupon the accused person shall be at once discharged in respect of the charge for which the *nolle prosequi* is entered, and if—

[9] *Section 47 amended by L.N. 3 of 1989*
[10] *Section 50(1) amended by Ord. 22 of 1987*

(a) he has been committed to prison, he shall be released; or

(b) he has been released on bail, his recognisances shall be discharged,

but such discharge of an accused person shall not operate as a bar to any subsequent proceedings against him on account of the same facts.

(2) If the accused person is not before the court when such *nolle prosequi* is entered, the Registrar shall forthwith cause notice in writing of the entry of such *nolle prosequi* to be given to the keeper of the prison, if such accused person is in custody therein, and also to the Magistrates' Court by which he was committed, and the Magistrates' Court shall forthwith cause a notice in writing to be given to any witnesses bound over to give evidence and to their sureties, if any, and also to the accused person and his sureties in case he has been admitted to bail.

Application by Crown Prosecutor for committal proceedings

51.[11] If in the course of a trial before the Magistrates' Court it appears to the Crown Prosecutor that the case is one which ought to be tried by the Supreme Court, the Magistrates' Court, on application made by the Crown Prosecutor before the close of the prosecution case, shall stay further proceedings and shall hold committal proceedings in accordance with the provisions of Part VII of this Ordinance.

Appointment of Crown Prosecutor

51A.[12] The Governor may, by notice in the Gazette, appoint a person to be the Crown Prosecutor:

Provided that until such time as a person is so appointed, and at any time when there is no such appointment subsisting, the Chief of Police[13] shall be deemed to be the Crown Prosecutor.

Appointment of Public Prosecutors and Conduct of Prosecutions

Power to appoint prosecutors

52. (1) The Crown Prosecutor by writing under his hand may appoint generally, or in any case, or for any specified class of cases, any person, whether employed in the public service or not, to be a public prosecutor.

(2) Every public prosecutor shall be subject to the express directions of the Crown Prosecutor.

Powers of prosecutors

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

[11] *Section 51 inserted by Ord. 22 of 1987*
[12] *Section 51A inserted by Ord. 22 of 1987*
[13] *Gazette Notice No. 63 of 1 July 2011: Title changed to Director of Police*

Withdrawal from prosecution in trials before Magistrates' Court

54. In any proceeding before the Magistrates' Court any public prosecutor may, with the consent of the court or on the instructions of the Crown Prosecutor, at any time before judgment is pronounced, withdraw from the prosecution of any person; and if such withdrawal is made—

(a) before the accused person is called upon to make his defence, he shall be discharged, but such discharge shall not operate as a bar to subsequent proceedings against him on account of the same facts;

(b) after the accused person is called upon to make his defence, he shall be acquitted.

Conduct of public prosecutions

55.[14] **(1)** No person other than the Crown Prosecutor or any person authorised by him shall conduct a public prosecution before the Magistrates' Court.

(2) The prosecutor shall have the like power of withdrawing from the prosecution as is provided by section 54 of this Ordinance, and the provisions of that section shall apply to any such withdrawal by a person authorised under subsection (1).

(3) Any person conducting the prosecution may do so personally or by an advocate.

Institution of Proceedings

Institution of proceedings

56. (1) Criminal proceedings may be instituted—

(a) by a police officer bringing a person arrested with or without a warrant of arrest before a magistrate upon a charge; or

(b) by a public prosecutor or a police officer laying a charge against a person before a magistrate and requesting the issue of a warrant of arrest or a summons; or

(c) by any person, other than a public prosecutor or a police officer, making a complaint as provided in subsection (3) of this section and applying for the issue of a warrant of arrest or a summons in the manner hereinafter mentioned.

(2) The validity of any proceedings instituted or purporting to be instituted in pursuance of subsection (1) of this section shall not be affected by any defect in the charge or complaint or by the fact that a summons or warrant of arrest was issued without any complaint or charge or, in the case of a warrant, without a complaint on oath.

(3) Any person, other than a public prosecutor or a police officer, who has reasonable and probable cause to believe that an offence has been committed by any person, may make a complaint thereof to a magistrate; and every such complaint may be made orally or in writing signed by the complainant, but if made orally shall be reduced into writing by the magistrate and when so reduced shall be signed by the complainant.

(4) If a magistrate, upon receiving a complaint under the provisions of subsection (3) of this section, is satisfied that *prima facie* the commission of an offence has been disclosed and that such complaint is not frivolous or vexatious, he shall draw up or cause to be drawn up and shall sign a formal charge containing a statement of the offence or offences alleged to have been committed by the accused.

(5) When a charge has been—

[14] *Section 55 amended by Ord. 14 of 2017*

(a) laid under the provisions of (1)(b) of this section; or

(b) drawn up under the provisions of subsection (4) of this section,

the magistrate shall issue either a summons or a warrant of arrest, as he deems fit, to compel the attendance of the accused person before the Magistrates' Court:

Provided that a warrant shall not be issued in the first instance unless the charge is supported by evidence on oath, either oral or by affidavit.

(6) Notwithstanding the provisions of subsection (5) of this section, a magistrate receiving any charge or complaint may, if he thinks fit for reasons to be recorded in writing, postpone the issuing of a summons or warrant and may direct an investigation, or further investigation, to be made by the police into such charge or complaint, and a police officer receiving such a direction shall investigate or further investigate the charge or complaint and report to the magistrate issuing the direction.

(7)[15] Nothing in subsection (5) of this section shall authorise a police officer to make an arrest without a warrant except as provided in section 16 or in any other law.

(8) A summons or warrant of arrest may be issued on a Sunday.

Powers of Attorney General

57.[16] **(1)** Nothing in this Ordinance shall affect the powers of the Attorney General under section 46 of the Constitution and for the purposes of exercising such powers, the Attorney General may do or perform any act or thing which the Crown Prosecutor may or is required to do or perform under any of the provisions of this Ordinance.

(2) Where the prosecution of any proceedings has been discontinued under the provisions of section 46(4)*(c)* of the Constitution, the provisions of section 54 of this Ordinance shall apply as if there had been a withdrawal from the prosecution under that section.

Summons to Accused Persons

Form and contents of summons

58. (1) Every summons issued by a court under this Ordinance shall be in writing, in duplicate, signed by a magistrate or by such officer of the court as the Chief Justice may from time to time direct.

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

Service of summons

59. (1) Every summons shall be served by a police officer or by an officer of the court issuing it or other public servant and shall, if practicable, be served personally on the person summoned by delivering or tendering to him one of the duplicates of the summons.

(2) Every person on whom a summons is served under the provisions of subsection (1) of this section shall, if so required by the serving officer, sign a receipt therefore on the back of the other duplicate.

[15] *Section 56(7) amended by Ord. 22 of 1987*

[16] *Section 57 amended by L.N. 3 of 1989 and L.N. 26 of 2009*

Procedure when service cannot be effected

60. If service of a summons in the manner provided by section 59 of this Ordinance cannot be effected by the exercise of due diligence, the summons may be served—

(a) by leaving one of the duplicates for him with some adult member of his family, or with his servant residing with him or with his employer; and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefore on the back of the other duplicate; or

(b) by affixing one of the duplicates of the summons to some conspicuous part of the house in which the person summoned ordinarily resides,

and thereupon the summons shall be deemed to have been duly served.

61. *Repealed.*

Service on company

62. Service of a summons on an incorporated company or other body corporate may be effected by serving it personally on the secretary, local manager or other principal servant of the corporation in St. Helena.

Proof of service

63. (1) Where a person summoned is not present at the place and time appointed in a summons, an affidavit purporting to be made before a magistrate that such summons has been served, and a duplicate of the summons purporting to be endorsed in the manner hereinbefore provided by the person to whom it was delivered or tendered or with whom it was left, shall be admissible in evidence and the statements made therein shall be deemed to be correct unless and until the contrary is proved:

Provided that if such duplicate is not endorsed in the manner hereinbefore provided, such affidavit shall be admissible in evidence if the court is satisfied from the statements made therein that service of the summons has been effected in accordance with the foregoing provisions of this Ordinance.

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

(3) Notwithstanding the provisions of subsection (1) of this section, the service of a summons may be proved by the oral evidence of the person who effected such service.

Meaning of "summons"

64. For the purposes of sections 58 to 63, both inclusive, of this Ordinance, **"summons"** means a summons to the accused person.

Warrant of Arrest

Warrant after issue of summons

65. Notwithstanding the issue of a summons to an accused person, a warrant of arrest may be issued at any time before or after the time appointed in the summons for the appearance of the accused person.

Disobedience of summons

66. (1) If an accused person, other than a corporation, does not appear at the time and place appointed in and by the summons, the court may issue a warrant to apprehend him and cause him to be brought before such court.

(2) If an accused person, being a corporation, does not appear in the manner for which provision is made by this Ordinance, the court may cause any officer thereof to be summoned before it in the manner for which provision is made by this Ordinance for compelling the attendance of witnesses and if such officer fails to attend he may be dealt with under the provisions of subsection (1) of this section.

(3) In this section and in section 269 of this Ordinance, **"officer"**, in relation to a corporation, means any director, any member of the board of management, by whatsoever name or style designated, and the secretary, and the local manager or other principal servant of the corporation in St. Helena.

(4) A warrant shall not be issued under this section for the arrest of any person unless the court is satisfied by evidence on oath that the summons directed to that person was duly served.

(5) Nothing in this section shall affect the power of a court to deal with a case in the absence of the accused person, whether an individual or a corporation, in the manner for which provision is made by sections 147 and 149 of this Ordinance.

Form, contents and duration of warrant of arrest

67. (1) Every warrant of arrest shall be under the hand of the Chief Justice, a Trial Judge or a magistrate.

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

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

68. *Repealed.*

Warrants, to whom directed

69. (1) A warrant of arrest may be directed to one or more police officers named therein or generally to all police officers:

Provided that any court issuing such a warrant may, if its immediate execution is necessary and no police officer is immediately available, direct it to any other person, and such person shall execute the same.

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

Notification of substance of warrant

70. The police officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and, if so required, shall show him the warrant.

Person arrested to be brought before the court without delay

71.[17] The police officer or other person executing a warrant of arrest shall (but subject to Part V of the Police and Criminal Evidence Ordinance, 2003 as to detention) without unnecessary delay bring the person arrested before the court before which he is required by law to produce such person.

Irregularities in warrant

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

Miscellaneous Provisions regarding Processes

Power to take bond for appearance

73. Where any person for whose appearance or arrest the Chief Justice, a Trial Judge or the magistrate presiding in the Magistrates' Court, as the case may be, is empowered to issue a summons or warrant is present in court, the Chief Justice, Trial Judge or such magistrate, as the case may be, may require such person to execute a bond, with or without sureties, for his appearance in court at such time as shall be therein specified.

Arrest for breach of bond for appearance

74. When any person who is bound by any bond taken under the provisions of this Ordinance to appear before a court does not so appear, the Chief Justice, Trial Judge or the magistrate presiding in such court, as the case may be, may issue a warrant directing that such person be arrested and produced before the court.

Power of court to order prisoner to be brought before it

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

(2) The officer to whom such order is directed shall act in accordance therewith, and shall provide for the safe custody of the prisoner during his absence from the prison for the purpose aforesaid.

[17] *Section 71 amended by Ord. 14 of 2017*

Warrants, etc, reciprocal provisions

76. (1) Any warrant, summons, charge, indictment, notice or other process in connection with any criminal cause or matter issued by a magistrate or court in St. Helena which is required to be executed or served in relation to or upon a person residing in one of the Dependencies may be forwarded by the Registrar to a court having jurisdiction in that Dependency with a request for the execution thereof in relation to or upon such person:

Provided that a warrant for the arrest of any person shall not be so forwarded without the consent of the Chief Justice or a Trial Judge.

(2) Where the Magistrates' Court receives any warrant, summons, charge, indictment, notice or other process in connection with any criminal cause or matter issued by a magistrate or court exercising jurisdiction in one of the Dependencies, with a request for the execution or service thereof in relation to or upon a person residing in St. Helena, such court shall, subject as hereinafter in this section provided, proceed as if such warrant, summons, charge, indictment, notice or other process had been issued by a magistrate exercising jurisdiction in St. Helena or by itself and shall subsequently make a return of execution or service to the magistrate or court who or which, as the case may be, issued the same together with a record of all proceedings, if any, in relation thereto:

Provided that in the case of a warrant of arrest of a person charged with the commission of an offence, such warrant shall not be executed unless the court to which such request is addressed receives a copy of the charge against such person together with a summary of the evidence which is proposed to be adduced at the inquiry into or trial of such offence.

(3) Where, in the exercise of the powers conferred upon it by virtue of the provisions of subsection (2) of this section, the Magistrates' Court has caused to be executed a warrant of arrest of any person charged with the commission of an offence, the court shall forward to the Chief Justice or Trial Judge a report of such arrest together with a copy of the charge and a summary of evidence referred to in subsection (2) of this section, and if the Chief Justice or Trial Judge is satisfied, after reading such copy and summary, and after such further inquiry, if any, as he may think fit to make, that the evidence is such that, if it is believed, a *prima facie* case may be established against the person arrested, he may direct that such person be sent in custody to the court by which the warrant was issued, and thereupon the Registrar shall endorse such warrant pursuant to such direction.

(4) If the Chief Justice or Trial Judge does not issue a direction under the provisions of subsection (3) of this section, the person arrested under the warrant of arrest referred to in that subsection shall be released forthwith.

(5) A warrant of arrest endorsed by the Registrar under the provisions of subsection (3) of this section shall be sufficient authority to any person named in such endorsement to receive and detain the person named in the warrant and to carry him and deliver him up to the court which issued such warrant.

Provision of this Part in relation to summonses and warrants to be generally applicable

77. The provisions contained in this Part of this Ordinance relating to a summons and warrant, and their issue, service and execution, shall, so far as may be, apply to every summons and every warrant of arrest issued under the provisions of this Ordinance.

Searches and Search Warrants

Search of premises of arrested persons

78. When a police officer has reason to believe that material evidence can be obtained in connection with an offence for which an arrest has been made, whether with or without warrant, or for which an arrest has been authorised by warrant, any police officer may search the dwelling or place of business of the person so arrested or for whom the warrant of arrest has been issued and may take possession of anything which might reasonably be used as evidence in any criminal proceedings.

Power to issue search warrant

79.[18] Where it is proved on oath to a court that in fact or according to reasonable suspicion anything upon, by or in respect of which an offence has been committed or anything which is necessary to the conduct of an investigation into any offence is in any building, vessel, aircraft, carriage, box, receptacle or place, the court may by warrant (called a search warrant) authorise the person to whom the warrant is addressed to search the building, vessel, aircraft, carriage, box, receptacle or place (which shall be named or described in the warrant) for any such thing and, if anything searched for is found, to seize it and carry it before the court issuing the warrant or some other court to be dealt with according to law.

Execution of search warrant

80. A search warrant may be issued and executed on any day, including a Sunday or public holiday, and shall be executed between the hours of sunrise and sunset, but the court may, by the warrant, in its discretion, authorise the police officer or other person to whom it is addressed to execute it at any hour.

Persons in charge of closed place to allow ingress

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

(2) If ingress to or egress from such building or other place cannot be so obtained the police officer or other person executing the search warrant may proceed in the manner prescribed by section 9 or 10 of this Ordinance.

(3) Where any person in or about such building or place is reasonably suspected of concealing about his person any article for which search is made, such person may be searched:

Provided that if such person is a woman the provisions of section 14 of this Ordinance shall be observed.

Detention of property seized

82. (1) Any thing seized or of which possession is taken under the provisions of section 78 or 79 of this Ordinance may be detained until the conclusion of the case or the investigation, reasonable care being taken for its preservation.

[18] *Section 79 amended by Ord. 6 of 2016*

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

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

Provisions applicable to search warrants

83. The provisions of subsection (1) and (3) of section 67 and section 69 of this Ordinance shall, so far as may be, apply to all search warrants issued under the provisions of section 79 of this Ordinance.

Provisions as to Bail

Release on bail

84.[19] **(1)** Any court before which an accused person appears or is brought may at any stage in the proceedings release him on bail.

Discharge from custody

85. (1)[20] Every person to whom bail is granted shall be released as soon as is practicable after bail is granted (or, where the grant of bail is subject to compliance with conditions prior to release, as soon as is practicable after such conditions have been complied with); and, if he is in prison, the court which grants bail shall cause notice thereof to be given to the officer in charge of the prison.

(2) Nothing in this section or in section 84 of this Ordinance shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the bond was executed.

Deposit instead of bond

86. When any person is required by any court or officer to execute a bond, with or without sureties, such court or officer may, except in the case of a bond for good behaviour, permit him to deposit a sum of money or any specific property, to such amount or of such value as the court or officer may fix, *in lieu* of executing such a bond.

Power to order sufficient bail when that first taken is insufficient

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

Discharge of sureties

[19] *Section 84 amended by Ord. 8 of 2007*
[20] *Section 85(1) substituted by Ord. 22 of 1987*

88. (1) All or any of the sureties for the appearance and attendance of a person released on bail may at any time apply to the Magistrates' Court to discharge the bond either wholly or so far as it relates to the applicant or applicants.

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

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

Death of surety

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

90. *Repealed.*

Forfeiture of bond

91. (1) Whenever it is proved to the satisfaction—

(a) of the court by which a bond has been taken; or

(b) of the court before which a person has engaged by bond to appear,

that such bond has been forfeited, the court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof, or to show cause why it should not be paid.

(2) If sufficient cause is not shown and the penalty is not paid, the court may proceed to recover the same by issuing a warrant for the attachment and sale of the movable property belonging to such person.

(3) Such warrant may be executed within the limits of the jurisdiction of the court which issued it.

(4) If such penalty is not paid and cannot be recovered by such attachment and sale, the person bound shall be liable, by order of the court which issued the warrant, to imprisonment for a period not exceeding six months or until such penalty is paid, whichever is the less.

(5) The court may, at its discretion, remit any portion of the penalty and enforce payment in part only.

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

Appeals from orders

92. Any person aggrieved by an order made by the Magistrates' Court under the provisions of section 91 of this Ordinance may appeal to the Supreme Court and the provisions of Part X of this Ordinance shall apply to every such appeal.

Power to direct levy of amount due on certain bonds

93. The Supreme Court may direct the Magistrates' Court to levy the amount due on a bond to appear and attend before the Supreme Court.

Incidents of bail in criminal proceedings

93A.[21] **(1)** In this section **"person"** means a person granted bail in criminal proceedings.

(2) A person shall be under a duty to surrender to custody; that duty is enforceable in accordance with section 93D of this Ordinance, and (except as provided by this section)—

(a) no security for his surrender to custody shall be taken from him;

(b) he shall not be required to provide a surety or sureties for his surrender to custody; and

(c) no other requirement shall be imposed on him as a condition of bail.

(3) A person may be required, before release on bail, to provide a surety or sureties to secure his surrender to custody.

(4) If it appears that he is unlikely to remain in St. Helena until the time appointed for him to surrender to custody, a person may be required, before release on bail, to give security for his surrender to custody; such security may be given by him or on his behalf.

(5) A person may be required (but only by a court) to comply, before release on bail or later, with such requirements as appear to the court to be necessary to secure that—

(a) he surrenders to custody;

(b) he does not commit an offence while on bail;

(c) he does not interfere with witnesses or otherwise obstruct the course of justice whether in relation to himself or any other person;

(d) he makes himself available for the purpose of enabling inquiries or a report to be made to assist the court in dealing with him for the offence.

(6) If a parent or guardian of a child under the age of 14 or young person consents to be surety for the child or young person for the purposes of this subsection, the parent or guardian may be required to secure that the child or young person complies with any requirement imposed on him by virtue of subsection (5) but—

(a) no requirement shall be imposed on the parent or the guardian of a young person by virtue of this subsection where it appears that the young person will attain the age of seventeen before the time to be appointed for him to surrender to custody; and

(b) the parent or guardian shall not be required to secure compliance with any requirement to which his consent does not extend and shall not, in respect of those requirements to which his consent does extend, be bound in a sum greater than £100.

(7) Where a court has granted bail in criminal proceedings it may on application—

(a) by or on behalf of the person to whom it was granted; or

(b) by the prosecutor or a police officer,

vary the conditions of bail or (subject to the provisions of this section) impose conditions in respect of bail which it has granted unconditionally.

(8)[22] Notwithstanding the words in brackets in subsection (5), a police officer acting as a custody officer under the Police and Criminal Evidence Ordinance, Cap 29, who is satisfied that he would refuse bail if the provisions of this subsection were not available to him, may,

[21] *Section 93A inserted by Ord. 22 of 1987*
[22] *Section 93A(8) added by Ord. 8 of 2007*

with the consent of the detained person, grant bail subject to any conditions which a court could lawfully impose:

Provided that the provisions of subsection (7) apply to a person to whom bail has been granted under this subsection as if such bail had been granted by the Magistrates' Court.

Presumption in favour of granting bail

93B.[23] **(1)** This section applies to a person who appears or is brought before a court during the course of criminal proceedings for an offence or offences alleged to have been committed by him, but for which he has not been convicted, and to a person who appears or is brought before a court in connection with an allegation that he has failed to pay a fine or compensation or has failed to comply with a probation order or a community service order.

