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## CHAPTER 117

### THE CRIMINAL PROCEDURE ACT

#### Arrangement of Sections

#### Section

1. Short title.
2. Interpretation.

#### PART I

##### APPREHENSION OF OFFENDER

3. Constable or peace officer may apprehend without warrant.
4. Persons offering goods suspected to be stolen may be apprehended.
5. Apprehension by private persons of night offenders.
6. Constable, &c., may apprehend persons found loitering about at night.
7. Proceedings before magistrate.

#### PART II

##### PROCEEDINGS PRELIMINARY TO TRIAL

8. When accused committed for trial copy of depositions to be supplied to Director of Public Prosecutions.
9. Power of Director of Public Prosecutions to remit cause for further inquiry.
10. Power of Director of Public Prosecutions to remit cause to be dealt with summarily.
11. Power of Director of Public Prosecutions to remit case for committal.
12. Further provision as to remission of cause.
13. Right of Director of Public Prosecutions to enter *nolle prosequi*.
14. Institution of proceedings.

## PART III

## INDICTMENTS, &amp;c.

15. Mode of trial.
16. Filing and service of copy of indictment.
17. Bringing of prisoners before the Court for trial.

## PART IV

## DILATORY PLEAS, ARRAIGNMENT, &amp;c.

18. Further time to plead.
19. Plea of not guilty puts defendant on trial.
20. Persons standing mute.
21. Pleas of autrefois convict or acquit.

## PART V

## TRIAL, DEFENCE, VERDICT, &amp;c.

22. Defence by counsel.
23. Rule for addresses by counsel to jury.
24. Accused entitled to inspect depositions at trial without fee.
25. Accused entitled to a copy of the depositions.
26. Punishment of person attempting to commit felony or misdemeanour, offence not being completed.
27. No person, after trial for any offence, to be tried for attempting to commit same offence.
28. Where a person is on trial for misdemeanour, and the facts amount to felony, such party is not entitled to acquittal.
29. Verdict of assault may be found where felony charged.
30. Proceedings upon indictment for committing any offence after a previous conviction.
31. In treason or felony, jury not to enquire, of lands, goods, &c.
32. No forfeiture of chattel which caused death.

## PART VI

EVIDENCE, ATTENDANCE OF WITNESSES,  
AMENDMENT, JUDGMENTS, Etc.

33. Depositions may be read in evidence for other offence than that for which were taken.
34. Attendance of witness bound by recognizance to attend.

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35. Writs of subpoena.
  36. Duty to prepare subpoenas.
  37. Service of subpoenas.
  38. Warrant for apprehension of witness not attending on recognizance.
  39. Warrant for apprehension of witness disobeying summons.
  40. Fine for non-attendance of witness.
  41. Warrant for apprehension of witness in first instance.
  42. Mode of dealing with witness refusing to be sworn etc.
  43. Non-attendance of witness at adjourned trial.
  44. Any person confined in any prison may be conveyed to the place at which such prisoner is required.
  45. Crime or interest does not incapacitate a witness.
  46. Persons so offered as witnesses are compellable to give evidence.
  47. Laws of England in relation to procedure to be in force, unless otherwise provided for.
  48. Where second jury, same right to challenge as in the first jury.
  49. Mode of making up record on conviction.
  50. Judgment not to be stayed or reversed for want of similitur, &c.

## PART VII

### ARRAIGNMENT AND TRIAL OF INSANE PERSONS

51. Procedure where person indicted appears on arraignment to be insane.
52. Procedure where person indicted appears during trial to be insane.
53. Special verdict where accused person found guilty, but insane at date of act or omission charged.
54. Provision for custody of accused person found insane;
55. Judge to report finding to Governor-General.

## PART VIII

### PUNISHMENT — IMPRISONMENT

56. Similar punishment for capital offences whether by verdict or confession.
57. Mode of punishment for felony not capital.
58. Rescue of a prisoner in custody and felonious rescue.
59. Procuring discharge of prisoner by false pretence.

- 
60. Prisoner escaping to undergo unexpired term with further imprisonment.
  61. Punishment of felonies less than capital.
  62. Where no definite term of imprisonment is fixed by law.
  63. Sentence to commence from day of passing same.
  64. Imprisonment for a subsequent felony, before expiration of imprisonment for prior offence.
  65. Persons convicted may be sentenced by the Court to be imprisoned, &c.

## PART IX

## JUDGMENT OF DEATH

66. Execution of prisoner under sentence of death.
67. Judge to report case of any prisoner under sentence of death, and Judge in certain cases may reprieve.
68. Prisoner, after sentence of death, to be kept apart in safe custody.
69. Governor-General to appoint place of execution.
70. Execution within walls of prison.

## PART X

## PARDONS

71. Crown may extend Royal mercy.
72. When pardon granted, offender still liable for any other felony or offence.
73. Nothing herein to affect the Royal Prerogative.