(2) Subject to subsection (3) and section 93E, and section 84(1) of this Ordinance, a person to whom this section applies shall, on every occasion when the proceedings are adjourned, be granted unconditional bail.

(3) Bail need not be granted, or may be granted with conditions, if the court is satisfied—

(a) that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not) would—
  (i) fail to surrender to custody; or
  (ii) commit an offence while on bail; or
  (iii) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person; or

(b) that the defendant should be kept in custody for his own protection or, if he is a child under the age of 14 or young person, for his own welfare; or that he is in custody in pursuance of the sentence of a court; or

(c) that it has not been practicable to obtain sufficient information for the purpose of taking the decisions required by this section for want of time since the institution of the proceedings against him.

Supplementary provisions about decisions on bail

93C.[24] **(1)** Subject to subsection (2), where—

(a) a court or police officer grants bail in criminal proceedings; or

(b) a court withholds bail in criminal proceedings from a person to whom section 93B applies; or

(c) a court, officer of a court or police officer appoints a time or place or a court or officer of a court appoints a different time or place for a person granted bail in criminal proceedings to surrender to custody; or

(d) a court varies any conditions of bail or imposes conditions in respect of bail in criminal proceedings,

that court, officer or police officer shall make a record of the decision in the prescribed manner and containing the prescribed particulars and, if requested to do so by the person in relation to whom the decision was taken, shall cause him to be given a copy of the record of the decision as soon as practicable after the record is made.

(2) Where bail in criminal proceedings is granted by endorsing a warrant of arrest for bail, the police officer who releases on bail the person arrested shall make the record required by subsection (1), instead of the judge or justice who issued the warrant.

[23] *Section 93B inserted by Ord. 22 of 1987*
[24] *Section 93C inserted by Ord. 22 of 1987*

(3) Where a Magistrates' Court or the Supreme Court—

(a) withholds bail in criminal proceedings; or

(b) imposes conditions in granting bail in criminal proceedings; or

(c) varies any conditions of bail or imposes conditions in respect of bail in criminal proceedings,

and does so in relation to a person to whom section 93B applies, then the court shall state its reasons for withholding bail or for imposing or varying the conditions.

(4) A court which is by virtue of subsection (3) required to state reasons for its decision, shall include a note of those reasons in the record of its decision and shall give a copy of that note to the person in relation to whom the decision was taken.

(5) Where a person has given security in pursuance of section 93A(4) and a court is satisfied that he failed to surrender to custody then, unless it appears that he had reasonable cause for such failure, the court may order the forfeiture of the security, or such part thereof as it thinks fit to order.

(6) A security which has been ordered to be forfeited by a court under subsection (5) shall, to the extent of the forfeiture—

(a) if it consists of money, be accounted for and paid in the same manner as a fine imposed by that court;

(b) if it does not consist of money, be enforced in such manner as may be specified in the order.

Offence of absconding by person released on bail

93D.[25] **(1)** If a person who has been released on bail in criminal proceedings fails without reasonable cause to surrender to custody, he shall be guilty of an offence.

(2) If a person who—

(a) has been released on bail in criminal proceedings; and

(b) having reasonable cause therefor, has failed to surrender to custody,

fails to surrender to custody at the appointed place as soon after the appointed time as is reasonably practicable, he shall be guilty of an offence.

(3) It shall be for the accused to prove that he had reasonable cause for his failure to surrender to custody.

(4) A failure to give to a person granted bail in criminal proceedings a copy of the record of the decision shall not constitute a reasonable cause for that person's failure to surrender to custody.

(5) A person guilty of an offence under this section shall be liable to a fine of £500 or six months imprisonment or both.

(6) In any proceedings for an offence under this section a document purporting to be a copy of the part of the prescribed record which relates to the time and place appointed for the person specified in the record to surrender to custody and to be duly certified to be a true copy of that part of the record shall be evidence of the time and place appointed for that person to surrender to custody.

(7) For the purposes of subsection (6)—

(a) **"the prescribed record"** means the record of the decision of the court, officer or police officer made in pursuance of section 93C;

(b) a copy of the prescribed record is duly certified if it is certified by the appropriate officer of the court or, as the case may be, by the police officer who took the

[25] *Section 93D inserted by Ord. 22 of 1987*

decision or a police officer designated for that purpose by the officer in charge of the police station from which the person to whom the record relates was released;

(c) "the appropriate officer" of the court is—

(i) in the case of the Magistrates' Court, the Clerk of the Peace or such other officer as may be authorised by him to act for the purpose;

(ii) in the case of the Supreme Court, the Registrar.

Liability to arrest for absconding or breaking conditions of bail

93E.[26] **(1)** If a person who has been released on bail in criminal proceedings and is under a duty to surrender into the custody of a court, fails to surrender to custody at the time appointed for him to do so, the court may issue a warrant for his arrest.

(2) If a person who has been released on bail in criminal proceedings absents himself from the court at any time after he has surrendered into the custody of the court but before the court is ready to begin or to resume the hearing of the proceedings, the court may issue a warrant for his arrest; but no warrant shall be issued under this subsection where that person is absent in accordance with leave given to him by or on behalf of the court.

(3) A person who has been released on bail in criminal proceedings and is under a duty to surrender into the custody of a court may be arrested without warrant by a police officer—

(a) if the police officer has reasonable grounds for believing that that person is not likely to surrender to custody;

(b) if the police officer has reasonable grounds for believing that that person is likely to break any of the conditions of his bail or has reasonable grounds for suspecting that that person has broken any of those conditions; or

(c) in a case where that person was released on bail with a surety or sureties, if a surety notifies a police officer in writing that that person is unlikely to surrender to custody and that for that reason the surety wishes to be relieved of his obligations as a surety.

(4) A person arrested in pursuance of subsection (3)—

(a) shall, except where he was arrested within 24 hours of the time appointed for him to surrender to custody, be brought as soon as practicable and in any event within 24 hours after his arrest, before a justice of the peace; and

(b) in the said excepted case shall be brought before the court at which he was to have surrendered to custody.

(5) A justice of the peace before whom a person is brought under subsection (4) may, subject to subsection (6), if of the opinion that that person—

(a) is not likely to surrender to custody; or

(b) has broken or is likely to break any condition of his bail, remand him in custody or commit him to custody, as the case may require, or alternatively, grant him bail subject to the same or to different conditions; but if not of that opinion shall grant him bail subject to the same conditions (if any) as were originally imposed.

Warrant of arrest may be endorsed for bail

93F.[27] Whenever a warrant is issued for the arrest of any person, the court, Magistrate or Judge issuing the same may (if in all the circumstances it appears just and reasonable so to do) incorporate therein a direction that the officer executing the warrant may,

[26] *Section 93E inserted by Ord. 22 of 1987*

[27] *Section 93F inserted by Ord. 22 of 1987*

instead of bringing the person arrested before the court, release him on bail to appear before the court at a time and place specified in the direction.

Charges and Indictments

Contents of charge or indictment

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

Joinder of counts

95. (1) Any offences may be charged together in the same charge or indictment if the offences charged are founded on the same facts or form or are a part of a series of offences of the same or a similar character.

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

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

Joinder of persons

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

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

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

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

(d) persons accused of robbery, aggravated burglary, burglary, or theft (as defined in the Theft Act, 1968) and persons accused of handling any property alleged to have been stolen in the course of any such offences and also any persons accused of aiding abetting or of attempting to commit any of the before mentioned offences.

Rules for the framing of charges and indictments

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

(a) (i) a count of a charge or indictment shall commence with a statement of the offence charged, called the statement of offence, which shall describe the

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

(ii) after the statement of the offence, particulars of such offence shall be set out in ordinary language, in which the use of technical terms shall not be necessary:

Provided that, where any rule of law or any written law limits the particulars of an offence which are required to be given in a charge or indictment, nothing in this paragraph shall require any more particulars to be given than those so required;

(iii) where a charge or indictment contains more than one count, the counts shall be numbered consecutively;

(b) (i) where an enactment constituting an offence states the offence to be the commission or the omission of any one of any different acts in the alternative, or the commission or the omission of any act in any one of any different capacities, or with any one of different intentions, or states any part of the offence in the alternative, the acts, omissions, capacities or intentions, or other matters stated in the alternative in the enactment, may be stated in the alternative in the count charging the offence;

(ii) it shall not be necessary, in any count charging an offence constituted by an enactment, to negative any exception to, exemption from or qualification of the operation of the enactment creating the offence;

(c) (i) the description of property in a charge or indictment shall be in ordinary language, and such as to indicate with reasonable clarity the property referred to, and, if the property is so described, it shall not be necessary, except when required for the purpose of describing an offence depending on any special ownership of property or special value of the property, to name the person to whom the property belongs or the value of the property;

(ii) where property is vested in more than one person, and the owners of the property are referred to in a charge or indictment, it shall be sufficient to describe the property as owned by one of those persons by name with the others, and if the persons owning the property are a body of persons with a collective name, such as a joint stock company or "Inhabitants", "Trustees", "Commissioners" or "Club" or other such name, it shall be sufficient to use the collective name without naming any individual;

(iii) property belonging to or provided for the use of any public establishment, service or department may be described as the property of the Government;

(iv) coin, bank notes and currency notes may be described as money; and any allegation as to money, so far as regards the description of the property, shall be sustained by proof of any amount of coin or of any bank or currency note (although the particular species of coin of which such amount was composed, or the particular nature of the bank or currency note, shall not be proved); and, in cases of theft and obtaining property or pecuniary advantage by deception (as defined in the Theft Act 1968) by proof that the accused person dishonestly appropriated or obtained any coin or any bank or currency note, or any portion of the value thereof, although such coin or bank or currency note may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same or to any other person and such part shall have been returned accordingly;

(d) the description or designation in a charge or indictment of the accused person, or of any other person to whom reference is made therein, shall be such as is reasonably sufficient to identify him, without necessarily stating his correct name, or his abode, style, degree or occupation; and if, owing to the name of the person not being known, or for any other reason, it is impracticable to give such a description or designation, such description or designation shall be given as is reasonably practicable in the circumstances or such person may be described as "a person unknown";

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

(f) subject to any other provisions of this section, it shall be sufficient to describe any place, time, thing, matter, act or omission whatsoever to which it is necessary to refer in any charge or indictment in ordinary language in such a manner as to indicate with reasonable clarity the place, time, thing, matter, act or omission referred to;

(g) it shall not be necessary in stating any intent to defraud, deceive or injure, to state an intent to defraud, deceive or injure a particular person unless an intent to defraud, deceive or injure a particular person is an essential ingredient of the offence;

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

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

Previous Conviction or Acquittal

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

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

Person may be tried again for separate offence

99. A person convicted or acquitted of any offence may afterwards be tried for any other offence with which he might have been charged on the former trial under the provisions of section 95(1) of this Ordinance.

Consequences supervening or not known at time of former trial

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

Where original court was not competent to try subsequent charge

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

Previous conviction or acquittal, how proved

102. (1) In any inquiry, trial or other proceeding under this Ordinance, a previous conviction or acquittal may be proved, in addition to any other mode provided by any law for the time being in force—

(a) by an extract certified, under the hand of the officer having the custody of the records of the court in which such conviction or acquittal was had, to be a copy of the sentence or order; or

(b) in case of a conviction, either by a certificate signed by the officer in charge of the prison in which the punishment or any part thereof was inflicted, or by production of the warrant of commitment under which the punishment was suffered,

together with, in each of such cases, evidence as to the identity of the accused person with the person so convicted or acquitted.

(2) A certificate in the form prescribed by the Governor given under the hand of an officer appointed by the Governor in that behalf, who has compared the finger prints of an accused person with the finger prints of a person previously convicted or acquitted, shall be *prima facie* evidence of all facts therein set forth, if it is produced by the person who took the finger prints of the accused person or by a police officer present at the same time.

(3) A previous conviction in any place outside St. Helena may be proved by the production of a certificate duly signed by an authorised police officer in the country or territory where the conviction was had, containing a copy of the sentence or order and the finger prints, or photographs of the finger prints of the person so convicted, together with evidence to the satisfaction of the court that the finger prints of the person so convicted are those of the accused person. Such a certificate as aforesaid shall be *prima facie* evidence of all facts therein set forth without proof that the officer purporting to sign it did in fact sign it and was empowered so to do.

Compelling Attendance of Witnesses

Summons for witness

103. (1) If it appears that material evidence can be given by or is in the possession of any person, it shall be lawful for a court having cognisance of any criminal proceedings to issue a summons to such person requiring his attendance before such court or requiring him to bring and produce to such court for the purpose of evidence all documents, writings or things in his possession or power which may be specified or otherwise sufficiently described in the summons.

(2) Any thing produced before a court may be retained by the court until thirty days after the conclusion of the trial at which it was produced and in the event of an appeal for such further period as the court to which the appeal is made shall direct.

Warrant for witness who disobeys summons

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

Warrant for witness in first instance

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

Mode of dealing with witness arrested under warrant

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

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

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

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

Penalty for nonattendance of witness

108. (1) Any person summoned to attend as a witness who, without lawful excuse—

(a) fails to attend as directed by the summons; or

(b) having attended, departs without having obtained the permission of the court; or

(c) fails to attend after adjournment of the court after being ordered to attend,

shall be liable by order of the court to a fine not exceeding £20.

(2) If such fine is not paid, it may be levied by attachment and sale of any movable property belonging to such witness within the limits of the jurisdiction of the court imposing such fine.

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

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

Examination of Witnesses

Power to summon material witnesses, or examine person present

109. Any court may, at any stage of any inquiry, trial or other proceeding under this Ordinance, summon or call any person as a witness, or examine any person in attendance though not summoned as a witness, or recall and re-examine any person already examined, and the court shall summon and examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case:

Provided that the prosecutor or the advocate for the prosecution or the accused person or his advocate shall have the right to cross examine any such person, and the court shall adjourn the case for such time, if any, as it thinks necessary to enable such cross examination to be adequately prepared if, in its opinion, either party may be prejudiced by the calling of any such person as a witness.

Evidence to be given on oath

110. (1)[28] Subject as hereinafter provided, every witness in a criminal cause or matter shall be examined upon oath and the court before which any witness appears shall have full power and authority to administer the usual oath.

(2) Any witness, upon objecting to being sworn and stating as the grounds for such objection either that he has no religious belief or that the taking of an oath is contrary to his religious belief, shall be permitted to make a solemn affirmation instead of taking an oath, which affirmation shall be of the same effect as if he had taken the oath.

(3) If any witness in any criminal cause or matter offers to give evidence on oath or affirmation in any form common amongst, or held binding by persons of the race or persuasion to which he belongs and which is not repugnant to justice or decency, and which does not purport to affect any third person, the court may, if it thinks fit, notwithstanding anything hereinbefore contained, tender such oath or affirmation to him.

(4) Where any child of tender years is called as a witness in a criminal cause or matter and such child does not, in the opinion of the court, understand the nature of an oath, his evidence may be received though not given on oath, if in the opinion of the court—

(a) he is possessed of sufficient intelligence to justify the reception of the evidence; and

(b) he understands the duty of speaking the truth.

Effect of accused's failure to mention facts when questioned or charged

110A.[29] **(1)** Where, in any proceedings against a person for an offence, evidence is given that the accused—

(a) at any time before he was charged with the offence, on being questioned under caution by a constable trying to discover whether or by whom the offence had been committed, failed to mention any fact relied on in his defence in those proceedings; or

(b) on being charged with the offence or officially informed that he might be prosecuted for it, failed to mention any such fact,

[28] *Section 110(1) amended by Ord. 1 of 1985*
[29] *Section 110A inserted by Ord. 8 of 2003*

being a fact which in the circumstances existing at the time the accused could reasonably have been expected to mention when so questioned, charged or informed, as the case may be, subsection (2) below applies.

(2) Where this subsection applies—

(a) a magistrates' court inquiring into the offence as examining justices;

(b) the court, in determining whether there is a case to answer; and

(c) the court or jury, in determining whether the accused is guilty of the offence charged,

may draw such inferences from the failure as appear proper.

(3) Subject to any directions by the court, evidence tending to establish the failure may be given before or after evidence tending to establish the fact which the accused is alleged to have failed to mention.

(4) This section applies in relation to questioning by persons (other than constables) charged with the duty of investigating offences or charging offenders as it applies in relation to questioning by constables-, and in subsection (1) above "officially informed" means informed by a constable or any such person.

(5) This section does not—

(a) prejudice the admissibility in evidence of the silence or other reaction of the accused in the face of anything said in his presence relating to the conduct in respect of which he is charged, in so far as evidence thereof would be admissible apart from this section; or

(b) preclude the drawing of any inference from any such silence or other reaction of the accused which could properly be drawn apart from this section.

(6) This section does not apply in relation to a failure to mention a fact if the failure occurred before the commencement of this section.

Effect of accused's silence at trial

110B.[30] **(1)** At the trial of any person for an offence, subsections (2) and (3) below apply unless—

(a) the accused's guilt is not in issue; or

(b) it appears to the court that the physical or mental condition of the accused makes it undesirable for him to give evidence;

but subsection (2) below does not apply if, at the conclusion of the evidence for the prosecution, his legal representative informs the court that the accused will give evidence or, where he is unrepresented, the court ascertains from him that he will give evidence.

(2) Where this subsection applies, the court shall, at the conclusion of the evidence for the prosecution, satisfy itself (in the case of proceedings on indictment, in the presence of the jury) that the accused is aware that the stage has been reached at which evidence can be given for the defence and that he can, if he wishes, give evidence and that, if he chooses not to give evidence, or having been sworn, without good cause refuses to answer any question, it will be permissible for the court or jury to draw such inferences as appear proper from his failure to give evidence or his refusal, without good cause, to answer any question.

(3) Where this subsection applies, the court or jury, in determining whether the accused is guilty of the offence charged, may draw such inferences as appear proper from the failure of the accused to give evidence or his refusal, without good cause, to answer any question.

[30] *Section 110B inserted by Ord. 8 of 2003*

(4) This section does not render the accused compellable to give evidence on his own behalf, and he shall accordingly not be guilty of contempt of court by reason of a failure to do so.

(5) For the purposes of this section a person who, having been sworn, refuses to answer any question shall be taken to do so without good cause unless−

(a) he is entitled to refuse to answer the question by virtue of any enactment, whenever passed or made, or on the ground of privilege; or

(b) the court in the exercise of its general discretion excuses him from answering it.

(6) This section applies—

(a) in relation to proceedings on indictment for an offence, only if the person charged with the offence is arraigned on or after the commencement of this section;

(b) in relation to proceedings in a magistrates' court, only if the time when the court begins to receive evidence in the proceedings falls after the commencement of this section.

Effect of accused's failure or refusal to account for objects, substances or marks

110C.[31] **(1)** Where—

(a) a person is arrested by a constable, and there is—

(i) on his person; or

(ii) in or on his clothing or footwear; or

(iii) otherwise in his possession; or

(iv) in any place in which he is at the time of his arrest,

any object, substance or mark, or there is any mark on any such object; and

(b) that or another constable investigating the case reasonably believes that the presence of the object, substance or mark may be attributable to the participation of the person arrested in the commission of an offence specified by the constable; and

(c) the constable informs the person arrested that he so believes, and requests him to account for the presence of the object, substance or mark; and

(d) the person fails or refuses to do so,

then if, in any proceedings against the person for the offence so specified, evidence of those matters is given, subsection (2) below applies.

(2) Where this subsection applies−

(a) a magistrates' court inquiring into the offence as examining justices;

(b) the court, in determining whether there is a case to answer; and

(c) the court or jury, in determining whether the accused is guilty of the offence charged,

may draw such inferences from the failure or refusal as appear proper.

(3) Subsections (1) and (2) above apply to the condition of clothing or footwear as they apply to a substance or mark thereon.

(4) Subsections (1) and (2) above do not apply unless the accused was told in ordinary language by the constable when making the request mentioned in subsection (1) (c) above what the effect of this section would be if he failed or refused to comply with the request.

(5) This section applies in relation to customs officers as it applies in relation to constables.

(6) This section does not preclude the drawing of any inference from a failure or refusal of the accused to account for the presence of an object, substance or mark or from the condition of clothing or footwear that could properly be drawn apart from this section.

[31] *Section 110C inserted by Ord. 8 of 2003*

(7) This section does not apply in relation to a failure or refusal that occurred before the commencement of this section.

Effect of accused's failure or refusal to account for presence at a particular place

110D.[32] **(1)** Where–

(a) a person arrested by a constable was found by him at a place at or about the time the offence for which he was arrested is alleged to have been committed; and

(b) that or another constable investigating the offence reasonably believes that the presence of the person at that place and at that time may be attributable to his participation in the commission of the offence; and

(c) the constable informs the person that he so believes, and requests him to account for that presence; and

(d) the person fails or refuses to do so,

then if, in any proceedings against the person for the offence, evidence of those matters is given, subsection (2) below applies.

(2) Where this subsection applies–

(a) a magistrates' court inquiring into the offence as examining justices;

(b) the court, in determining whether there is a case to answer; and

(c) the court or jury, in determining whether the accused is guilty of the offence charged,

may draw such inferences from the failure or refusal as appear proper.

(3) Subsections (1) and (2) do not apply unless the accused was told in ordinary language by the constable when making the request mentioned in subsection (1) (c) above what the effect of this section would be if he failed or refused to comply with the request.

(4) This section applies in relation to customs officers as it applies in relation to constables.

(5) This section does not preclude the drawing of any inference from a failure or refusal of the accused to account for his presence at a place that could properly be drawn apart from this section.

(6) This section does not apply in relation to a failure or refusal that occurred before the commencement of this section.

Refractory witnesses

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

(a) refuses to be sworn; or

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

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

(d) refuses to sign his deposition,

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

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

[32] *Section 110D inserted by Ord. 8 of 2003*

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

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

Reports by experts

112. (1) A court may receive in evidence in any inquiry, trial or other proceeding under the provisions of this Ordinance any document purporting to be a report under the hand of an expert upon any matter or thing duly submitted to him for examination or analysis:

Provided that no such document shall be so received unless it contains a statement of the qualifications of such expert to make such examination or analysis.

(2) Without prejudice to the provisions of section 109 of this Ordinance, the court may presume—

(a) that the signature on any such report as is mentioned in subsection (1) of this section is genuine and that the person signing it held the qualifications which he professed to hold at the time he signed it; and

(b) that any matter or thing to which such report relates has been duly submitted for examination.

(3) The examination or analysis, or any part thereof, on which any such report as is mentioned in subsection (1) of this section is based may be made by the person signing the report or by any person acting under his direction.

Proof by written statement

112A.[33] **(1)** In any criminal proceedings, including committal proceedings, a written statement by any person shall if such of the conditions mentioned in the next following subsection as are applicable are satisfied, be admissible as evidence to the like extent as oral evidence to the effect by that person.

(2) The said conditions are—

(a) the statement purports to be signed by the person who made it;

(b) the statement contains a declaration by that person to the effect that it is true to the best of his knowledge and belief and that he made the statement knowing that, if it were tendered in evidence, he would be liable to prosecution if he wilfully stated in it anything which he knew to be false or did not believe to be true;

(c) at least 7 days before the hearing at which the statement is tendered in evidence, a copy of the statement is served, by or on behalf of the party proposing to tender it, on each of the other parties to the proceedings; and

(d) none of the other parties within seven days from the service of the copy of the statement, serves a notice on the party so proposing objecting to the statement being tendered in evidence under this section:

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

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

[33] *Section 112A inserted by Ord. 1 of 1985 and amended by Ord. 22 of 1987*

(a) if the statement is made by a person under the age of 21, it shall give his age;

(b) if it is made by a person who cannot read it, it shall be read to him before he signs it and shall be accompanied by a declaration by the person who so read the statement to the effect that it was so read; and

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

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

(a) the party by whom or on whose behalf a copy of the statement was served may call that person to give evidence; and

(b) the court may, of its own motion or on the application of any party to the proceedings, require that person to attend before the court and give evidence.

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

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

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

(a) by delivering it to him or his advocate; or

(b) in the case of a body corporate, by delivering it to the secretary or clerk of the body at its registered or principal office.

Taking evidence of witnesses in absence of the accused

113. (1) If it is proved that an accused person has absconded and that there is no immediate prospect of arresting him, the court competent to try or commit for trial such person for the offence complained of may, in his absence, examine the witnesses, if any, produced on behalf of the prosecution, and record their depositions. Any such depositions may, on the arrest of such person, be given in evidence against him on the inquiry into or trial of the offence with which he is charged if the deponent is dead or incapable of giving evidence, or his attendance cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.

(2) If it appears that an offence punishable with imprisonment for a period not less than seven years has been committed by some person or persons unknown, the Supreme Court may direct that the Magistrates' Court shall hold committal proceedings and examine any witnesses who can give evidence concerning the offence; any evidence so taken may be given in evidence against any person who is subsequently accused of the offence if the witness is dead or incapable of giving evidence or beyond the limits of St. Helena.

Evidence for Defence

114. *Repealed.*

Procedure where person charged is the only witness called

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

Right of reply

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

Abolition of right of accused to make unsworn statement

116A. (1) Subject to subsections (2) and (3), in any criminal proceedings the accused shall not be entitled to make a statement without being sworn, and accordingly, if he gives evidence, he shall do so on oath and be liable to cross examination; but this section shall not affect the right of the accused, if not legally represented to address the court or jury otherwise than on oath on any matter on which, if he were so legally represented, his advocate could address the court or jury on his behalf.

(2) Nothing in subsection (1) shall prevent the accused making a statement without being sworn—

(a) if it is one which he is required by law to make personally; or

(b) if he makes it by way of mitigation before the court passes sentence upon him.

Procedure in case of the Insanity or other Incapacity of an Accused Person

Inquiry by court as to insanity of accused

117. (1) When in the course of a trial or committal proceedings the court has reason to believe that the accused person is of unsound mind and consequently incapable of making his defence, it shall inquire into the fact of such unsoundness.

(2) If the accused person is found to be of unsound mind and consequently incapable of making his defence, the court shall postpone further proceedings in the case.

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

(4) If the case is one in which bail may not be taken, or if sufficient security is not given, the court shall order the accused person to be detained in safe custody in such place and manner as it may think fit and shall transmit the court record or a certified copy thereof to the Governor.

(5) Upon consideration of the record the Governor may by warrant under his hand directed to the court, order that the accused person be confined in a mental hospital or other suitable place of custody and the court shall give any directions necessary to carry out such order. Any such warrant of the Governor shall be sufficient authority for the detention of such accused person until the Governor makes a further order in the matter or until the court finding

him incapable of making his defence orders him to be brought before it again in the manner provided by sections 118 and 119 of this Ordinance.

Procedure when accused certified as capable of making his defence

118. If any person confined in a mental hospital or other place of custody under the provisions of section 117 of this Ordinance is found by the medical officer in charge of such mental hospital or place to be capable of making his defence, such medical officer shall forthwith forward a certificate to that effect to the Crown Prosecutor, who shall thereupon inform the court which recorded the finding against such person whether it is the intention of the Crown that the proceedings against such person shall continue or otherwise. In the former case such court shall thereupon order the removal of such person from such place where he is detained and shall cause him to be brought in custody before it in the manner described in section 119 of this Ordinance; otherwise, the court shall forthwith issue an order for the immediate release from custody of such person.

Resumption of trial or investigation

119. (1) Whenever committal proceedings or a trial is postponed under the provisions of section 117 of this Ordinance, the court may at any time, subject to the provisions of section 118 of this Ordinance, resume those proceedings or trial and require the accused person to appear before such court, and if upon such appearance the court considers him capable of making his defence, the investigation or trial shall proceed, or begin *de novo*, as to the court may appear expedient.

(2) Any certificate given to the Crown Prosecutor under the provisions of section 118 of this Ordinance may be given in evidence in any proceedings under this section without further proof unless it is proved that the medical officer purporting to sign it did not in fact sign it.

(3) If upon the appearance of an accused person before it, the court considers him still to be incapable of making his defence, it shall proceed as if he were brought before it for the first time.

Defence of insanity at Committal Proceedings

120. When an accused person appears to be of sound mind at the time of committal proceedings, the court, notwithstanding that it is alleged that at the time when the act in respect of which the accused person is charged was committed, he was by reason of unsoundness of mind incapable of knowing the nature of the act or that it was wrong or contrary to law, shall proceed with the case, and, if the accused person ought to be committed for trial by the Supreme Court, the court shall so commit him.

Defence of insanity on trial

121. (1) Where any act or omission is charged against any person as an offence, and it is given in evidence on the trial of such person for that offence that he was insane so as not to be responsible for his action at the time when the act was done or omission made, then if it appears to the Magistrates' Court or, in the case of a trial before the Supreme Court, to the jury before which such person is tried that he did the act or made the omission charged but was insane as aforesaid at the time when he did or made the same, the court or jury, as the case may

be, shall make a special finding or return a special verdict to the effect that the accused person is not guilty by reason of insanity.

(2) When any such special finding or verdict is made or returned the court shall report the case for the orders of the Governor, and shall order the accused person to be kept in custody in such place and in such manner as the court shall direct.

(3) The Governor may upon receiving a report made under the provisions of subsection (2) of this section order such person to be confined in a mental hospital, prison or other suitable place of safe custody either in St. Helena or elsewhere.

(4) The superintendent of a mental hospital, prison or other place in which any person is detained by an order of the Governor made under the provisions of subsection (3) of this section shall make a report to the Governor on the condition, history and circumstances of every such person at the expiration of a period of three years from the date of such order and thereafter at the expiration of periods of two years from the date of the last report, and on the consideration of any such report the Governor may order that the person detained be discharged or otherwise dealt with.

(5) Notwithstanding the provisions of subsection (4), the officer in charge of the prison or the senior medical officer[34] may, at any time after a person has been detained in any place by an order of the Governor made under the provisions of this section, make a special report to the Governor on the condition, circumstances and history of any such person, and the Governor, on a consideration of any such report, may order that the person detained be discharged or otherwise dealt with.

(6) The Governor may at any time order that a person detained under the provisions of this section be transferred from a mental hospital to a prison, or from a prison to a mental hospital, or from any place in which he is detained to either a prison or a mental hospital.

Procedure when accused does not understand proceedings

122. (1) If the Magistrates' Court at any time in a trial or committal proceedings, decides that an accused person, though not insane, cannot be made to understand the proceedings, it shall appoint the Public Solicitor, a lay advocate or other qualified person to represent the accused, and the Court shall proceed to hear all the evidence available both for the prosecution and the defence, and—

(a) if the Court decides that the accused did not do the act or make the admission charged, it shall discharge the accused;

(b) if the Court decides that the accused did the act or made the omission charged, the Court shall not convict the accused nor commit him for trial, but shall make a special finding to that effect.

(2) If a Magistrates' Court makes a special finding under subsection (1), then, taking into consideration the need to protect the public and any other relevant factors, the Court may make any of the following orders—

(a) that the accused be discharged, (either conditionally or under such conditions as the Court considers appropriate);

(b) that the accused be detained in safe custody or released (either conditionally or under such conditions as the Court considers appropriate), pending the receipt by the Court of expert evidence concerning the accused's mental and medical health; whereafter the Court may make any other order under this subsection;

[34] *Gazette Notice No. 63 of 1 July 2011: Senior Medical Officer/Clinical Director*

(c) that the accused be detained in safe custody pending an order made by the Governor under the provisions of subsection (5), in such place and manner as it thinks fit;

(d) that the accused be released, (either unconditionally or under such conditions as the Court considers appropriate), pending an order made by the Governor under the provisions of subsection (5).

(3) The conditions referred to in subsection (2)*(a), (b)* and *(d)* and in subsection (5) are such conditions as to the Court seem appropriate, including that—

(a) the accused shall keep the peace and be of good behaviour;

(b) the accused shall avoid certain named locations or persons;

(c) the accused shall live with a certain person or group of persons or at a certain location;

(d) the accused must be cared for by a certain person or group of persons.

(4) Where an order has been made under the provisions of subsection (2)(c) or (d), the Court shall transmit the court record or a certified copy thereof, to the Governor.

(5) Upon consideration of the record transmitted to him under the provisions of subsection (4), the Governor may by order under his hand direct that the accused shall be detained at Her Majesty's Pleasure or for such period or place of custody as may be specified in the order, or that such person be released, unconditionally or upon such conditions as he specifies.

(6) Any order made under the provisions of subsection (5), other than an order directing the unconditional release of a person, may at any time be varied or discharged by the Governor and—

(a) the order so made shall be sufficient authority for the removal of the person to whom it relates to the place of detention specified in the order so made or varied and for his detention therein;

(b) any person removed or detained under the authority of any such order shall be deemed to be in lawful custody:

Provided that no such order shall be so varied as to increase the period for which the person to whom it relates may be detained thereunder.

(7) If the accused breaches any of the conditions made by the Magistrates' Court or the Governor under this section, then the accused may be —

(a) brought before the Court and the Court may make another Order under subsection (2); or

(b) detained in custody until the Governor has made another Order under subsection (5).

(8) If any person confined in a mental hospital or other place of custody under the provisions of this section is found by the medical officer in charge of such mental hospital or place to be capable of understanding proceedings which might be brought against him, such medical officer shall forthwith forward a certificate to that effect to the Attorney General, who shall thereupon inform the court which recorded the finding against such person whether it is the intention of the Crown that the proceedings against such person shall continue or otherwise. In the former case such court shall thereupon order the removal of such person from such place where he is detained and shall cause him to be brought in custody before it to be retried or dealt with under subsection (9); otherwise, the court shall forthwith issue an order for the immediate release from custody of such person.

(9) If upon the appearance of an accused person before it the court considers him still to be incapable of understanding the proceedings, it shall make an Order under subsection (2).

(10) The person in charge of a mental hospital or other place in which any person is detained by an order made under the provisions of this section shall make a report to the

Governor on the condition, history and circumstances of every such person every six months, and on the consideration of any such report the Governor may order that the person detained be discharged or otherwise dealt with.

(11) Notwithstanding the provisions of subsection (10), the officer in charge of any place or a Medical Officer may, at any time after a person has been detained in any such place by an order made under this section, make a special report to the Governor on the condition, circumstances and history of any such person, and the Governor, on consideration of any such report, may order that the person detained be discharged or otherwise dealt with.

(12)[35] The provisions of this section shall apply mutatis mutandis to proceedings before the Supreme Court.

Costs and Compensation

Award of costs

123.[36] **(1)** A court may order the payment of costs in any of the following circumstances—

(a) to the prosecutor, whether public or private, by a person convicted of any offence by such court;

(b) to any person acquitted of any offence by such court, by the prosecutor, whether public or private, if the court considers that the prosecutor had no reasonable grounds for prosecuting such person;

(c) to the respondent, by an appellant whose appeal fails;

(d) to an appellant, by a respondent, on the success of an appeal;

(e) to any person in any matter of an interlocutory nature, including a request for an adjournment, if such person has been put to any expense when in the opinion of the court the applicant had no reasonable or proper grounds for making the application;

(f) to the trustees of the Legal Assistance Fund, by any person who might otherwise (in accordance with the provisions of this section) be ordered to pay costs to a party who was assisted or represented by a Lay Advocate under the provisions of the Lay Advocates Ordinance[37].

(2)[38] The costs awarded under the provisions of subsection (1) shall be such sum (not exceeding, in the case of the Magistrates' Court, the sum of £500) as appears to the court to be just and reasonable in the circumstances of the case.

(3) Costs awarded under this section may be awarded in addition to any compensation awarded under the provisions of section 124 of this Ordinance.

(4) An appeal shall lie to the Supreme Court against any award of costs of over £50 by the Magistrates' Court, but only if the leave of the Magistrates' Court or the Chief Justice is given to the bringing of such appeal, and —

(a) no appeal shall lie against an order of the Supreme Court either awarding or refusing to award costs;

(b) no appeal shall lie to the Supreme Court against an order of the Magistrates' Court refusing to award costs:

Provided that any court hearing an appeal relating to any other matter than costs may vary any order relating to costs made by the court from whose decision the appeal is made.

[35] *Section 122(12) inserted by Ord. 9 of 2001*
[36] *Section 123 amended by Ords. 22 of 1987 and 1 of 2001*
[37] *Cap. 13*
[38] *Section 123(2) amended by Ord. 1 of 2001 and 8 of 2007*

Compensation in case of frivolous or vexatious charge

124. If on the dismissal of any charge any court is of the opinion that the charge was frivolous or vexatious, such court may order the prosecutor to pay to the accused person a reasonable sum as compensation for the trouble and expense to which such person may have been put by reason of such charge, in addition to his costs.

Power to order convicted person to pay compensation

125. (1)[39] When any accused person is convicted by a court of any offence and it appears from the evidence that some other person, whether or not he is the prosecutor or a witness in the case, has suffered material loss or personal injury in consequence of the offence committed and that substantial compensation is in the opinion of the court, recoverable by that person by civil action, such court may, in its discretion and in addition to any other lawful punishment, order the convicted person to pay to that other person such compensation as the court deems fair and reasonable:

Provided that in no case shall the amount of compensation awarded exceed £2,000.

(2) When any person is convicted of any offence relating to property, the power conferred by subsection (1) of this section shall be deemed to include a power to award compensation to any bona fide purchaser of any property in relation to which the offence was committed, for the loss of such property if the same is restored to the possession of the person entitled thereto.

(3) Any order for compensation under this section shall be subject to appeal and no payment of compensation shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

(4) At the time of awarding any compensation in any subsequent civil action relating to the same matter, the court hearing the civil action shall take into account any sum paid or recovered as compensation under this section.

Recovery of costs and compensation and imprisonment in default

126. (1) Sums allowed for costs or compensation under the provisions of section 123, 124 or 125 of this Ordinance shall in all cases be specified in the conviction sentence or order.

(2) If the person who has been ordered to pay such costs or compensation fails so to pay, a warrant of distress may be issued in accordance with section 227 of this Ordinance, and, in default of distress, the court may issue such process as may be necessary for his appearance and may sentence him to imprisonment in accordance with the provisions of section 228 or 231 of this Ordinance, and thereupon all the provisions of section 232 of this Ordinance relating to sentences of imprisonment in default of distress shall become applicable.

Restitution of Property

Property found on accused person

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

[39] *Section 125(1) amended by Ord. 3 of 1982*

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

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

Property stolen, etc

128. (1) If any person charged with any offence of stealing, taking, obtaining, extorting, embezzling, converting, or disposing of any property, or of knowingly receiving any property which has been unlawfully obtained, is prosecuted to conviction or admits any such offence under the provisions of either subsection (2) of section 159 or of section 220 of this Ordinance, the property shall be restored to the owner or his representative.

(2) In every case referred to in subsection (1) of this section, the court before which such offender is convicted shall have power to make orders for restitution of the said property or to order the restitution thereof in a summary manner:

Provided that—

(a) where goods as defined in the Sale of Goods Act, 1893 have been obtained by deception or other wrongful means not amounting to theft, (as defined in the Theft Act, 1968) the property in such goods shall not revest in the person who was the owner of the goods, or his personal representative, by reason only of the conviction of the offender; and

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

(3) On the restitution of any stolen property, if it appears to the court by the evidence that—

(a) the offender has sold the stolen property to any person;

(b) such person has had no knowledge that the same was stolen; and

(c) any moneys have been taken from the offender on his apprehension,

the court may, on the application of such purchaser, order that out of such money a sum not exceeding the amount of the proceeds of such sale be delivered to the said purchaser.

(4) The operation of any order under this section shall, unless the court by which the conviction is imposed directs to the contrary in any case in which the title to the property is not in dispute, be suspended—

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

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

and in cases where the operation of any such order is suspended until the determination of the appeal, the order shall not take effect as to the property in question if the conviction is quashed on appeal. The Chief Justice or Trial Judge may give directions for securing the safe custody of any property, pending the suspension of the operation of any such order.

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

Convictions for Offences other than those Charged

Person charged may be convicted of a minor offence

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

Conviction for attempt or being an accessory after the fact

130. When a person is charged with an offence, he may be convicted of—

(a) having attempted to commit that offence; or

(b) being an accessory after the fact to the commission of such offence,

although he was not so charged.

Convictions in respect of charges relating to death of child

131. (1) When a woman is charged with the murder of her child, being a child under the age of twelve months, and the court is of opinion that she by any wilful act or omission caused its death, but at the time of the act or omission she had not fully recovered from the effect of giving birth to such child and that, by reason thereof or by reason of the effect of lactation consequent upon the birth of the child, the balance of her mind was then disturbed, she may be convicted of the offence of manslaughter, although she was not so charged.

(2) When a person is charged with the murder or manslaughter of any child, or with an offence relating to the procuring of abortion, and the court is of opinion that he is not guilty of murder or manslaughter or of an offence relating to the procuring of abortion, but that he is guilty of the offence of killing an unborn child, he may be convicted of that offence although he was not so charged.

(3) When a person is charged with the offence of child destruction and the court is of opinion that he is not guilty of that offence but that he is guilty of an offence relating to the procuring of abortion, he may be convicted of that offence although he was not so charged.

Persons charged with manslaughter may be convicted of reckless driving, etc

132. When a person is charged with manslaughter in connection with the driving of a motor vehicle by him and the court is of opinion that he is not guilty of that offence but is guilty of an offence under the provisions of section 30 of the Road Traffic Ordinance[40] (which relates to causing death by reckless or dangerous driving) or of section 31 of that Ordinance (which relates to reckless driving), he may be convicted of either such offence although he was not so charged, whether or not the requirements of section 37 of that Ordinance (which relates to notice of prosecutions) have been satisfied with regard to that offence.

Person charged with rape may be convicted of indecent assault, etc

133.[41] When a person is charged with rape and the court is of opinion that he is not guilty of that offence but that he is guilty of the offence of indecent assault, unlawful sexual intercourse with a girl under the age of sixteen years or incest, he may be convicted of one of those offences although he was not so charged.

[40] *Cap. 101*

[41] *Section 133 amended by Ord. 2 of 1989*

Person charged with incest may be convicted of alternative offence

134. A person charged with incest, although acquitted of that offence may be found guilty of any alternative offence as provided in the Sexual Offences Act 1956[42], though not so charged.