## PART XI

UNDERGOING SENTENCE EQUIVALENT  
TO PARDON

74. Imprisonment to have the effect of a pardon, but the person pardoned is liable for subsequent felony.

## PART XII

## GENERAL PROVISIONS

75. Felonies within Admiralty jurisdiction.
76. Nothing to affect Her Majesty's land or naval forces.
77. Continuous bail.
78. Taking of recognizance of bail.
79. Definition of "month" in sentence of imprisonment.

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80. Recovery of costs.  
 81. Power of Supreme Court to fine on conviction of felony.  
 82. Power of Court in relation to fines.  
 83. Incidental provisions as to fines.  
 SCHEDULE.

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CRIMINAL PROCEDURE

(24th March, 1873.)

3/1873.

211901.

511916.

1111945.

S.R.O. 2211956.

1411957.

1511961.

S.R.O. 4611981.

**1.** This Act may be cited as the Criminal Procedure Act. **Short title.**

**2.** In the interpretation of this Act, and of any other Act relating to criminal law, unless there be something in the enactment, or in the context, indicating a different meaning, or calling for a different construction— **Interpretation.**

(a) "indictment" includes "information" and "inquisition" as well as indictment, and also any plea, replication, or other pleadings, and any record;

"property" includes goods, chattels, money, valuable securities, and every other matter or thing, whether real or personal, upon or with respect to which any offence may be committed;

"the Court" means the High Court or any Judge thereof.

(b) Whenever in any Act relating to any offence, whether punishable on indictment or summary conviction, any word has been used or employed in describing or referring to the offence, or to the subject matter on or with respect to which it may be committed, or to the offender, or the party affected, or intended to be affected, by the offence, such Act shall be understood to include several matters of the same kind as well as one matter, and, when a forfeiture or penalty is made payable to a party aggrieved, it shall be payable to a

body corporate in case such a body be the party aggrieved.

(c) Whenever a person doing a certain act is declared to be guilty of any offence and to be liable to punishment therefor, it shall be understood that such person shall only be deemed guilty of such offence and liable to such punishment after being duly convicted of such act, and whenever, it is provided that the offender shall be liable to different degrees or kinds of punishment, it shall be understood that the punishment to be inflicted will be subject to the limitations contained in the enactment, in the discretion of the Court, or tribunal, before which such conviction takes place.

## PART I

### APPREHENSION OF OFFENDERS

Constable or peace officer may apprehend without warrant.

**3.** Any person, found committing an offence punishable either upon indictment or upon summary conviction, may be immediately apprehended by any constable, or peace officer, without a warrant, or by the owner of the property on or with respect to which the offence is being committed, or by his servant, or any other person authorized by such owner, and shall be forthwith taken before a Magistrate to be dealt with according to law.

Persons offering goods suspected to be stolen may be apprehended.

**4.** If any person, to whom any property is offered to be sold, pawned or delivered, has reasonable cause to suspect that any such offence has been committed with respect to such property, he may, and, if in his power, he shall, apprehend and forthwith carry before a Magistrate the party offering the same, together with such property, to be dealt with according to law.

Apprehension by private persons of night offenders.

**5.** Any person may apprehend any other person found committing any indictable offence in the night, and shall convey or deliver him to some constable, or other person in order that he may be taken, as soon as he conveniently may be, before a Magistrate to be dealt with according to law.

Constable, &c., may apprehend persons found loitering about at night.

**6.** Any constable or peace officer may, without a warrant, take into custody any person whom he finds loitering or lying in any highway, yard, or other place during the

night, and whom he has good cause to suspect of having committed, or being about to commit, any felony, and may detain such person until he can be brought before a Magistrate to be dealt with according to law:

Provided that no person, apprehended as aforesaid, shall be detained longer than forty-eight hours without being brought before a Magistrate.

**7.** The proceedings to be had before any Magistrate, when any offender is brought before him, shall, subject to any special provision contained in any Act relating to the particular offence with which the offender is charged, be regulated by the provisions of the Magistrate's Code of Procedure Act, relating to the summary jurisdiction (criminal) of Magistrates.

**Proceedings before magistrate.**

**Cap. 255.**

## PART II

### PROCEEDINGS PRELIMINARY TO TRIAL

**8.** When a person is committed for trial under the provisions of the Magistrate's Code of Procedure Act, the Registrar shall, as soon as practicable after the written information (if any), the depositions and the statement of the accused have been delivered to him in accordance with the provisions of the said Act, cause a copy of the said documents to be made and delivered to the Director of Public Prosecutions.

**When accused committed for trial copy of depositions to be supplied to Director of Public Prosecutions.**  
**Cap. 255.**

**9.** At any time after the receipt of the copy of the documents mentioned in the preceding section and before the sitting of the Court to which the accused person has been committed for trial, the Director of Public Prosecutions may, if he thinks fit, remit the cause to the Magistrate with directions to re-open the inquiry for the purpose of taking evidence or further evidence on a certain point or points to be specified, and with any other directions he thinks proper.