Person charged with unlawful sexual intercourse of a girl under 16 years be convicted of indecent assault

135.[43] When a person is charged with the unlawful sexual intercourse with a girl under the age of sixteen years and the court is of opinion that he is not guilty of that offence but that he is guilty of the offence of indecent assault, he may be convicted of that offence although he was not so charged.

Alternative convictions on charge of theft

136. When a person is charged with the theft of anything and—

(a) it is proved that he handled stolen goods knowing or believing them to be stolen goods he may be convicted of the latter offence, even though he was not so charged;

(b) it is proved that he obtained the thing in any such manner as would amount to obtaining it by deception he may be convicted of the offence of obtaining it by deception although he was not so charged.

Alternative conviction on charge of obtaining by deception

137. When a person is charged with obtaining by deception anything capable of being stolen, and it is proved that he stole the thing, he may be convicted of the offence of theft although he was not so charged.

Construction of sections

138. The provisions of sections 129 to 137 of this Ordinance, both inclusive, shall be construed as being in addition to and not in derogation of the provisions of any other written law and the other provisions of this Ordinance, and the provisions of sections 130 to 137 of this Ordinance, both inclusive, shall be construed as being without prejudice to the generality of the provisions of section 129 of this Ordinance.

[42] *Replaced by the Sexual Offences Act 2003 which has been applied to St.Helena by the Sexual Offences Act 2003 (Application) Order 2004.*

[43] *Section 135 amended by Ord. 2 of 1989*

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

General

Evidence to be taken in presence of accused

139. (1) Except as otherwise expressly provided all evidence taken in any inquiry or trial under this Ordinance shall be taken in the presence of the accused person.

(2) If the conduct of the accused person is such that, even after warning, he continues to impede the course of the inquiry or trial, it shall be permissible to proceed with the inquiry or trial without the presence of the accused person but the circumstances should be noted upon the record.

The Magistrates' Court

Record of evidence in Magistrates' Court

140.[44]**(1)** The presiding magistrate shall ensure that a record is kept of all of the evidence heard or received during the course of any trial or inquiry in the Magistrates' Court.

(2) Every statement tendered in evidence under section 112A shall be retained by the court and shall form part of the record, and the retention of such statement shall be a sufficient compliance with the requirements of subsection (1).

(3) Every exhibit produced in evidence shall (unless it is of such a nature that it cannot be retained in the court, in which event the court shall give such directions as appear necessary or expedient for the preservation of the exhibit or a sufficient record thereof) be retained by the court and shall form part of the record; and such retention shall be a sufficient compliance with the provisions of subsection (1).

(4) The record of any oral evidence shall be either—

(a) a written record of the evidence, made by or under the personal superintendence of the presiding magistrate, which shall normally be recorded in the form of a narrative; or

(b) a sound recording of the evidence:

Provided that, where the record is made by way of a sound[45] recording, the following provisions shall apply—

(i) the recording shall be of the whole of the evidence given by each witness, including the taking of the oath and the evidence of the witness's identity;

(ii) the recording shall be retained as part of the record for a period of at least six months or until any appeal against the decision of the court has been finally determined, whichever is longer.

(5) Nothing in this section shall affect—

(a) the procedure for recording the depositions of witnesses in committal proceedings; or

(b) the practice whereby each member of the court makes his own notes of the principal parts of the evidence.

[44] *Section 140 amended by Ord. 22 of 1987*

[45] See also the Sound Recording Rules, Cap. 9

Interpretation of evidence to accused or his advocate

141. (1) Whenever any evidence in an inquiry or trial is given in a language not understood by the accused person, it shall be interpreted to him in open court in a language understood by him.

(2) If the accused person appears by advocate and the evidence is given in a language other than English, and is not understood by the advocate, it shall be interpreted to such advocate in English.

Interpretation of documents

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

Supreme Court

Record of evidence in Supreme Court

143. The Chief Justice may, from time to time, give directions as to the manner in which evidence shall be taken down in cases coming before the Supreme Court, and the evidence or the substance thereof shall be taken down in accordance with such directions.

PART VI
PROCEDURE IN TRIALS BEFORE THE MAGISTRATES' COURT

Provisions Relating to the Hearing and Determination of Cases

Nonappearance of prosecutor at hearing

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

(2) The dismissal of a charge under this section shall not operate as a bar to subsequent proceedings against the accused person on account of the same facts.

Appearance of both parties

145. If at any time appointed for the hearing of the case both the prosecutor and the accused person appear before the court, the court shall proceed to hear and determine the case.

Adjournment

146.[46] **(1)** Before or during the hearing of any case, it shall be lawful for the court in its discretion to adjourn the hearing to a time and place then to be appointed and stated in the presence and hearing of the party or parties or their respective advocates (if any) then present, and in the meantime the court may suffer the accused person to go at large, or may by warrant remand him to some prison, remand home, or other suitable place or may release him upon his entering into a bond with or without sureties, at the discretion of the court, conditioned for his appearance at the time and place to which such hearing or further hearing shall be adjourned:

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

(2) Where it appears that the court will not be able to deal with any case on the day on which a person has been summoned to appear in connection therewith, or on the date on which a person granted bail is required to surrender to custody, it shall be lawful for the Clerk of the Peace to cause written notice to be served upon such person to the effect that his attendance is not required on such date that he should attend on such later date as may be specified in the notice.

(3) Where a notice has been served on a person under subsection (2), the effect shall be as if—

(a) the original summons served upon such person had required his attendance on the later date specified in the notice; or

(b) the person had been granted bail with a duty to surrender to custody on such later date, as the case may be.

Nonappearance of parties after adjournment

147. (1) If at any time and place to which a hearing or further hearing has been adjourned—

(a) the accused person appears and the prosecutor fails to appear, the court may dismiss the charge and may make such order as to costs as it thinks fit;

(b) the prosecutor appears and the accused person fails to appear, it shall be lawful for the court to proceed with the hearing or the further hearing, as the case may be, as if the accused person were present;

(c) both the prosecutor and the accused person fail to appear, the court may dismiss the charge and make such order as to costs as it thinks fit, or further adjourn the case to a time and place to be appointed.

(2) If the court convicts the accused person in his absence, it may, upon being satisfied that his absence was occasioned by causes over which he had no control, and that he had a probable defence on the merits, set aside such conviction, and in that event the hearing shall be resumed and further proceedings taken thereon in all respects as if the court had not exercised the powers conferred upon it by the provisions of subsection (1)*(b)* of this section.

(3) Any sentence of imprisonment imposed under the provisions of subsection (1)*(b)* of this section shall be deemed to commence from the date of arrest of the accused person, and the person effecting such arrest shall endorse the date thereof on the back of the warrant of commitment.

[46] *Section 146 amended by Ord. 22 of 1987*

(4) If the court, in its discretion, refrains from convicting the accused in his absence, the court may issue a warrant for the arrest of the accused person and cause him to be brought before the court.

Accused to be called upon to plead

148. (1) At the commencement of a trial, the substance of the charge shall be stated to the accused person by the court, and he shall be asked whether he admits or denies the truth of the charge.

(2)[47] If the accused person admits the truth of the charge, the court shall convict him and pass sentence upon or make an order against him, unless there appears to it sufficient cause to the contrary.

(3) If the accused person does not admit the truth of the charge, the court shall record a plea of not guilty and shall proceed to hear the case as in this Ordinance provided.

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

(5) If the accused person pleads—

(a) that he has been previously convicted or acquitted, as the case may be, of the same offence; or

(b) that he has obtained a pardon for his offence, the court shall try whether such plea is true in fact or not, and if the court finds that the facts alleged by the accused person do not establish the plea, or if it finds that it is false in fact, the accused person shall be required to plead to the charge.

Nonappearance of accused in petty cases

149. (1) Where an accused person is charged with an offence to which this section applies and—

(a) such person fails to appear before the court at the time and place appointed in the summons directed to him; and

(b) the court is satisfied by evidence on oath that such summons was duly served upon him,

the court may, in the absence of the accused person and on the application of the prosecutor, hear the evidence for the prosecution and, if it is satisfied after hearing such evidence that the accused person committed such offence, may convict and sentence him in his absence:

Provided that the court in any such case shall not sentence the accused person to a term of imprisonment either directly or in default of the payment of a fine or to a fine exceeding £5.

(2) If the court convicts an accused person in his absence under the provisions of subsection (1), it may, upon being satisfied that his absence was occasioned by causes over which he had no control, and that he had a probable defence on the merits, set aside such conviction and in that event the court shall hear and determine the charge in all respects as if it had not exercised the powers conferred upon it by the provisions of subsection (1).

(3) The offences to which this section applies are—

(a) an offence under the Road Traffic Ordinance except as provided in the next following section; and

(b) any other offence which the Governor in Council may by order published in the *Gazette* declare to be an offence which may be tried under this section.

[47] *Section 148(2) amended by Ord. 22 of 1987*

Plea of guilty in writing

150.[48] A person accused of an offence under the Road Traffic Ordinance may plead guilty in writing and the court may, on proof of such written plea and on the application of the prosecutor, convict and sentence the accused person in his absence:

Provided that a person shall not be sentenced to imprisonment (immediate or suspended) or to any punishment for which his consent is required, or be disqualified for holding or obtaining a driving licence, unless he is present in court at the time of sentence; and the court may issue a summons or a warrant of arrest to secure his attendance for this purpose.

Procedure on plea of not guilty

151. (1) If an accused person, after being called upon to plead, does not admit the truth of the charge, the court shall proceed to hear the witnesses for the prosecution.

(2) The accused person or his advocate, if any, may cross examine each witness for the prosecution.

(3) If the accused person does not employ an advocate, the court shall, at the close of the examination of each witness for the prosecution, ask the accused person whether he wishes to cross examine that witness and shall record his answer.

(4) If the accused person cross examines any witness for the prosecution, the prosecutor may re-examine such witness on any matter arising out of such cross examination.

Discharge of accused person when no case to answer

152. If at the close of the evidence for the prosecution in support of the charge it appears to the court that a case is not made out against the accused person sufficiently to require him to make a defence, the court shall dismiss the case and shall forthwith acquit him.

Reply to claim of no case to answer

152A.[49] Whenever an accused person or his advocate makes a submission, at the close of the prosecution case to the effect that section 152 is applicable to the case, or if the court proposes, of its own motion, to proceed as provided in that section, the prosecutor shall be allowed to address the court:

Provided that, if the prosecutor addresses the court, the accused person or his advocate shall have the right to reply.

Defence

153. (1)[50] If, at the close of the evidence for the prosecution in support of the charge, it appears to the court that a case is made out against the accused person sufficiently to require him to make a defence, the court shall—

(a) explain the substance of the charge to the accused person; and

(b) inform him that he has the right—

[48] *Section 150 amended by Ord. 22 of 1987*
[49] *Section 152A inserted by Ord. 22 of 1987*
[50] *Section 153(1) amended by Ord. 1 of 1985*

(i) to give evidence on oath, and that if he does so he will be liable to cross examination; or

(ii) to remain silent; and

(c) ask him whether he has any witnesses to examine or other evidence to adduce in his defence; and

(d) proceed to hear the accused person and his witnesses and other evidence, if any.

(2) In any case where there is more than one accused person, the court may—

(a) hear each accused person and his witnesses, if any, in turn; or

(b) if it appears more convenient, hear all the accused persons and then hear all their witnesses.

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

(4) The provisions of section 151 of this Ordinance as to cross examination and re-examination of witnesses shall apply, with all necessary modifications, to witnesses for the defence as they apply to witnesses for the prosecution.

Evidence in reply

154. If the accused person adduces evidence in his defence introducing new matter which the prosecutor could not by the exercise of reasonable diligence have foreseen, the court may allow the prosecutor to adduce evidence in reply to contradict the said matter.

Opening and close of case for prosecution and defence

155.[51] **(1)** The prosecutor and the accused person shall be entitled to address the court at the commencement of their respective cases for the purpose of—

(a) explaining the nature of the evidence or the order in which witnesses are to be called; or

(b) dealing with any point or points of law which appear to be relevant.

(2) After the close of the case for the accused person, the prosecutor shall be entitled to address the court, and the accused person shall then be entitled to address the court:

Provided that, if any issue of law is raised by the accused person, the prosecutor may reply to such issue, but the accused person shall then have the right to address the court in answer to such reply.

(3) Where a right of address or reply is conferred by the provisions of this section upon a prosecutor or any accused person, such right may be exercised by an advocate representing such prosecutor or accused person.

Amendments of charges

156. (1) Where, at any stage of a trial, it appears to court that—

(a) the evidence discloses an offence other than the offence with which the accused person is charged; or

(b) the charge is defective in a material particular; or

[51] *Section 155 amended by Ord. 22 of 1987*

(c) the accused person desires to plead guilty to an offence other than the offence with which he is charged,

the court, if it is satisfied that no injustice will be caused thereby, may make such order for the alteration of the charge by way of its amendment or by the substitution or addition of a new charge as it thinks necessary to meet the circumstances of the case:

Provided that where a charge is altered under the provisions of this subsection—

(a) the court shall thereupon call upon the accused person to plead to the altered charge;

(b) the accused person may demand that the witnesses for the prosecution or any of them be recalled and be further cross examined by the accused person or his advocate, whereupon the prosecution shall have the right to re-examine any such witnesses on matters arising out of such further cross examination; and

(c) the accused person shall have the right to give or to call such further evidence on his behalf as he may wish.

(2) Where an alteration of a charge is made under the provisions of subsection (1), the court shall, if it is of the opinion that the accused person may be thereby prejudiced, adjourn the trial for such period as may be reasonably necessary.

(3) The court shall inform the accused person of his right to demand the recall of witnesses under the proviso to subsection (1), and that he may apply to the court for an adjournment under the provisions of subsection (2).

(4) In any case where a charge is altered under the provisions of subsection (1) the court may make such order as to the payment by the prosecution of any costs incurred on account of the alteration of the charge as it may think fit.

Judgment

157. (1) The court, having heard both the prosecutor and the accused person and their witnesses and evidence shall then, or at some subsequent time to be notified to the prosecutor and the accused person, deliver judgment.

(2) The judgment in every trial in the Magistrates' Court shall be pronounced, or the substance of such judgment shall be explained, in open court either immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties and their advocates, if any:

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

(3) The accused person shall, if in custody, be brought up, or, if not in custody, be required to attend to hear judgment delivered.

(4) No judgment delivered by the court shall be deemed to be invalid by reason only—

(a) of the absence of any party or his advocate on the day notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties or their advocates, or any of them, the notice of such day; or

(b) of the absence at the time of the delivery of such judgment of one or more of the magistrates constituting the court at the trial.

(5) Nothing in this section shall be so construed as to limit in any way the provisions of section 266 of this Ordinance.

Contents of judgment

158. (1) Every judgment delivered under the provisions of section 157 of this Ordinance shall, except as otherwise expressly provided by this Ordinance, be written by, or reduced to writing under the direction and superintendence of the presiding magistrate, and shall contain the point or points for determination, the decision thereon and the reason for the decision and shall be dated and signed by such presiding magistrate as on the date on which it is pronounced in open court.

(2) In the case of a conviction, the judgment shall specify the offence of which, and the section of the written law, if any, under which, the accused person is convicted.

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

(4) On the application of the accused person and upon payment therefor a copy of the judgment shall be given to him without delay.

Convictions, etc

159. (1) The court, having delivered its judgment, shall in the case of the conviction of the accused person pass sentence upon or make an order against him according to law.

(2) The court, before passing sentence, may make such inquiries as it thinks fit in order to determine the sentence proper to be passed, may inquire into the character and antecedents of the accused person and may take into consideration, either at the request of the prosecution or the accused person, in assessing the proper sentence to be passed such character and antecedents, including any other offences admitted by him, whether or not he has been convicted of such offences:

Provided that—

(a) the accused person shall be given an opportunity to confirm, deny or explain any statement made about him and in any case of doubt the court shall in the absence of legal proof thereof ignore such statement;

(b) no offence of which the accused person has not been convicted shall be taken into consideration in assessing the proper sentence unless in respect of each such offence the details of the same, including the time, place and nature thereof shall have been recorded and the accused person specifically requests in respect of each such offence that it shall be so taken into consideration and a note of such request is recorded in the proceedings; and

(c) if for any reason the sentence passed by the court is set aside the accused person shall not be entitled to plead *autrefois convict* in respect of any offence taken into consideration in assessing the sentence that was set aside.

Drawing up conviction or order

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

Order of acquittal bar to further proceedings

161. The production of a copy of an order of acquittal, certified by the clerk or other officer of the court, shall without other proof be a bar to any subsequent proceedings against the same accused person for the same offence.

Miscellaneous Provisions relating to Trials before the Magistrates' Court

Limitation of time in certain cases

162. No offence in respect of which the punishment prescribed by law does not exceed imprisonment for a term of six months or a fine of £50, or both such imprisonment and fine, shall be triable by the Magistrates' Court unless the charge or complaint relating to such offence is laid within twelve months from the time when the matter of such charge or complaint arose:

Provided that where by any written law a different period of limitation is prescribed in respect of any such offence from that prescribed by this section, this section shall have effect as if for the period of twelve months therein specified there were substituted that different period.

Procedure in case of offence proving unsuitable for summary trial

163. If in the course of a trial before the Magistrates' Court it appears to the court at any stage of the proceedings that the case is one which ought to be tried by the Supreme Court, the proceedings shall be stayed and the accused person shall be committed for trial upon indictment before the Supreme Court in accordance with the procedure hereinafter directed in relation to committal proceedings as to offences triable by the Supreme Court.

PART VII
PROVISIONS RELATING TO THE COMMITTAL OF ACCUSED PERSONS FOR TRIAL BEFORE THE SUPREME COURT

Committal Proceedings in the Magistrates' Court

Power to commit for trial

164.[52] The Magistrates' Court may commit any accused person for trial by the Supreme Court in accordance with the provisions of this Part.

Offences triable summarily or on indictment

164A.[53] Unless otherwise specified in the provision creating it—

(a) an offence for which a person is liable to be sentenced to a term of imprisonment of 14 years or more is triable only on indictment;

(b) an offence for which a person is liable to be sentenced to a term of imprisonment of less than 14 years is triable either summarily or on indictment as provided by

[52] *Section 164 substituted by Ord. 8 of 2007*
[53] *Section 164A inserted by Ord. 14 of 2017*

section 165.

Mode of trial of 'either way' offences

165.[54] **(1)** Subject to subsection (2), where an offence is triable either summarily or on indictment, the offence shall be tried summarily unless the Attorney General directs, in writing, that it be tried on indictment;

Provided that, in a case to which subsection (2) applies, the Magistrates' Court shall not call upon the accused to enter a plea unless it first advises him of his right under that subsection and affords him an adequate opportunity (by adjournment if necessary) to exercise that right:

(2) Where, in the case of an offence for which a person is liable to be sentenced (on conviction on indictment) to a term of imprisonment exceeding five years, or to an unlimited fine, the Attorney General does not give such a direction as is mentioned in subsection (1), the accused may make an application to the Chief Justice that the case be removed into and tried in the Supreme Court; and the Chief Justice may make such Order in respect thereof as he considers appropriate.

(3) In any case in which the Attorney General makes such a direction as is mentioned in subsection (1), the Magistrates' Court shall forthwith commit the accused (either in custody or on bail) to the Supreme Court for trial and shall transmit the record of its proceedings to the Chief Justice.

Procedure in relation to offences triable only upon indictment

166.[55] **(1)** Where a person is charged before the Magistrates' Court with an offence which is triable only upon indictment, the Attorney General shall, as soon as is practicable after the investigation of the case is complete, and in any event within two months (or such longer time as the Court may allow in exceptional circumstances), certify in writing to the Magistrates' Court either—

(a) that he is satisfied that there is a case to answer and that it is the intention of the Crown that the matter proceed to trial; or

(b) that the Crown does not intend to proceed to trial.

(2) In a case in which the Attorney General certifies as specified in subsection (1)*(a)*, the Magistrates' Court shall forthwith commit the accused (either in custody or on bail) to the Supreme Court for trial and shall transmit the record of its proceedings to the Chief Justice.

(3) In a case in which the Attorney General certifies as specified in subsection (1)*(b)*—

(a) the proceedings in the Magistrate's court shall forthwith cease, without any further order of the court;

(b) if the accused is remanded in custody, the Attorney General shall cause a copy of his certificate to be delivered forthwith to the Superintendent of Gaols and such certificate shall be sufficient authority for the prisoner to be forthwith released from custody;

(c) if the accused is on bail, the Attorney General shall cause a copy of his certificate to be served upon the accused and the accused shall thereupon cease to be bound by any conditions upon his bail and released from his obligation to surrender to custody.

Election for trial by jury or by judge alone

[54] *Section 165 substituted by Ord. 8 of 2007 and amended by Ord. 14 of 2017*
[55] *Section 166 substituted by Ord. 8 of 2007*

167.[56] **(1)** When a defendant is committed for trial, one of the Justices or the Clerk of the Court must explain to the defendant that he or she has the right to elect whether to be tried by jury or by the trial judge sitting alone and must call on the defendant to make an election.

(2) An indication of election may be given by the defendant's legal representative.

(3) An election under subsection (1), once made, may not be changed except for good reason and with the leave of the trial judge, but may be set aside as provided by subsections (5) and (6).

(4) Subject to subsections (5) and (6)—

(a) if the defendant refuses to elect or remains silent, the trial must be with a jury;

(b) if there is more than one defendant to an indictment, and one of them elects trial by jury, the trial must be with a jury.

(5) The prosecution may apply to the judge for the trial to be conducted without a jury on the grounds that the nature of the case or the character of the defendant(s) render it improbable that an impartial jury could be selected.

(6) Upon such an application, and after hearing representations from each of the defendants, the judge may in his discretion order the trial to be by a judge sitting alone.

Remand

168.[57] If for any reasonable cause the court considers it necessary to adjourn committal proceedings, it may do so and remand the accused either on bail or (subject to section 93B) in custody.

Preservation of Testimony in Certain Cases

Taking the depositions of witnesses

169.[58] **(1)** Whenever it appears to any magistrate that—

(a) any person who is dangerously ill or hurt and not likely to recover is able and willing to give material evidence relating to any offence triable by the Supreme Court, or

(b) any person who is able to give material evidence relating to any offence triable by the Supreme Court is unwilling to do so in the form of a written statement in accordance with section 112A,

and (in either case) it is in the interests of justice to obtain and preserve the evidence of such person, such magistrate may take in writing the statement on oath or affirmation of such person, and shall subscribe the same, and certify that it contains accurately the whole of the statement made by such person, and shall add a statement of his reason for taking the same, and of the date and place when and where the same was taken, and shall preserve such statement and file it for record.

(2) If the statement relates to an offence for which proceedings have been instituted against any person, reasonable notice of the intention to take the same shall, if practicable, be given to the prosecutor and the accused person, and if the accused person is in custody he shall be brought by the person in whose charge he is, under an order in writing of the magistrate, to the place where the statement is to be taken and he shall be given full opportunity to cross examine the person making the statement.

[56] *Section 167 substituted by Ord. 8 of 2007 and amended by Ord. 10 of 2016*
[57] *Section 168 substituted by Ord. 8 of 2007*
[58] *Section 169 substituted by Ord. 8 of 2007*

(3) If the statement relates to an offence for which any person is then or subsequently committed for trial, it shall be transmitted to the Registrar, and a copy thereof shall be transmitted to the Crown Prosecutor.

(4) For the purposes of taking a deposition in the circumstances described in subsection (1)*(b)*, the magistrate may secure the attendance of the witness before him by issuing a summons or a warrant of arrest.

Use of statement in evidence

170.[59] A statement taken under the provisions of section 169 may afterwards be used in evidence on the trial of any person accused of an offence to which the same relates if—

(a) the person who made the statement is dead; or

(b) if the court is satisfied that for any sufficient cause his attendance cannot be procured,

and if reasonable notice of the intention to take such statement was, if practicable, given to the person (whether the prosecutor or the accused person) against whom it is proposed to be read in evidence, and he had or might have had, if he had been present, full opportunity of cross examining the person making the same.

Proceedings after Committal for Trial

Filing of indictment and evidence

171.[60]**(1)** Within 21 days (or such longer time as the Chief Justice may allow) of the order committing an accused person to the Supreme Court for trial, the Attorney General shall draw up an indictment in accordance with the provisions of this Ordinance, and cause the same to be filed (together with copies of the statements of evidence of the witnesses upon whose evidence the Crown intends to rely) in the registry of the Supreme Court and a copy thereof to be served upon the accused.

(2) In any such indictment the Attorney General may charge the accused person with any offence which, in his opinion, is disclosed by the statements of evidence which he files with it, either in addition to, or in substitution for, the offence upon which the accused person has been committed for trial.

(3) In this section and section 172, 'statement of evidence' includes a statement of a kind which is capable of being admitted in evidence under section 112A, deposition taken in accordance with section 169, and any exhibit referred to in any such statement or deposition.

(4) The accused may, within 21 days of the service upon him of the indictment and copy statements in accordance with subsection (1), file in the Supreme Court any representations which he wishes the Chief Justice or Trial Judge to consider in relation to the indictment or the admissibility of any of the statements.

Submission to Chief Justice

172.[61]**(1)** Every indictment filed in the registry of the Supreme Court shall be submitted by the Registrar, together with the record of the committal proceedings and the statements of evidence filed with the indictment, and any representations filed by the accused

[59] *Section 170 substituted by Ord. 8 of 2007*
[60] *Section 171 substituted by Ord. 8 of 2007*
[61] *Section 172 substituted by Ord. 8 of 2007*

under section 171(4), to the Chief Justice or Trial Judge in chambers, for perusal and consideration.

(2) If, upon consideration of an indictment pursuant to subsection (1), it appears to the Chief Justice or Trial Judge—

(a) that the offence with which the accused person is charged in such indictment is, after such amendment, if any, as may be authorised by him, an offence disclosed by the evidence of the witnesses whose statements have been filed in accordance with section 171(1), he shall direct that the accused person be brought to trial upon such indictment at the next convenient sessions of the Supreme Court; or

(b) that the case is one which may suitably be tried by the Magistrates' Court, he may direct that the case shall be heard and determined by that court in the same manner as if such person had not been committed for trial, and thereupon the Magistrates' Court shall proceed in accordance with that direction; or

(c) that no probable ground or cause is disclosed by such evidence for bringing the accused person to trial upon such indictment, whether amended or not, he shall disallow such indictment, and upon any such disallowance shall order the accused person to be discharged.

(3) The discharge of an accused person under subsection (2)*(c)* shall not be a bar to any subsequent charge in respect of the same facts.

Notice of trial

173.[62] In every case where, pursuant to section 172, the Chief Justice or Trial Judge directs that an accused person be brought to trial upon an indictment, the Registrar shall endorse on or annex to such indictment, and to every copy thereof delivered to an officer of the court, a police officer or a prison officer for service thereof, a notice of trial, specifying the particular sessions of the Supreme Court at which the accused person is to be tried on the said indictment, which shall be in such form as the Chief Justice may from time to time approve.

Copy of indictment and notice of trial to be served

174.[63]**(1)** The Registrar shall deliver or cause to be delivered to the officer of the court, police officer or prison officer serving the indictment a copy thereof with the notice of trial endorsed thereon or annexed thereto, and, if there are more than one accused persons committed for trial, then as many copies as there are such accused persons.

(2) The officer of the court, police officer, or prison officer shall, as soon as practicable after having received the copy or copies of the indictment and notice or notices of trial, and (in any event) at least ten days before the day specified therein for trial, by himself or his deputy or other officer, deliver to the accused person or persons committed for trial such copy or copies of the indictment and notice or notices.

(3) When any accused person has been admitted to bail and cannot readily be found, the officer of the court or police officer shall affix the said copy and notice to the outer or principal door of the dwelling house of the accused person.

(4) Nothing in this section shall prevent any person committed for trial, and in custody at the opening of or during any sessions of the Supreme Court, from being tried thereat, if he expresses his assent to be so tried and no special objection is made thereto on the part of the Crown Prosecutor.

[62] *Section 173 substituted by Ord. 8 of 2007*
[63] *Section 174 substituted by Ord. 8 of 2007*

Return of service

175.[64] The person serving the copy or copies of the indictment and notice or notices of trial shall forthwith make to the court a return of the mode of service thereof.

Postponement of trial

176.[65]**(1)** If the Supreme Court considers that there is sufficient cause for the delay, it shall be lawful for the Court (of its own motion or upon the application of the prosecutor or the accused person) to postpone the trial of an accused person to the next sessions of the Court or to a subsequent sessions, and to extend the bonds of the witnesses when such witnesses have entered into bonds to appear at the trial, in which case the extended bonds shall have the same force and effect as fresh bonds to appear and give evidence at such subsequent sessions.

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

Indictment to be in name of Attorney General

177.[66] All indictments drawn up in pursuance of section 171 shall be in the name of and signed by the Attorney General and shall be in such form as the Chief Justice may from time to time approve.

178. *Repealed*
179. *Repealed*
180. *Repealed*
181. *Repealed*
182. *Repealed*
183. *Repealed*

PART VIII
PROCEDURE IN TRIALS BEFORE THE SUPREME COURT

General

Practice of Supreme Court in its criminal jurisdiction

184. Subject to the provisions of this Ordinance, the practice of the Supreme Court in its criminal jurisdiction shall be assimilated as nearly as circumstances will admit to the practice of Her Majesty's High Court of Justice in England in its criminal jurisdiction.

Mode of trial

185.[67] **(1)** All trials before the Supreme Court shall be—

(a) by the Chief Justice or Trial Judge and a jury of nine persons; or

[64] *Section 175 substituted by Ord. 8 of 2007*
[65] *Section 176 substituted by Ord. 8 of 2007*
[66] *Section 177 substituted by Ord. 8 of 2007*
[67] *Section 185 amended by Ord. 12 of 2016*

(b) by the Chief Justice or Trial Judge sitting alone.

(2) The provisions of the Juries Ordinance 1979 shall apply to trials by jury, and to the juries and the members thereof.

Arraignment

Pleading to indictment

186. The accused person to be tried before the Supreme Court upon an indictment shall be placed at the bar unfettered, unless the court otherwise orders, and the indictment shall be read over to him by the Registrar or other officer of the court, and explained if need be by that officer, and such accused person shall be required forthwith to plead thereto, unless the accused person objects to the want of service of the copy of the indictment and notice of trial in accordance with section 179 of this Ordinance, and the court finds that he has not been duly served therewith.

Orders for amendment of indictment, separate trial, and postponement of trial

187. (1) Every objection to any indictment for any formal defect on the face thereof shall be taken immediately after the indictment has been read over to the accused person and not later.

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

(3) Where an indictment is so amended, a note of the order for amendment shall be endorsed on the indictment and the indictment shall be treated for all purposes as having been filed in the amended form.

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

(5) Where, before a trial upon indictment or at any stage of such trial, the court is of opinion that the postponement of the trial of the accused person is expedient as a consequence of the exercise of any power of the court under this Ordinance, the court shall make such order as to the postponement of the trial as appears necessary.

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

(a) the court may order that the jury be discharged from giving its verdict on the count or counts the trial of which is postponed, or on the indictment, as the case may be; and

(b) the procedure on the separate trial of a count shall be the same in all respects as if the count had been found in a separate indictment, and the procedure on the postponed trial shall be the same in all respects (provided that the jury has been discharged) as if the trial had not commenced; and

(c) the court may make such order as to admitting the accused person to bail, and as to the enlargement of bonds and otherwise as the court thinks fit.

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

Quashing of indictment

188. (1) If any indictment does not state, and cannot by any amendment authorised by section 187 of this Ordinance be made to state, any offence of which the accused has had notice, it shall be quashed—

(a) on a motion made before the accused person pleads; or

(b) on a motion made in arrest of judgment; or

(c) by the court, of its own motion.

(2) A written statement of every motion to be made under subsection (1)*(a)* or *(b)* shall be delivered to the Registrar or other officer of the court by or on behalf of the accused person and shall be entered upon the record.

Procedure in case of previous convictions

189. Where an indictment contains a count charging an accused person with having been previously convicted of any offence, the procedure shall be as follows—

(a) the part of the indictment stating the previous conviction shall not be read out in court, nor shall the accused person be asked whether he has been previously convicted as alleged in the indictment, unless and until he has either pleaded guilty to or been convicted of the subsequent offence;

(b) if he pleads guilty to or is convicted of the subsequent offence, he shall then be asked whether he has previously been convicted as alleged in the indictment;

(c) if he answers that he has been so previously convicted, the court may proceed to pass sentence on him accordingly; but if he denies that he has previously been so convicted, or, refuses to or does not answer such question, the court shall then hear evidence concerning such previous conviction:

Provided that if upon the trial of any person for any such subsequent offence such person gives evidence of his own good character, it shall be lawful for the prosecutor, in answer thereto, to adduce evidence of the conviction of such person for the previous offence or offences before a finding of guilty is entered, and the court shall inquire concerning such previous conviction or convictions at the same time as it inquires concerning such subsequent offence.

Plea of not guilty

190. Every accused person upon being arraigned upon any indictment, by pleading generally thereto the plea of not guilty shall, without further form, be deemed to have put himself upon his trial.

Plea of *autrefois acquit* and *autrefois convict*

191. (1) Any accused person against whom an indictment is filed may plead—

(a) that he has previously been convicted or acquitted, as the case may be, of the same offence; or

(b) that he has obtained a pardon for his offence, and if either of such pleas is pleaded in any case and denied to be true in fact, the court shall try whether such plea is true in fact or not.

(2) If the court finds that the facts alleged by the accused person do not establish the plea, or if it finds that it is false in fact, the accused person shall be required to plead to the indictment.

Refusal to plead

192. If an accused person being arraigned upon any indictment stands mute of malice, or either will not, or by reason of infirmity is unable to, answer directly to the indictment, the court, if it thinks fit, shall enter a plea of not guilty on behalf of such accused person, and the plea so entered shall have the same force and effect as if such accused person had actually pleaded the same; or the court may if it has reason to believe that the accused person is of unsound mind or cannot be made to understand the nature of the proceedings find—

(a) that the accused person is of unsound mind, in accordance with the provisions of section 117 of this Ordinance; or

(b) that the accused person cannot be made to understand the nature of the proceedings, in accordance with the provisions of section 122 of this Ordinance as if the accused person had been committed for trial and an indictment filed under the provisions of section 122(1)*(b)*.

Plea of guilty

193. If an accused person pleads guilty, the plea shall be recorded and he may be convicted thereon.

Plea of guilty to offence other than charged

194. Where an accused person is arraigned on an indictment for an offence, and can lawfully be convicted on such indictment of some other offence not charged in such indictment, he may plead not guilty to the offence charged in the indictment, but guilty of such other offence, but the court shall not be bound to accept any such plea of guilty.

195. *Repealed.*

Power to postpone or adjourn proceedings

196. (1) If, from the absence of witnesses or any other reasonable cause to be recorded in the proceedings, the court considers it necessary or desirable to postpone the commencement of or to adjourn any trial, the court may from time to time postpone or adjourn the same for such time as it considers reasonable and may by warrant remand the accused person in prison or other place of security.

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

(3) The court may on a remand admit an accused person to bail, or suffer him to go at large.

Empanelling and Instruction of Jury

Selection of jury

197.[68]**(1)** Where the accused person has elected to be tried by jury, or has refused to elect, or has remained silent when called upon to elect, and pleads not guilty, or a plea of not guilty is entered on his behalf in accordance with the provisions of section 192, jurors shall be chosen and the trial shall begin.

(2) Every jury in a criminal trial shall be chosen in accordance with the procedure prescribed by the Juries Ordinance[69].

Peremptory challenge and challenges for cause

198. (1) The prosecutor and every accused person shall respectively be entitled to challenge, without assigning any reason for such challenge, not more than five persons whose names are drawn from the jurors box.

(2) In addition to the peremptory challenges for which provision is made by subsection (1), the prosecutor and every accused person shall respectively be entitled to any number of challenges for cause on any of the following grounds, and no other, that is to say—

(a) that the name of the person called as a juror does not appear in the jurors book:

Provided that no misnomer or misdescription in the jurors book shall be a ground of challenge if it appears to the court that the description given in that book sufficiently identifies the person called as juror, or

(b) that the person called as a juror may not be impartial between the Crown and the accused person; or

(c) that the person called as a juror is disqualified or is not qualified for jury service under the provisions of any law for the time being in force.

(3) Every challenge shall be made before the person called as a juror takes his seat in the place provided for the jury.

(4) Where a challenge for cause is made, the prosecutor or the accused person, as the case may be, making such challenge shall inform the court of the grounds of such challenge, and the court shall inquire into and shall determine the issue and for such purpose may inspect the jurors book, and hear such evidence as it may think fit to receive.

(5) If upon an inquiry under subsection (4) the court finds that the grounds upon which the challenge is made have been established, the person who has been called as a juror shall not be sworn, but if the court finds that such grounds have not been established, such person shall be sworn.

(6) Every accused person shall be informed of his rights under this section before the choice of jurors is commenced.

(7) The provisions of this section are in addition to and not in derogation of the provisions of the Juries Ordinance.

Jury to be sworn, etc

199.[70]**(1)** When the jury has been chosen the members thereof shall select one of their number to be the foreman thereof.

(2) When the foreman of the jury has been selected, each member of the jury, including the foreman thereof, shall take an oath in the following form—

"I swear by Almighty God that I will faithfully try the defendant and give a true verdict according to the evidence."

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[68] *Section 197 amended by Ord. 1 of 1985*
[69] Cap. 20
[70] *Section 199 amended by Ord. 1 of 1985*

(3) When the jury has been sworn pursuant to subsection (2), the Chief Justice, or an officer of the court under his supervision, shall—

(a) explain to the jury the substance of the indictment in respect of which the accused person is charged;

(b) inform the jury that the accused person has pleaded not guilty to the charge; and

(c) explain to the jury the nature of the duties imposed on each member thereof,

and thereupon the accused person shall be deemed to be in the charge of the jury.

Adjourned trial

200. (1) If for any reason a trial is adjourned, the jurors shall be required to attend at the adjourned sitting, and at any adjourned sitting of the court until the conclusion of the trial.

(2) Notwithstanding the provisions of subsection (1), if for any reason a trial is adjourned and the court is of the opinion that it is in the interests of justice so to do, it may upon the application of the accused person or of its own motion, discharge the jury and postpone the trial.

Case for the Prosecution

Opening of case for prosecution

201.[71] When—

(a) in a case to be tried by jury, the jury has been sworn; or

(b) in any other case, a plea of not guilty has been recorded,

the prosecutor shall open the case against the accused person, and shall call witnesses and adduce evidence in support of the charge.

Additional witnesses for prosecution

202. (1) A person who did not give evidence at the committal proceedings shall not be called as a witness by the prosecution at any trial unless the accused person has received reasonable notice in writing of the intention to call such witness.

(2) The notice shall state the name and address of the witness and the substance of the evidence which he intends to give. The court shall determine what notice is reasonable, regard being had to the time when and the circumstances in which the prosecution become acquainted with the nature of the witness's evidence and determine to call him as a witness. No such notice need be given if the prosecution first become aware of the evidence which the witness could give on the day on which he is called.

(3) Notwithstanding the provisions of subsection (1), where it is proposed to tender in evidence the evidence of a witness under the provisions of section 204 of this Ordinance, evidence may be given of any of the matters set forth in subsection (2)*(a)* of section 204 without such notice as is required by this section.

(4) If the court is of the opinion that the accused person is taken by surprise in a manner likely to be prejudicial to his defence by the production of a witness who did not give evidence at the committal proceedings and of the intention to call whom no or insufficient notice has been given, the court may, on the application of the accused person or of its own motion, adjourn the trial.

[71] *Section 201 substituted by Ord. 1 of 1985*

Cross examination of witnesses for the prosecution

203. The witnesses called for the prosecution shall be subject to cross examination by the accused person or his advocate, if any, and to re-examination by the prosecutor.

Evidence in committal proceedings may be read as evidence in certain cases

204.[72]**(1)** When any person has been committed for trial for any offence, the evidence in committal proceedings of any person taken before the Magistrates' Court may, if the conditions specified in subsection (2) are satisfied, without further proof be read as evidence on the trial of that person, whether for that offence or for any other offence arising out of the same transaction, or set of circumstances, as that offence.

(2) The conditions referred to in subsection (1) are as follows—

(a) the evidence shall be the evidence of a witness of whom it is proved at the trial that—

(i) he cannot be found; or

(ii) his attendance cannot be procured without an amount of delay, expense or inconvenience which, in the circumstances of the case, would be unreasonables; or

(iii) he is dead; or

(iv) he is insane; or

(v) he is so ill as not to be able to travel; or

(vi) he is kept out of the way by the procurement of the accused person or on his behalf; and

(b) it shall be proved at the trial, by a certificate purporting to be signed by the magistrate presiding over the court before which the evidence in committal proceedings was taken or by an officer of such court or by the oath of a credible witness, that such evidence was taken in the presence of the accused person and that the accused person or his advocate, if any, had full opportunity of cross examining the witness:

Provided that if the accused person or his advocate, if any, had no such opportunity, this condition shall be deemed to be satisfied if the court is of the opinion that the accused person is not prejudiced by the lack of such opportunity; and

(c) the record of such evidence must purport to be signed by one of the examining magistrates.

(3) The provisions of this section shall have no effect in any case in which it is proved that the evidence aforesaid, or, where the proof required by subsection (2)*(b)* is given by means of a certificate, the certificate was not in fact signed by the magistrate by whom it purports to have been signed.

(4) In a case where committal proceedings were held under the provisions of section 167A, subsection (2) shall apply with the substitution of the following paragraph *(b)*—

(b) the witness whose evidence it is proposed to read was made the subject of a conditional witness order in accordance with section 170.

Evidence of medical witness

[72] *Section 204 amended by Ord. 22 of 1987*

205. (1) The evidence in committal proceedings of a medical officer or other medical witness, taken and attested by a magistrate in the presence of the accused person, may be read as evidence, although the deponent is not called as a witness.

(2) The court may, if it thinks fit, on the application of the prosecutor or the accused person, or of its own motion, summon any such medical officer or medical witness for the purpose of examination or cross examination as a witness.

Statement or evidence of accused

206. Any statement or evidence of the accused person may, whether signed by the accused person or not, be given in evidence without further proof thereof, unless it is proved that the magistrate purporting to certify the same did not in fact certify it.

Close of case for prosecution

207.[73]**(1)** When the evidence of the witnesses for the prosecution has been concluded, and the statement or evidence, if any, of the accused person before the committing court has been given in evidence, the court, if it considers that there is not sufficient evidence that the accused person or any one of several accused persons committed the offence, shall, after hearing the accused person and the prosecutor, in a trial by jury withdraw the case from the jury and acquit the accused person and in a trial without jury the Chief Justice or Trial Judge may at any time acquit the accused person.

(2) When the evidence of the witnesses for the prosecution has been concluded, and the statement or evidence, if any, of the accused person before the committing court has been given in evidence, the court, if it considers that there is sufficient evidence that the accused person or any one or more of several accused persons may have committed the offence, shall inform each accused person of his right—

(a) to give evidence on his own behalf; and

(b) to call witnesses in his defence,

and shall then ask the accused person or his advocate, if any, whether he intends to exercise any of the rights conferred upon him under paragraphs *(a)* or *(b)* and shall record the answer. The court shall then call on the accused person to enter on his defence save where the accused person does not wish to exercise any of such rights, in which event the prosecutor may sum up the case for the prosecution.

Case for the Defence

Defence

208.[74] In any case where there is more than one accused person the court may either hear each accused person and his witnesses, if any, in turn or may, if it appears more convenient, hear all the accused persons and then hear all their witnesses.

Additional witnesses for the defence

209. The accused person shall be allowed to examine any witness not previously bound over to give evidence at the trial, if such witness is in attendance, but he shall not be entitled as

[73] *Section 207 amended by Ord. 1 of 1985*
[74] *Section 208 amended by Ord. 22 of 1987*

of right to have any witness summoned other than a witness whom he named to the court committing him for trial as a witness whom he desired to be summoned.

Evidence in reply

210. If the accused person adduces evidence in his defence introducing new matter which the prosecution could not by the exercise of reasonable diligence have foreseen, the court may allow the prosecutor to adduce evidence in reply to contradict the said matter.

Verdict

Summing up to the jury

211.[75] In a case being tried by jury, when the case on both sides is closed the Chief Justice or Trial Judge—

(a) shall direct the jury on the law which is applicable to the case; and

(b) may sum up and comment on the evidence which has been given for the prosecution and for the defence, if any,

and shall then direct the jury to consider its verdict.

Retirement of jury

212.[76]**(1)** If the jury retires to consider its verdict, the jurors shall remain together under the charge of an officer of the court in a private place, and shall not be allowed to separate, except on such terms as may be imposed by the court, until the jury has considered and returned a verdict or is discharged for failure to agree upon a verdict.

(2) No person other than the officer of the court who has charge of the jurors shall be permitted to speak or communicate in any way with any juror without the leave of the court.

(3) The breach of any of the foregoing provisions of this section shall not affect the validity of the proceedings:

Provided that if such breach is discovered before the verdict of the jury is returned, the court may, if it is of the opinion that such breach has occasioned a substantial miscarriage of justice—

(a) discharge the jury and direct a new jury to be chosen and sworn; or

(b) postpone the trial of the accused person for such period and upon such terms as it may think fit.

(4) The jury may during any period of retirement for the purpose of considering its verdict communicate with the Chief Justice or Trial Judge in order to obtain—

(a) a direction on a point of law relevant to any issue between the prosecution and the defence; or

(b) information as to any matter given in evidence for the prosecution or the defence:

Provided that any such communication shall be made in open court and in the presence of the accused person and his advocate, if any.

(5) If it appears to the court that the jury have had a period of time for deliberation that the Trial Judge thinks reasonable having regard to the nature and complexity of the case, and the jury is unable to agree upon a unanimous verdict, section 15 of the Juries Ordinance, 1979 applies as to a majority verdict.

[75] *Section 211 amended by Ord. 1 of 1985*
[76] *Section 212 amended by Ord. 14 of 2017*

Verdict of jury

213. (1) The verdict of the jury shall be returned in open court and in the presence of the accused person by the foreman of the jury.

(2) The verdict of the jury may be—

(a) a general verdict that the accused person is guilty or not guilty;

(b) a special verdict under the provisions of section 121 of this Ordinance; or

(c) a special verdict in which the jury finds the facts which have been established by the evidence;

(d) a finding under the provisions of section 122 of this Ordinance, that the accused did or did not do the act or make the omission charged,

and if the jury returns a special verdict under the provisions of paragraph *(c)* of this section the court shall determine the question whether the accused person is guilty of the offence with which he is charged.

(3) Where an indictment contains more counts than one the jury shall, unless the court otherwise directs, return a separate verdict on each count in such indictment.

Reconsideration of verdict

214. (1) Notwithstanding any of the foregoing provisions of this Ordinance, the Chief Justice or Trial Judge may, for reasons to be recorded by him, direct a jury which has returned a general verdict to reconsider such verdict in any case where—

(a) such verdict is not in accordance with the law;

(b) such verdict is not unequivocal as to the guilt or otherwise of the accused person;

(c) the verdicts are in the opinion of the Chief Justice or Trial Judge inconsistent,

and if upon any such reconsideration the jury returns a different verdict from that first returned, that different verdict shall be the verdict of the jury.

(2) Nothing in this section shall be so construed as to entitle the Chief Justice or Trial Judge to require a jury to reconsider its verdict more than once on any one count of an indictment.

Recording verdict

215. When the verdict of the jury is returned it shall be recorded and the accused person shall be convicted or acquitted, as the case may be, in accordance with such verdict.

Judgment

Judgment

215A.[77] **(1)** In a case being tried by the Chief Justice or a Trial Judge sitting alone, the Chief Justice or the Trial Judge, as the case may be, shall, when the case on both sides is closed, deliver judgment.

(2) Judgment shall be pronounced in open court either immediately or at some subsequent time of which notice shall be given to the parties and their advocates.

(3) The accused person shall, if in custody, be brought up, or, if not in custody, be required by the court to attend, to hear judgment delivered.

[77] *Section 215A inserted by Ord. 1 of 1985*

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

Passing Sentence

Calling upon the accused

216. If the accused person is found guilty or pleads guilty, it shall be the duty of the Chief Justice or Trial Judge to ask him whether he has anything to say why sentence should not be passed upon him according to law, but the omission to make such inquiry shall have no effect on the validity of the proceedings.

Motion in arrest of judgment

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

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

(3) If on any such motion the court decides in favour of the accused person, he shall be acquitted but such acquittal shall not operate as a bar to another indictment founded on the same facts.

Sentence

218. If no motion in arrest of judgment is made, or if the court decides against the accused person upon such motion, the court may pass sentence upon the accused person or make an order against him at any time during the session.

Objections cured by verdict

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

Inquiry may be made prior to passing sentence

220.[78] **(1)** The court, before passing any sentence, may make such inquiries as it thinks fit, in order to inform itself as to the sentence proper to be passed, and may inquire into the character and antecedents of the accused person either at the request of the prosecution or the accused person and may take into consideration in assessing the proper sentence to be passed such character and antecedents including any other offences committed by him, whether or not he has been convicted of such offences:

Provided that—

[78] *Section 220 amended by Ord. 22 of 1987*

(a) the accused person shall be given an opportunity to confirm, deny or explain any statement made about him and in any case of doubt the court shall in the absence of legal proof thereof ignore such statement;

(b) subject to subsection (2), no offence of which the accused person has not been convicted shall be taken into consideration in assessing the proper sentence unless the accused person specifically agrees that such offence shall be taken into consideration and details of such request as set out in section 159 have been recorded in the proceedings; and

(c) if for any reason the sentence passed by the court is set aside the accused person shall not be entitled to plead *autrefois convict* in respect of any offence taken into consideration in assessing the sentence that was set aside.

(2) Where an accused person has committed a series of offences over a period of time, and has been convicted upon an indictment charging the accused person with having committed one or more of these offences, the Court may pass a sentence which is appropriate to the whole of the accused person's involvement in that series of offences, and it shall not be necessary to record the particulars of such offences in the manner prescribed in section 159:

Provided that the Court shall take into account any such series of offences only to the extent (if any) to which the accused person admits his guilt thereof.

PART IX
SENTENCES AND THEIR EXECUTION

Sentences

Warrant in case of sentence of imprisonment

221. (1) Where any person has been sentenced to imprisonment by the Supreme Court or the Magistrates' Court, a warrant under the hand of the Chief Justice, Trial Judge or of the magistrate presiding over the court, as the case may be, ordering that the sentence shall be carried out in a prison shall be full authority to the officer in charge of such prison and to all other persons for carrying into effect the sentence described in such warrant.

(2) Subject to the express provisions of this or any other written law to the contrary, every sentence shall be deemed to commence from and to include the whole of the day on which it was pronounced.

(2A)[79] Where a court sentences an offender to imprisonment for a term in respect of any offence and the offender has been remanded in custody in connection with such offence, or any other related offence the charge for which was founded on the same facts or evidence, the number of days for which the offender was so remanded in custody in connection with such offence or related offence shall count as time served by him as part of the sentence.

(3) Where on appeal the Court of Appeal or the Supreme Court, as the case may be, makes an order which has the effect of requiring a person to commence or resume a sentence of imprisonment, any time during which such person has been at liberty, whether on bail or otherwise, after the sentence was first passed upon him shall not count as part of the sentence, which shall be deemed to commence or, if such person has already served part of the sentence, to be resumed on the day on which such person is first received into prison after the making of such order.

(4) The provisions of subsection (3) shall be in addition to, and not in derogation of, the provisions of section 256(2) of this Ordinance.

[79] *Section 221(2A) inserted by Ord. 17 of 2011*

Prisons in which sentences are to be served

222. Subject to the provisions of any law for the time being in force, every sentence of imprisonment shall be served in a prison in St. Helena:

Provided that—

(a) the Governor may, in any case in which he thinks fit, direct that the sentence be served in a prison in any of the Dependencies; and

(b) where a court sentences a person for a period of fourteen days or less, whether awarded as a substantive sentence or in default of the payment of money, the court may, if it thinks fit, order the sentence to be served in any suitable place.

Imprisonment

223. (1) A person liable to imprisonment for life or any other fixed period may be sentenced for any shorter term.

(2) A person liable to imprisonment may be sentenced to pay a fine instead of imprisonment.

Detention of young offenders

224. (1) If a court convicts of an offence punishable with imprisonment a person (in this section referred to as a "young offender") who in its opinion is under the age of sixteen years, and if it is satisfied for reasons to be stated by it in writing that there would be, but for the provisions of this section, no suitable alternative to sentencing the young offender to a term of imprisonment to be served in a prison, it shall order him to be detained in safe custody pending an order by the Governor under the provisions of subsection (2) in such place and manner as it thinks fit and shall transmit the court record, or a certified copy thereof, to the Governor.

(2) Upon consideration of a record transmitted to him under the provisions of subsection (1), the Governor shall by order under his hand direct that the young offender shall be detained in such prison or other place of custody as he specifies in the order:

Provided that a prison shall not be so specified in relation to any young offender unless, in the opinion of the Governor, no other place of custody is suitable for that offender.

(3) Any order made under the provisions of subsection (2) shall state the maximum period during which the order shall be of effect and the periods at which it shall be reviewed, and may at any time, whether or not it has been varied under the provisions of subsection (5), be varied or discharged by the Governor:

Provided that no such order shall direct or be varied so as to direct, the detention of any young offender for a period which exceeds the maximum period of imprisonment to which the young offender could, but for the provisions of this section, have been sentenced in respect of the offence for which he was convicted.

(4) Where an order is made, or varied, under the provisions of this section—

(a) the order so made or varied shall be sufficient authority for the removal of the young offender to whom it relates to the place of detention specified in the order so made or varied and for his detention therein;

(b) any young offender removed or detained under the authority of any such order shall be deemed to be in lawful custody; and

(c) the provisions of any written law which may be for the time being in force for regulating and controlling a place where a young offender is detained under the provisions of this section shall, subject to the provisions of any rules made under the provisions of subsection (6), apply to that young offender.

(5) If any person in charge of a place of custody, other than a prison, where a young offender is detained under the provisions of this section, is of the opinion that the young offender is beyond control, he may bring the young offender before the Magistrates' Court, and the court, if it is satisfied that the young offender is beyond control, may after hearing the young offender order the young offender to be detained in a prison specified by it, and may make a recommendation to the Governor accordingly.

(6) The Governor in Council may make rules—

(a) empowering a court, where a young offender is detained by virtue of an order made under the provisions of subsection (2), to make, after giving to the parent or guardian of, or other person liable by law to maintain, the young offender an opportunity to be heard, an order requiring such parent, guardian or other person to make periodic payments to be applied for the maintenance of the young offender, providing for any payments so made to be so applied, prescribing the maximum amount of each such payment and the maximum period for which such payments shall be made and regulating the manner in which, and the periods at which, such payments shall be made;

(b) providing for the education and training of young offenders, regulating visits to, and communications with, young offenders and prescribing generally the conditions under which they may be detained;

(c) establishing committees of visitors for the purpose of visiting and inspecting places where young offenders are detained and hearing complaints from young offenders and regulating the manner in which such committees shall carry out their duties; and

(d) generally for the better carrying into effect of the provisions of this section.

Suspended sentences of imprisonment

224A.[80] **(1)** A court which passes a sentence of imprisonment for a term of not more than two years, may order that the sentence or a part thereof shall be suspended on the condition that, during the period specified in the order being at least one year but not more than two years from the date of the order (in this Part referred to as "the operational period"), the offender does not commit another offence in St. Helena which is punishable with imprisonment.

(2) A court shall not deal with an offender by means of a suspended sentence unless the case appears to the court to be one in which a sentence of imprisonment would have been appropriate in the absence of any power to suspend such a sentence by an order under subsection (1).

(3) A court which passes a suspended sentence on any person for an offence shall not make a probation order in his case in respect of another offence of which he is convicted by or before the court or for which he is dealt with by the court.

(4) On passing a suspended sentence the court shall explain to the offender in ordinary language his liability under section 224B of this Ordinance if during the operational period he commits an offence punishable with imprisonment.

[80] *Section 224A inserted by Ord. 3 of 1982 and amended by Ord. 8 of 2007*

(5) Subject to any provision to the contrary contained in this or any other Ordinance, a suspended sentence which has not taken effect under section 224B shall be treated as a sentence of imprisonment for the purposes of all Ordinances.

Power of court on conviction of further offence to deal with suspended sentence

224B.[81] **(1)***(a)* If an offender is convicted of an offence punishable with imprisonment which was committed during the operational period of a suspended sentence and he is so convicted by or before a court having power under section 224C to deal with him in respect of the suspended sentence or he subsequently appears or is brought before such a court, then, that court shall consider his case and, subject to paragraph *(b)*, shall order that the suspended sentence (or the part of it which has not already been served, as the case may be) shall take effect with the original term unaltered.

(b) If the court is of the opinion that, in view of all the circumstances which have arisen since the suspended sentence was passed, including the facts of the subsequent offence, it would be unjust to make an order referred to in paragraph *(a)*, the court shall state its reasons for that opinion and may—

(i) order that the sentence shall take effect with the substitution of a lesser term for the original term;

(ii) by order vary the original order under section 224A(1) by extending the operational period by a further period expiring not later than two years from the date of the variation; or

(iii) make no order with respect to the suspended sentence.

(2) Where a court orders that a suspended sentence shall take effect, with or without any variation of the original term, the court may order that that sentence shall take effect immediately or that the term thereof shall commence on the expiration of another term of imprisonment passed on the offender by that or another court.

(3) In proceedings for dealing with an offender in respect of a suspended sentence which take place before the Supreme Court any question whether the offender has been convicted of an offence punishable with imprisonment committed during the operational period of the suspended sentence shall be determined by the Supreme Court and not by the verdict of a jury.

(4) Where a court deals with an offender under this section in respect of a suspended sentence the appropriate officer of the court shall notify the appropriate officer of the court which passed the sentence of the method adopted.

(5) Where on consideration of the case of an offender a court makes no order with respect to a suspended sentence, the appropriate officer of the court shall record that fact.

(6) For the purposes of any enactment conferring rights of appeal in criminal cases any order made by a court with respect to a suspended sentence shall be treated as a sentence passed on the offender by that court for the offence for which the suspended sentence was passed.

Court by which suspended sentence may be dealt with

224C.[82] **(1)** An offender may be dealt with in respect of a suspended sentence by the Supreme Court or the Magistrates' Court.

[81] *Section 224B inserted by Ord. 3 of 1982 and amended by Ord. 8 of 2007*
[82] *Section 224C inserted by Ord. 3 of 1982*

(2) Where an offender is convicted by the Magistrates' Court of an offence punishable with imprisonment and such Court is satisfied that the offence was committed during the operational period of a suspended sentence passed by the Supreme Court—

(a) the Magistrates' Court may, if it thinks fit, commit him in custody or on bail to the Supreme Court; and

(b) if it does not, shall give written notice of the conviction to the Registrar of the Supreme Court.

(3) For the purposes of this section and of section 224D of this Ordinance a suspended sentence passed on an offender on appeal shall be treated as having been passed by the court by which he was originally sentenced.

Procedure where court convicting of further offence does not deal with suspended sentence

224D.[83] **(1)** If it appears to the Supreme Court, or to a justice of the peace, that an offender has been convicted in St. Helena of an offence punishable with imprisonment committed during the operational period of a suspended sentence and that he has not been dealt with in respect of the suspended sentence, that court or justice may, subject to the following provisions of this section, issue a summons requiring the offender to appear at the place and time specified therein, or a warrant for his arrest.

(2) A justice of the peace shall not issue a summons under this section except on information and shall not issue a warrant under this section except on information in writing and on oath.

(3) A summons or warrant issued under this section shall direct the offender to appear or be brought before the court by which the suspended sentence was passed.

Community service orders

224E.[84] **(1)** Where a person of or over fourteen years of age is convicted of an offence punishable with imprisonment, the court by or before which he is convicted may, instead of dealing with him in any other way (but subject to subsection (2)) make an order (in this Ordinance referred to as "a community service order") requiring him to perform unpaid work in accordance with the subsequent provisions of this Ordinance for such number of hours (being in the aggregate not less than 40 nor more than 240) as may be specified in the order.

(2) A court shall not make a community service order in respect of any offender unless the offender consents and the court is satisfied—

(a) after considering a report by a probation officer about the offender and his circumstances and, if the court thinks it necessary, hearing a probation officer, that the offender is a suitable person to perform work under such an order; and

(b) that provisions can be made under the arrangements for him to do so.

(3) Where a court makes community service orders in respect of two or more offences of which the offender has been convicted by or before the court, the court may direct that the hours of work specified in any of those orders shall be concurrent with or additional to those specified in any other of those orders, but so that the total number of hours which are not concurrent shall not exceed the maximum in subsection (1).

(4) A community service order shall specify the functions conferred by the subsequent provisions of this Ordinance on a probation officer.

[83] *Section 224D inserted by Ord. 3 of 1982*
[84] *Section 224E inserted by Ord. 16 of 1985*

(5) Before making a community service order the court shall explain to the offender in ordinary language—

(a) the purpose and effect of the order (and in particular the requirements of the order as specified in section 224F of this Ordinance);

(b) the consequences which may follow under section 224G if he fails to comply with any of those requirements; and

(c) that the court has under section 224H the power to review the order on the application either of the offender or of a probation officer.

(6) The court by which a community service order is made shall forthwith give copies of the order to a probation officer and he shall give a copy to the offender.

(7) The Governor may by order direct that subsection (1) shall be amended by substituting for the maximum number of hours specified in that subsection as originally enacted or as previously amended under this subsection, such number of hours as may be specified in the order.

(8) Nothing in subsection (1) shall be construed as preventing a court which makes a community service order in respect of any offence from making an order for costs against, or imposing any disqualifications on, the offender.

Obligations of person subject to community service order

224F.[85]**(1)** An offender in respect of whom a community service order is in force shall—

(a) report to the probation officer and subsequently from time to time notify him of any change of address; and

(b) perform for the number of hours specified in the order such work at such times as he may be instructed by the probation officer.

(2) Subject to section 224H(1) of this Ordinance, the work required to be performed under a community service order shall be performed during the period of twelve months beginning with the date of the order but, unless revoked, the order shall remain in force until the offender has worked under it for the number of hours specified in it.

(3) The instruction given by the probation officer under this section shall, so far as practicable, be such as to avoid any conflict with the offender's religious beliefs and any interference with the times, if any, at which he normally works or attends a school or other educational establishment.

Breach of community service order

224G.[86] **(1)** If at any time while a community service order is in force in respect of an offender it appears on information to a justice of the peace that the offender has failed to comply with any of the requirements of section 224F of this Ordinance (including any failure satisfactorily to perform the work which he has been instructed to do), the justice may issue a summons requiring the offender to appear at the place and time specified therein, or may, if the information is in writing and on oath, issue a warrant for his arrest.

(2) Any summons or warrant issued under this section shall direct the offender to appear or be brought before the Magistrates' Court.

(3) If it is proved to the satisfaction of the Magistrates' Court before which an offender appears or is brought under this section that he has failed without reasonable excuse to comply with any of the requirements of section 224F the court may, without prejudice to the continuance of the order, impose on him a fine not exceeding £1,000 or may—

[85] *Section 224F inserted by Ord. 16 of 1985*

[86] *Section 224G inserted by Ord. 16 of 1985 and amended by Ord 7 of 2016*

(a) if the community service order was made by the Magistrates' Court, revoke the order and deal with the offender, for the offence in respect of which the order was made, in any manner in which he could have been dealt with for that offence if the order had not been made;

(b) if the order was made by the Supreme Court, commit him to custody or release him on bail until he can be brought or appear before the Supreme Court.

(4) Where the Magistrates' Court deals with an offender's case under subsection (3)*(b)* it shall send to the Supreme Court a Certificate signed by a justice of the peace certifying that the offender has failed to comply with the requirements of section 224F in the respect specified in the certificate, together with such other particulars of the case as may be desirable; and a certificate purporting to be so signed shall be admissible as evidence of the failure before the Supreme Court.

(5) Where by virtue of subsection (3)*(b)* the offender is brought or appears before the Supreme Court and it is proved to the satisfaction of the court that he has failed to comply with any of the requirements of section 224F the court may either—

(a) without prejudice to the continuance of the order, impose on him a fine not exceeding £1,000; or

(b) revoke the order and deal with him, for the offence in respect of which the order was made, in any manner in which he could have been dealt with for that offence if the order had not been made.

(6) A person sentenced under subsection (3)*(a)* for an offence may appeal to the Supreme Court against the sentence.

(7) In proceedings before the Supreme Court under this section any question of whether the offender has failed to comply with the requirements of section 224F shall be determined by the court and not by the verdict of the jury.

(8) A fine imposed under this section shall be deemed for the purpose of any enactment to be a sum adjudged to be paid by a conviction.

Alteration of community service orders

224H.[87] **(1)** Where a community service order is in force in respect of any offender and, on the application of the offender or a probation officer, it appears to the Magistrates' Court that it would be in the interest of justice to do so having regard to circumstances which have arisen since the order was made, the court may extend, in relation to the order, the period of twelve months specified in section 224F(2) of this Ordinance.

(2) Where such an order is in force and on any such application it appears to the Magistrates' Court that, having regard to such circumstances, it would be in the interests of justice that the order should be revoked or that the offender should be dealt with in some other manner for the offence in respect of which the order was made, the court may—

(a) if the order was made by the Magistrates' Court, revoke the order or revoke it and deal with the offender, for the offence in respect of which the order was made, in any manner in which he could have been dealt with for that offence if the order had not been made;

(b) if the order was made by the Supreme Court, commit him to custody or release him on bail until he can be brought or appear before the Supreme Court,

and where the court deals with his case under paragraph *(b)* above it shall send to the Supreme Court such particulars of the case as may be desirable.

(3) Where an offender in respect of whom such an order is in force—

[87] *Section 224H inserted by Ord. 16 of 1985*

(a) is convicted of an offence before the Supreme Court; or

(b) is committed by the Magistrates' Court to the Supreme Court for sentence and is brought or appears before the Supreme Court; or

(c) by virtue of subsection (2)*(b)* above is brought or appears before the Supreme Court,

and it appears to the Supreme Court to be in the interests of justice to do so, having regard to circumstances which have arisen since the order was made, the Supreme Court may revoke the order or revoke the order and deal with the offender, for the offence in respect of which the order was made, in any manner in which he could have dealt with for that offence if the order had not been made.

(4) A person sentenced under subsection (2)*(a)* for an offence may appeal to the Supreme Court against the sentence.

(5) Where the Magistrates' Court proposes to exercise its powers under subsections (1) and (2) otherwise than on the application of the offender it shall summon him to appear before the court and, if he does not appear in answer to the summons, may issue a warrant for his arrest.

Fines

225. (1)[88] Where a fine is imposed under any written law, then in the absence of express provisions relating to such fine in such law the following provisions shall apply—

(a) where no sum is expressed to which the fine may extend, the amount of the fine which may be imposed is unlimited, but shall not be excessive;

(b) in the case of an offence punishable with a fine or a period of imprisonment, the imposition of a fine or a period of imprisonment shall be a matter for the discretion of the court;

(c) in the case of an offence punishable with imprisonment as well as a fine, in which the offender is sentenced to a fine with or without imprisonment, and in every case of an offence punishable with fine only in which the offender is sentenced to a fine, the court passing sentence may, in its discretion—

(i) direct by its sentence that in default of payment of the fine the offender shall suffer imprisonment for a certain period, which imprisonment shall be in addition to any other imprisonment to which he may have been sentenced; and

(ii) issue a warrant for the levy of the amount on the immovable and movable property of the offender by distress and sale under warrant:

Provided that if the sentence directs that in default of payment of the fine the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no court shall issue a distress warrant unless for special reasons to be recorded in writing it considers it necessary to do so;

(d) the period of imprisonment ordered by a court in respect of the non-payment of any sum of money adjudged to be paid on a conviction shall be such term as in the opinion of the court will satisfy the justice of the case, but shall not exceed in any case the maximum fixed by the following scale—

"Amount	**Maximum period**
Not exceeding £100	7 days

[88] *Section 225(1) amended by Ord. 1 of 2001, Ord. 8 of 2007 and Ord. 14 of 2017*

Exceeding £100 but not exceeding £250	14 days
Exceeding £250 but not exceeding £500	21 days
Exceeding £500 but not exceeding £1,000	1 month
Exceeding £1,000, but not exceeding £2,000	2 months
Exceeding £2,000	3 months"

(e) the imprisonment which is imposed in default of payment of a fine shall terminate whenever the fine is either paid or levied by process of law.

(2) When following the trial of a child or young person for any offence a fine is imposed upon or any costs or compensation are ordered to be paid by such child or young person, the court imposing such fine or making such order may, and if the offender is a child shall, order that the total amount so imposed or ordered to be paid be recovered from the parent or guardian of such child or young person, and if any such order is made the provisions of this Ordinance relating to the payment and default in payment of fines and to the recovery of costs and compensation shall apply in all respects as if such parent or guardian had himself been sentenced to a fine or ordered to pay costs or compensation of the respective amounts imposed upon or ordered to be paid by the child or young person:

Provided that no order shall be made under the provisions of this subsection unless the court is satisfied—

(a) that the parent or guardian of such child or young person can be found and is within the jurisdiction of the court; and

(b) that the neglect of such parent or guardian to exercise due care and control of the child or young person conduced to the commission of the offence.

(3) Any parent or guardian aggrieved by an order made under the provisions of this section by the Magistrates' Court may appeal to the Supreme Court and the provisions of Part X of this Ordinance shall apply to any such appeal.

(4) For the purposes of subsection (2)—

"child" means a person under the age of fourteen years;

"young person" means a person who has attained the age of fourteen years and is under the age of seventeen years.

Order for disposal of property regarding which offence committed

226.[89](1) During or at the conclusion of any trial the court may make such order as it thinks fit for the disposal whether by way of forfeiture, confiscation or otherwise of any property produced before it regarding which any offence appears to have been committed or which has been used for the commission of or to facilitate the commission of any offence.

(2) In any case where no evidence has been called, if the prosecutor wishes any property to be disposed of under the provisions of subsection (1) of this section, he shall after the conviction of the accused person produce such property before the court which may thereupon make an order under subsection (1).

(3) Where the court orders the forfeiture or confiscation of any property as provided in subsection (1) but does not make an order for its destruction or for its delivery to any person, the court may direct that the property shall be kept or sold and that the same or, if sold, the

[89] *Section 226 amended by Ord. 14 of 2017*

proceeds thereof shall be held as it directs until some person establishes to the satisfaction of the court a right thereto. If no person establishes such a right within six months from the date of forfeiture or confiscation such property or the proceeds thereof shall be paid into and form part of the general revenues of St. Helena.

(4) The power conferred by subsections (1) and (3) upon the court shall include the power to make an order for the forfeiture or confiscation or for the destruction or for the delivery to any person of such property, but shall be exercised subject to any special provisions regarding forfeiture, confiscation, destruction, detention or delivery contained in the written law under which the conviction was made or in any other written law applicable to the case.

(5) Where an order is made under the provisions of this section, or of Part V of the Police Force Ordinance[90] the order shall not, except when the property is livestock or is subject to speedy and natural decay, be carried out until the period allowed for presenting such appeal has passed or when such appeal is entered until the disposal of such appeal.

(6) In this section, **"property"** includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any person, but also any property into or for which the same has been converted or exchanged and anything acquired by such conversion or exchange, whether immediately or otherwise.

Non-payment of fine, etc

227.[91] (1) When it appears that a fine or other payment ordered to be made by an accused person has not been paid, the Magistrates' Court shall inquire into the circumstances and may make one or more of the orders mentioned in subsection (2).

(2) The orders which may be made under subsection (1) are—

(a) if there are exceptional circumstances in which the court judges it in the interests of justice to do so, remit the outstanding payment (or any part thereof) and discharge the debtor from further liability in respect thereof;

(b) make such fresh order as appears to be just as to the date by which or the instalments by which the outstanding amount is to be paid;

(c) make an attachment of earnings order in accordance with section 227A;

(d) in the case of a fine, revoke the original order for payment and substitute therefore such alternative sentence as meets the justice of the case.

(3) A Justice of the Peace may issue a summons or a warrant to secure the attendance of any person whose attendance before the Court is necessary for the purposes of this section.

(4) Where the original sentence or order was imposed in the Supreme Court, the Magistrates' Court shall not make an order under subsection (2)(d) but may commit the debtor, either in custody or on bail, to the Supreme Court.

Attachment of earnings

227A.[92] (1) Without prejudice to any other power to enforce payment of money, the Supreme Court and the Magistrates' Court shall have power to make an attachment of earnings order to enforce the payment of any sum ordered to be paid by way of fine, costs, compensation or otherwise.

(2) In this section **"attachment of earnings order"** means an order directed to a person (in this section called "the employer") who appears to the court to be the employer of

[90] *Cap. 132*
[91] *Section 227 amended by Ord. 8 of 2007*
[92] *Section 227A inserted by Ord. 22 of 1987*

the person (in this section called "the debtor") ordered to pay the sum the payment of which is to be enforced.

(3) An attachment of earnings order shall direct the employer to deduct from the salary or other remuneration of the debtor such periodical sums as may be specified in the Order, and to remit such sums to the proper officer of the court.

(4) The proper officer of the court for the purposes of subsection (3) shall be—

(a) in the case of the Supreme Court, the Registrar; and

(b) in the case of the Magistrates' Court, the Clerk of the Peace.

(5) Rules made under the Courts (Rules) Ordinance[93], may prescribe the form and contents of an attachment of earnings order, and generally provide for the effective use of attachment of earnings orders.

228. *Repealed*

Payment in full after commitment

229. Any person committed to prison for nonpayment of money ordered to be paid may pay the sum mentioned in the warrant, with the amount of expenses therein authorised, if any, to the person in whose custody he is and that person shall thereupon discharge him if he is in custody for no other matter.

Part payment after commitment

230. (1) If any person committed to prison for non-payment of money ordered to be paid pays any sum in part satisfaction of the sum adjudged to be paid, the period of his imprisonment shall be reduced by a number of days bearing as nearly as possible the same proportion to the total number of days for which such person is committed, as the sum so paid bears to the sum for which he is liable.

(2) Where a person is confined in a prison and is desirous of making a payment in part satisfaction under the provisions of subsection (1) the officer in charge of that prison, shall, on application being made to him by such prisoner, at once take him before a magistrate, and such magistrate shall certify the amount by which the period of imprisonment originally awarded is reduced by such payment in part satisfaction, and shall make such order as is required in the circumstances.

231. *Repealed.*

Power to allow time for payment of money adjudged to be paid

232. (1) Where a court—

(a) sentences a convicted person to a fine and, at the same time or by a subsequent order, to imprisonment in default of payment thereof; or

(b) sentences to imprisonment for want of or *in lieu* of distress any person against whom an order for the payment of money has been made,

the court shall, before committing any such person to prison in pursuance of such sentence, consider whether he will be able, if not committed to prison, to pay the amount due, either by instalments or otherwise, within a reasonable time and—

[93] *Cap. 9*

(i) if the court is satisfied that such person will not be able to pay the amount due within a reasonable time as aforesaid, it shall forthwith commit him to prison;

(ii) if it appears to the court that such person will be able to pay the amount due, by instalments or otherwise, within a reasonable time as aforesaid, the court shall make such order with regard to the time and manner of payment as it thinks fit, and shall, subject to the provisions of subsection (2), forthwith release him;

(iii) if such person is employed, whether in the public service or otherwise, the court may, by order (hereinafter referred to as an "attachment order") to be served upon such person's employer, direct that the amount due shall be deducted from such person's salary or wages and paid to the court either in one payment or by such monthly instalments as the court may direct, and the court shall, subject to the provisions of subsection (2), forthwith release such person:

Provided that no attachment order shall include a direction to make a payment or monthly instalment exceeding one half of such person's monthly rate of salary or wages.

(2) Before releasing any person under the provisions of paragraph (ii) or paragraph (iii) of subsection (1), the court may, if it thinks fit, require him to enter into a bond, with or without sureties, conditioned for his appearance on such date or dates as the court may determine, and, in default of his so entering into such bond, the court shall forthwith commit him to prison.

(3) If a person who has been allowed time for payment under the provisions of subsection (1)*(b)*(ii) fails to pay the amount due, or any instalment thereof, in accordance with the order made by the court, the court may, after making inquiry into his means in his presence, commit him to prison.

(4) Where the court has ordered payment by instalments and default is made in the payment of any such instalment, the whole of the amount then remaining unpaid shall become immediately due and payable.

(5) Upon making inquiry in accordance with the provisions of subsection (3) the court may, in its discretion, instead of issuing a warrant of commitment to prison forthwith, make an order extending the time allowed for payment or varying the amount of the instalments or the times at which the instalments were, by the previous order of the court, directed to be paid, as the case may be.

(6) For the purpose of enabling inquiry to be made under the provisions of subsection (3) the court may issue a summons to the person ordered to pay the money to appear before it and, if he does not appear in obedience to the summons, may issue a warrant for his arrest or, without issuing a summons, issue in the first instance a warrant for his arrest.

Objections to attachment

233. (1) Any person claiming to be entitled to or to have a legal or equitable interest in the whole or part of any property attached in execution of a warrant issued under section 236 of this Ordinance may, at any time prior to the receipt by the court of the proceeds of sale of such property, give notice in writing to the court of his objection to the attachment of such property, and thereupon all further proceedings in connection with such objection shall be regulated by the procedure prescribed by any Ordinance or rules of court relating to objections to attachment of property in execution of a civil judgment.

234. *Repealed.*

Power of court to permit conditional release of offenders on probation

235. (1) In any case in which a person is found guilty by any court of any offence and no previous conviction is proved against him, or if it appears to the court by which he is found guilty that, having regard to the youth, character, antecedents, health or mental condition of the offender, or to the trivial nature of the offence, or to any extenuating circumstances under which the offence was committed, no sentence of imprisonment or fine should be imposed, the court may with or without convicting the offender, make a probation order:

Provided that—

(a) before making a probation order, the court shall explain to the offender in ordinary language the effect of the order and that if he fails in any way to comply therewith or commits another offence, he will be liable to be sentenced or to be convicted and sentenced for the original offence, and the court shall not make a probation order unless the offender expresses his willingness to comply with the provisions of the order; and

(b) for the purposes of sections 123(1), 125 and 128 of this Ordinance any order made under this section shall be deemed to be a conviction.

(2) A probation order shall have effect for such period of not less than twelve months and of not more than three years from the date of the order as may be specified therein, and shall require the probationer to submit during that period to the supervision of a probation officer or other suitable person, and shall contain such provisions as the court considers necessary for securing the supervision of the offender, and such additional conditions as to residence and other matters as the court, having regard to the circumstances of the case, considers necessary for securing the good conduct of the offender or for preventing a repetition of the same offence or the commission of other offences.

(3) The court by which a probation order is made shall furnish two copies of the order, one of which shall be given to the probationer and the other to the person under whose supervision he is placed.

(4) A court which has made a probation order may at any time—

(a) if it appears to it upon the application of any interested party that it is expedient that the terms or the conditions of the order should be varied, summon the probationer to appear before it; and if he fails to show cause why such variation should not be made, vary the terms of the order by extending or diminishing the duration thereof or by altering the conditions thereof or by inserting additional conditions:

Provided that in no case shall a probation order be extended in such a manner that the total period of probation exceeds three years;

(b) on application being made by any interested party, and on being satisfied that the conduct of the probationer has been such as to make it unnecessary that he should be under supervision for any further period, discharge the probation order.

Misconduct by probationers

236.[94]**(1)** When a probationer is convicted of an offence committed while the probation order was in force the court which made such order may issue a summons requiring the probationer to appear at the place and time specified therein or may issue a warrant for his arrest.

[94] *Section 236 amended by Ord. 7 of 2016*

(2) Where a probationer is convicted by a court of an offence committed while the probation order was in force, the court may commit the probationer to custody or release him on bail, with or without sureties, until he can be brought or appear before the court by which the probation order was made.

(3) Where it is proved to the satisfaction of the court by which the probation order was made that the probationer has been convicted of an offence while the probation order was in force then—

(a) if the probationer was not convicted of the original offence in respect of which the probation order was made, the court may convict him of that offence and pass any sentence which it could pass if the probationer had then been convicted before that court of that offence; or

(b) if the probationer was convicted of the original offence in respect of which the probation order was made, the court may pass any sentence which it could pass if the probationer had then been convicted before that court of that offence.

(4) If it appears to a court that a probationer has failed to comply with any of the provisions of a probation order, it may issue a summons to the probationer requiring him to appear at the place and time specified therein or may issue a warrant for his arrest:

Provided that a court shall not issue such a summons or such a warrant except on information on oath.

(5) If it is proved to the satisfaction of the court by which the probation order was made that the probationer has failed to comply with any of the provisions of the probation order then—

(a) without prejudice to the continuance in force of the probation order, the court may, subject as hereinafter provided, impose on the probationer a fine not exceeding £1,000; or

(b) if the probationer—

(i) was not convicted of the original offence in respect of which the probation order was made, the court may convict him and pass any sentence which it could pass if the probationer had then been convicted before that court of that offence; or

(ii) was convicted of the original offence in respect of which the probation order was made, the court may pass any sentence which it could pass if the probationer had then been convicted before that court of that offence:

Provided that where a court has under the provisions of paragraph *(a)* imposed a fine on the probationer then, on any subsequent sentence being passed upon the probationer under the provisions of the preceding section or of this section, the imposition of such fine shall be taken into account in fixing the amount of such sentence.

Appointment, selection and duties of probation officers

236A.[95] **(1)** The Governor may from time to time appoint such number of probation officers of either sex as may appear to him to be necessary.

(2) A probation officer shall have the powers and discharge the duties conferred or imposed on a probation officer by or under this or any other Ordinance; and in particular it shall be the duty of a probation officer–

(a) to supervise, having regard to the requirements of the probation orders made in an officer's respective case, the probationers placed under such officer's supervision; and

[95] *Section 236A inserted by Ord. 4 of 2001*

(b) to advise, assist and befriend probationers placed under such officer's supervision; and

(c) to inquire, without prejudice to any special directions that may be given by the court, into the circumstances and past and present environment of any accused or convicted person, with a view to assisting the court in determining the most suitable way of dealing with such person's case; and

(d) to assist the court by which a probation order was made in determining how best to exercise its powers in relation to a probationer; and

(e) to advise, assist and befriend persons who, on release from custody, have been placed under such officer's supervision.

(3) It shall be the duty of the Chief Administrative Health and Social Services Officer[96], subject to any general or special directions given to that officer by the Governor, to provide for the efficient carrying out of the work of probation officers and to review the work of probation officers in individual cases.

(4) The probation officer who is to be responsible for the supervision of a probationer shall be selected under arrangements made by the Chief Administrative Health and Social Services Officer[97] from among the available probation officers, so, however, that the probation officer under whose supervision a woman or girl is placed shall be a woman; and, if the probation officer so selected is unable for any reason to carry out his or her duties, or if the Chief Administrative Health and Social Services Officer[98] thinks it desirable that another probation officer should take his or her place, then another probation officer shall be selected in like manner from among the available probation officers.

Probation of offenders rules

237.[99] The Governor in Council may make rules prescribing any matter relating to the probation of offenders which he may think necessary.

Discharge of an offender without punishment

238. (1) Where, in any trial for an offence the sentence for which is not fixed by law, the court finds that the charge against the accused person is proved but is of opinion that, having regard to his character, antecedents, age, health or mental condition, or to the trivial nature of the offence, or to the extenuating circumstances in which the offence was committed, it is inexpedient to inflict any punishment and that a probation order is not appropriate, the court may convict such person and—

(a) make an order discharging him absolutely; or

(b) make an order discharging him subject to the condition that he commits no offence during such period, not exceeding twelve months from the date of the order, as may be specified therein.

(2) At the time of making an order under the provisions of subsection (1)*(b)* (hereinafter in this section referred to as an order of conditional discharge), the court shall inform the accused person that if he commits another offence during the period specified in such order he will be liable to be sentenced for the original offence.

(3) Where an accused person in respect of whom an order of conditional discharge has been made is convicted of another offence committed during the period specified in such order,

[96] *Gazette Notice No. 63 of 1 July 2011: Title changed to Director of Health and Social Welfare*
[97] *Gazette Notice No. 63 of 1 July 2011: Title changed to Director of Health and Social Welfare*
[98] *Gazette Notice No. 63 of 1 July 2011: Title changed to Director of Health and Social Welfare*
[99] *Section 237 Substituted by Ord. 4 of 2001*

the court which made such order may pass in respect of the original offence any sentence which it could pass if such person had then been convicted of that original offence.

(4) When an order is made by the court under the provisions of this section such an order shall be deemed to be a conviction for the purposes of sections 123(1), 125 and 128 of this Ordinance.

Sentences cumulative unless otherwise ordered

239. (1) Where a person after conviction for an offence is convicted of another offence, either before sentence is passed upon him under the first conviction or before the expiration of that sentence, any sentence of imprisonment which is passed upon him under the subsequent conviction shall be executed after the expiration of the former sentence, unless the court directs that it shall be executed concurrently with the former sentence or of any part thereof:

Provided that it shall not be lawful for a court to direct that a sentence of imprisonment in default of payment of a fine shall be executed concurrently with a former sentence under section 225(1)*(c)*(i) of this Ordinance or of any part thereof.

(2) Where a person is convicted of more than one offence at the same time and is sentenced to pay a fine in respect of more than one of such offences then the court may order that all or any of such fines may be noncumulative.

Escaped convicts to serve unexpired sentences when recaptured

240. When sentence is passed under this Ordinance on an escaped convict, such sentence, if of imprisonment shall not take effect until the convict has served a period of imprisonment equal to the portion of his period of imprisonment that remained unexpired at the date of his escape from prison.

Defects in Order or Warrant

Errors and omissions in orders and warrants

241. The court may at any time amend any defect in substance or in form in any order or warrant, and no omission or error as to the time and place, and no defect in form in any order or warrant given under this Ordinance, shall be held to render void or unlawful any act done or intended to be done by virtue of such order or warrant, provided that it is therein mentioned, or may be inferred therefrom, that it is founded on a conviction or judgment, and there is a valid conviction or judgment to sustain the same.

PART X
APPEALS, ETC

Appeals from Magistrates' Court

Appeal to Supreme Court

242. (1) Save as hereinafter provided, any person convicted on a trial by the Magistrates' Court may appeal to the Supreme Court, and shall be so informed by the presiding magistrate at the time when sentence is passed.

(2) An appeal to the Supreme Court may be on a matter of fact as well as on a matter of law.

No appeal on plea of guilty

243. No appeal shall lie in the case of any person who has pleaded guilty and has been convicted on such plea by the Magistrates' Court, except as to the extent or legality of the sentence.

Right of appeal against acquittal

244.[100] The prosecutor may appeal to the Supreme Court against a decision or determination of the Magistrates' Court on any of the following grounds, namely:

(a) that the decision or determination was erroneous in law;

(b) that the decision or determination was one which no reasonable court, properly directing itself in law, could have reached;

(c) that the sentence imposed was so lenient as to be one which no reasonable court, properly directing itself in law, could have passed:

Provided that an appeal under paragraph *(c)* shall not be instituted except by or with the consent of the Attorney General.

Petition of appeal

245. (1) Every appeal shall be made in the form of petition in writing presented by the appellant which shall be lodged with the Registrar within fourteen days of the date of the judgment or order from which the appeal is preferred, unless for good cause shown the Supreme Court extends the time.

(2) When the appellant is represented by an advocate or is the Crown Prosecutor, the petition shall contain particulars of the matters of law or of fact in regard to which the Magistrates' Court is alleged to have erred.

(3) A petition of appeal by the Crown Prosecutor shall be presented and signed by the Crown Prosecutor.

(4) Save in so far as any such fee is waived or reduced, the fee prescribed for filing an appeal shall be paid at the time of lodging a petition of appeal and if such fee, if any, is not paid the petition shall not be received.

Appellant in prison

246. If the appellant is in prison, he may present his petition of appeal to the officer in charge of the prison, who shall thereupon forward such petition to the Registrar.

Application for extension of time, and abandonment of appeal

247. (1) An application to extend the time for lodging a petition of appeal shall be made in writing to the Registrar and shall be supported by an affidavit specifying the grounds for the application.

[100] *Section 244 substituted by Ord. 8 of 2007*

(2) The Supreme Court may summarily reject an application of the kind mentioned in subsection (1) without hearing the applicant or his advocate if, on perusing the supporting affidavit, it is of the opinion that no grounds for granting the application are disclosed.

(3) An appellant may, at any time after he has lodged a petition of appeal or an application to extend the time for lodging such petition, abandon his appeal by giving notice in writing of such abandonment to the Registrar, and upon such notice being given the appeal shall be deemed to have been dismissed by the Supreme Court.

Summary dismissal of appeal

248. On receiving a petition made under the provisions of section 245 of this Ordinance, the Chief Justice shall peruse the same and after perusing the record of the Magistrates' Court—

(a) in the case of an appeal against sentence only, where he considers that the sentence is not excessive; or

(b) in any other case, where he considers that no question of law is raised proper for consideration by the court, or that there is no material in the circumstances of the case which could raise a reasonable doubt whether the conviction was right or lead the court to consider that the sentence ought to be reduced,

he may dismiss the appeal summarily without hearing the appellant or his advocate.

Notice of hearing

249.[101] **(1)** If the Supreme Court does not dismiss an appeal summarily it shall cause notice to be given to the appellant and to the respondent or to their advocates, if any, of the time and place at which the appeal will be heard and shall furnish the appellant with a copy of the proceedings and the respondent with a copy of the proceedings and of the petition of appeal.

(2) At the hearing of an appeal the Supreme Court shall hear the appellant and the respondent or their advocates, if any.

(3) The Supreme Court may hear and dispose of an appeal from the Magistrates' Court, sitting outside St. Helena and in the absence of the parties and their advocates, if both the Appellant and the Respondent so agree and if the Chief Justice considers it a proper case in which so to proceed.

(4) If the Supreme Court is proceeding to hear an appeal under subsection (3) in the absence of the parties and their advocates, the Chief Justice may order the parties to deliver written submissions at such times and in such manner as is specified.

Powers of Supreme Court on appeals from convictions

250. (1) On any appeal against conviction, the Supreme Court shall allow the appeal if it is of the opinion that—

(a) the judgment should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence; or

(b) the judgment should be set aside on the ground of a wrong decision on any question of law if such decision has in fact caused a miscarriage of justice; or

(c) on any other ground there has been a miscarriage of justice,

and in any other case shall dismiss the appeal:

[101] *Section 249 amended by Ord. 2 of 2001*

Provided that the court shall, notwithstanding that it is of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers no substantial miscarriage of justice has actually occurred.

(2) Subject to the provisions of subsection (1), the Supreme Court on any appeal may—

(a) reverse the finding and sentence, and acquit or discharge the appellant, or order a new trial; or

(b) alter the finding and find the appellant guilty of another offence, maintaining the sentence, or with or without altering the finding, reduce or increase the sentence; or

(c) with or without such reduction or increase and with or without altering the finding, alter the nature of the sentence or make any order which the Magistrates' Court could have made.

Powers of Supreme Court on appeals from acquittal

251. On any appeal from an acquittal or dismissal, the Supreme Court may remit the case together with its judgment thereon to the court of trial for determination, whether or not by way of rehearing, with such directions as the Supreme Court may think necessary.

Powers of Supreme Court on appeals from other orders

252. The Supreme Court may on any appeal from any order other than a conviction, acquittal or dismissal alter or reverse any such order.

Appellant's right to be present at appeal

253. An appellant who is in custody shall be entitled to be present at the hearing of the appeal.

Delivery of judgment

254. On the termination of the hearing of an appeal the Supreme Court shall, either at once or at some future date which shall either then be appointed or of which notice shall subsequently be given, deliver judgment in open court:

Provided that—

(a) in the absence of the Chief Justice or Trial Judge from St. Helena it shall be lawful for another Trial Judge or the Registrar in open court to read the judgement of the Supreme Court on an appeal;

(b) in the case of an appeal against a conviction, if the court is of the opinion that the appeal should be allowed and the appellant discharged, it may on the termination of the hearing of the appeal order the release of the appellant if he is in custody.

Supreme Court to make orders conformable with judgment

255. When a case is decided on appeal by the Supreme Court it shall thereupon make such orders as are conformable to the judgment or order and shall if necessary cause the record of the lower court to be amended in accordance with such judgment or order.

Admission of appellant to bail pending appeal

256. (1) The Supreme Court or the Magistrates' Court may, if it sees fit, admit an appellant to bail pending the determination of his appeal:

Provided that an application for bail under this section shall be made in the first instance to the Magistrates' Court.

(2) The time during which an appellant, pending the determination of his appeal, is admitted to bail shall not count as part of any term of imprisonment under his sentence and the sentence of the appellant, whether it is the sentence passed by the court of trial or the sentence passed by the Supreme Court on appeal, shall, subject to any directions which may be given by the court as aforesaid be deemed to be resumed or to begin to run, as the case requires, if the appellant is in custody, as from the day on which he was first confined to prison under the sentence, and, if he is not in custody, as from the day on which he is received into prison under the sentence.

Further evidence

257. (1) In an appeal from the Magistrates' Court the Supreme Court, if it thinks additional evidence is necessary, shall record its reasons, and may either take such evidence itself or direct it to be taken by the Magistrates' Court.

(2) When the additional evidence is taken by the Magistrates' Court, such court shall certify such evidence to the Supreme Court, which shall thereupon proceed to dispose of the appeal.

(3) Unless the Supreme Court otherwise directs, the accused or his advocate, if any, shall be present when the additional evidence is taken.

(4) Evidence taken in pursuance of this section shall be taken as if it were evidence taken at a trial before the Magistrates' Court.

(5) In an appeal from the Magistrates' Court, the Supreme Court may, if it thinks fit, call for and receive from that court a report on any matter connected with the appeal.

Abatement of appeals

258. Every appeal from the Magistrates' Court, except an appeal from a sentence of fine, shall finally abate on the death of the appellant.

Second appeal

259. (1) Either party to an appeal from the Magistrates' Court may appeal against the decision of the Supreme Court in its appellate jurisdiction to the Court of Appeal on a matter of law, not including severity of sentence, but not on a matter of fact or of mixed fact and law.

(2) On any such appeal, the Court of Appeal may, if it thinks that the judgment of the Magistrates' Court or of the Supreme Court should be set aside or varied, make any order which the Magistrates' Court or the Supreme Court could have made; or may remit the case, together with its judgment or order thereon, to the Supreme Court or to the Magistrates' Court for determination, whether or not by way of rehearing, with such directions as the Court of Appeal may think necessary:

Provided that in the case of an appeal against conviction, if the Court of Appeal dismisses the appeal and confirms the conviction appealed against, it shall not, save as provided in subsection (3), increase, reduce or alter the nature of the sentence imposed in respect of that conviction, whether by the Magistrates' Court or by the Supreme Court, unless the Court of Appeal is of the opinion that such sentence was an unlawful one, in which case it may impose such sentence in substitution therefor as it thinks proper.

(3) If it appears to the Court of Appeal that a party to an appeal, though not properly convicted on some count, has been properly convicted on some other count, the Court of Appeal may, in respect of the count, on which the court considers that the appellant has been properly convicted, either affirm the sentence passed by the Magistrates' Court or by the Supreme Court, or pass such other sentence, whether more or less severe, in substitution therefor as it thinks proper.

(4) Where a party to an appeal has been convicted of an offence and the Magistrates' Court or the Supreme Court could lawfully have found him guilty of some other offence and, on the finding of the Magistrates' Court or of the Supreme Court, it appears to the Court of Appeal that the court must have been satisfied of facts which proved him guilty of that other offence, the Court of Appeal may, instead of allowing or dismissing the appeal, substitute for the conviction entered by the Magistrates' Court or by the Supreme Court a conviction of that other offence, and pass such sentence in substitution for the sentence passed by the Magistrates' Court or by the Supreme Court as may be warranted in law for that other offence.

(5) On any appeal under this section the Court of Appeal may, notwithstanding that it may be of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has occurred.

(6) For the purposes of this section the proceedings of the Supreme Court in revision shall be deemed to be an appeal.

(7) The provisions of section 256(2) of this Ordinance shall apply to a convicted appellant appealing under the provisions of this section with the modification that such section shall be construed as if for the words "Supreme Court" occurring therein there were substituted the words "Court of Appeal".

Admission to bail pending second appeal

260. The Supreme Court may in its discretion, in any case in which an appeal from a decision of that court in its appellate jurisdiction to the Court of Appeal is filed, grant bail pending the hearing of such appeal.

Revision

Power of courts to call for records

261. (1) The Supreme Court may call for and examine the record of any criminal proceedings before the Magistrates' Court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such court.

(2) In every case coming before the Magistrates' Court in which a person is convicted and is sentenced to an aggregate period of more than six months imprisonment the Magistrates' Court shall as soon as possible submit its record of the proceedings to the Supreme Court for consideration.

Powers of Supreme Court on revision

262. (1) In the case of any proceedings in the Magistrates' Court the record of which has been called for or which has been submitted for consideration under the provisions of section 261(2), or which otherwise comes to its knowledge, when it appears that in such

proceedings an error material to the merits of any case or involving a miscarriage of justice has occurred, the Supreme Court may—

(a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 250 and 257 of this Ordinance and may enhance the sentence;

(b) in the case of any other order, other than an order of acquittal, alter or reverse such order.

(2) No order shall be made to the prejudice of a person convicted of an offence unless he has had an opportunity of being heard either personally or by an advocate on his own behalf.

(3) In exercising its powers under this section in relation to sentence, the Supreme Court shall not inflict a greater punishment for the offence which in the opinion of the Supreme Court the accused has committed, than could legally have been inflicted by the Magistrates' Court.

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

Provided that when any person is acquitted of the offence with which he was charged but is convicted of another offence, whether charged with such other offence or not, the Supreme Court may, if it reverses the finding of conviction, itself convert the finding of acquittal into one of conviction.

(5) Where an appeal lies from any finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(6) In exercising the powers of revision under this section, the Supreme Court may, pending the final determination of the case, release any convicted person on bail:

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

(7) In exercising its powers under this section, the Supreme Court may, if it thinks fit, call for and receive from the Magistrates' Court a report on any matter connected with the case.

Discretion of court as to hearing parties

263. Save as provided in section 262 of this Ordinance, no party has any right to be heard either personally or by advocate by the Supreme Court when it is exercising its powers of revision:

Provided that the court may, if it thinks fit, when exercising such powers hear any party either personally or by advocate, or receive a written submission.

Supreme Court order to be certified to lower court

264. When a case is revised by the Supreme Court, it shall certify its decision or order to the Magistrates' Court, and that court shall thereupon make such orders as are conformable to the decisions so certified, and, if necessary, the record shall be amended in accordance therewith.

Appeals from the Supreme Court

Appeals from Supreme Court to Court of Appeal

265. (1) Subject as hereinafter provided, any person convicted on a trial held by the Supreme Court and sentenced to a term of imprisonment exceeding twelve months or to a fine exceeding £50, may appeal to the Court of Appeal—

(a) against that conviction on a question of law or of fact or of mixed law and fact; and

(b) with the leave of the Supreme Court or the Court of Appeal, against the sentence unless the sentence is one fixed by law.

(2) Subject as hereinafter provided, any person convicted on a trial held by the Supreme Court and sentenced to a term of imprisonment for twelve months or less, or to a fine exceeding £10 but not exceeding £50 may, with the leave of the Court of Appeal, or upon the certificate of the Supreme Court that it is a fit case for appeal, appeal against his conviction on any ground which appears to the Court of Appeal or to the Supreme Court to be a sufficient ground of appeal:

Provided that notwithstanding that the sentence imposed is a fine not exceeding £10 it shall be competent for the Court of Appeal or the Supreme Court to grant such leave or certificate, as the case may be, it either is of opinion that the case involves a question of law of general or public importance.

(3) No appeal against conviction shall be allowed in the case of a person who has pleaded guilty and has been convicted on such a plea.

(4) The Supreme Court or the Court of Appeal may in its discretion, in any case in which an appeal to the Court of Appeal is lodged under this section, grant bail, pending the hearing and determination of such appeal.

(5) The provisions of section 256(2) of this Ordinance shall apply to a convicted appellant appealing under the provisions of this section with the modification that such section shall be construed as if for the words "Supreme Court" occurring therein there were substituted the words "Court of Appeal".

(6)[102] The prosecutor may appeal to the Court of Appeal against a decision or determination of the Supreme Court on any of the following grounds, namely:

(a) that the decision or determination was erroneous in law;

(b) that the decision or determination was one which no reasonable court, properly directing itself in law, could have reached;

(c) that the sentence imposed was one which the court had no power to impose or was so lenient as to be one which no reasonable court, properly directing itself in law, could have passed:

Provided that nothing in paragraphs *(a)* and *(b)* enables the prosecutor to appeal against the verdict of a jury unless it is alleged that the jury was misdirected in law by the trial judge;

Provided further that an appeal under paragraph *(c)* shall not be instituted except by or with the consent of the Attorney General.

PART XI
SUPPLEMENTARY PROVISIONS

Irregular Proceedings

Finding or sentence when reversible by reason of error or other proceedings

266. Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the complaint, summons, warrant, charge, indictment, proclamation, order, judgment or other proceedings before or during the trial or in any inquiry or other proceedings under this Ordinance, unless such error, omission, irregularity or misdirection has in fact occasioned a failure of justice:

[102] *Section 265(6) amended by Ord. 8 of 2007*

Provided that in determining whether any error, omission or irregularity has occasioned a failure of justice the court shall have regard to the question whether the objection could and should have been raised at an earlier stage in the proceedings.

Distress not illegal nor distrainer a trespasser for defect or want of form in proceedings

267. No distress made under this Ordinance shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress or other proceedings relating thereto.

Directions in the Nature of Habeas Corpus

Power to issue directions in the nature of a *habeas corpus*

268. (1) The Supreme Court may whenever it thinks fit direct—

(a) that any person within the limits of St. Helena be brought up before the court to be dealt with according to law;

(b) that any person illegally or improperly detained in public or private custody within such limits be set at liberty;

(c) that any prisoner detained in any prison situated within such limits be brought before the court to be there examined as a witness in any matter pending or to be inquired into in such court;

(d) that any prisoner detained as aforesaid be brought before a court-martial or any commissioners acting under the authority of any commission from the Governor for trial or to be examined touching any matter pending before such court-martial or commissioners respectively;

(e) that the body of a defendant within such limits be brought in on a return of *cepi corpus* to a writ of attachment.

(2) The Chief Justice may from time to time make rules to regulate the procedure in cases under this section.

Miscellaneous

Appearances and representations

269.[103] **(1)** Notwithstanding anything contained in the articles of association, by-laws or other document governing the constitution of a corporation, and notwithstanding anything contained in any other written law, an officer of a corporation (as defined in section 66 of this Ordinance) appearing in court on behalf of such corporation shall be deemed so to appear with the full authority of such corporation, and to have full power to represent such corporation.

(2) Where any person is charged before any court with the commission of an offence, such person may be represented at the trial of such offence by an advocate or, with the leave of the court, by any other person who is not a legal practitioner, or may personally conduct his own defence.

Affidavits

[103] *Section 269 amended by Ord. 16 of 1985*

270. Affidavits and affirmations to be used before the Supreme Court may be sworn or affirmed, as the case may be, before the Chief Justice, Trial Judge, the Registrar or any magistrate or before a commissioner for oaths.

Copies of proceedings

271. If any person affected by any judgment or order passed in any proceedings under the provisions of this Ordinance desires to have a copy of the judgment or order or any deposition or other part of the record, he shall on applying for such copy be furnished therewith provided he pays for the same, unless the court for special reasons thinks fit to furnish it free of cost.

Forms

272. Such forms as the Chief Justice may from time to time approve, with such variations as the circumstances of each case may require, may be used for the respective purposes therein mentioned, and if so used shall be sufficient for any such purpose.

Power to make rules, etc

273. (1) The Governor in Council may make rules prescribing—

(a) the fees to be paid by appellants under this Ordinance;

(b) the manner in which such fees should be paid;

(c) the persons who may be exempted from the payment of such fees;

(d) the fees to be paid, if any are payable, for copies of proceedings held under the provisions of this Ordinance;

(e) the amount of expenses payable to complainants, witnesses and jurors attending before any court for the purpose of any inquiry, trial or proceedings held under the provisions of this Ordinance.

(2) Notwithstanding the provisions of subsection (1)*(e)* of this section or any rules made thereunder a court may in its discretion disallow the payment of or reduce the expenses payable to any person.

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