**Power of Director of Public Prosecutions to remit cause for further inquiry.**

**10.** If after the receipt of the copy of the documents mentioned in section 8 the Director of Public Prosecutions is of opinion that the accused person should not have been committed for trial but that the matter should have been dealt with summarily, the Director of Public Prosecutions may, if he thinks fit, at any time after that receipt,

**Power of Director of Public Prosecutions to remit cause to be dealt with summarily.**

remit the cause to the Magistrate with directions to deal with it accordingly, and with any other directions he thinks proper.

Power of  
Director of  
Public  
Prosecutions to  
remit case for  
committal.

**11.** (1) In any case where the Magistrate discharges an accused person, the Director of Public Prosecutions may require the Magistrate to send to him the depositions taken in the cause, or a copy thereof, and any other documents or things connected with the cause which he thinks fit.

(2) If, after the receipt of those documents and things, the Director of Public Prosecutions is of opinion that the accused person should have been committed for trial, the Director of Public Prosecutions may, if he thinks fit, remit them to the Magistrate, with directions to deal with the matter accordingly, and with any other directions he thinks proper.

Further provision  
as to remission  
of cause.

**12.** (1) Any directions given by the Director of Public Prosecutions under sections 9, 10 and 11 shall be in writing and shall be complied with by the Magistrate but the Director of Public Prosecutions may at any time add to, alter or revoke any such directions.

(2) Whenever the Director of Public Prosecutions gives any directions under section 9, 10 or 11, the following provisions (where necessary or applicable) shall have effect, that is to say—

(a) the Registrar at the request in writing of the Director of Public Prosecutions shall send back to the Magistrate the original documents transmitted to him by the Magistrate;

(b) where the accused person is in custody, the Magistrate may, by an order in writing under his hand, direct the keeper of the prison having his custody to convey him or cause him to be conveyed to the place where the proceedings are to be held for the purpose of being dealt with as the Magistrate directs;

(c) where the accused person is on bail or is at liberty, the Magistrate shall issue a summons for his attendance at the time and place when and where the proceedings are to be held; and



(d) thereafter the proceedings shall be continued under the provisions of the Magistrate's Code of Procedure Act as if the accused person had not been committed for trial or had not been discharged, as the case may be, and, in the case of any directions given under section 10, in the same manner as if the Magistrate had himself formed an opinion in terms of section 48 of the first-mentioned Act.

Cap. 255.

**13.** (1) At any time after the receipt of the copy of the documents mentioned in section 8, and either before or at the trial and at any time before verdict the Director of Public Prosecutions may enter *nolle prosequi* either by stating in Court or by informing the Court in writing addressed to the Registrar 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 *nolle prosequi* is entered, and if he has been committed to prison, shall be released, or if he is on bail, his recognizance shall be discharged, but his discharge shall not operate as a bar to any subsequent proceedings against him on the same facts.

Right of  
Director of Public  
Prosecutions to  
enter *nolle  
prosequi*.

(2) If the accused person is not before the Court when *nolle prosequi* is entered, the Registrar shall cause notice in writing of the entry to be given to the keeper of the prison in which the accused is detained, and also to the Magistrate of the district in which he was committed for trial, and the Magistrate shall forthwith cause a similar notice in writing to be given to any witnesses bound over to give evidence at the trial and to the accused and his sureties if he has been admitted to bail.

**14.** On receipt of the copy of the documents relating to the preliminary inquiry, the Director of Public Prosecutions, if he sees fit to do so, shall institute such criminal proceedings in the Supreme Court against the accused person which to him seem proper.

Institution of  
proceedings.

### PART III

#### INDICTMENTS. &c

**15.** Every person committed for trial shall be tried on an indictment filed by the Director of Public Prosecutions:

Mode of trial.

Provided that nothing in this section shall affect the right of the Director of Public Prosecutions to file a criminal information.

Filing and service  
of copy of  
indictment.

**16.** (1) Subject to the provisions hereafter in this section contained, every indictment shall be filed in the Registry of the Supreme Court five days at least before the day of trial of the accused person charged in the indictment.

(2) The Registrar shall, four days at least before the day of trial, deliver or cause to be delivered to the keeper of the prison to which the accused person has been committed to await his trial, or to which he would in due course have been so committed if he had not been admitted to bail, a certified copy of the indictment, and the copy shall be given by the keeper to the accused person forthwith, if he is in custody, or when he applies for it, if he is on bail.

(3) Whenever the keeper of a prison delivers a copy of the indictment to an accused person he shall notify the Registrar of the fact and any such notification purporting to be signed by the keeper shall be *prima facie* proof of the fact that the copy aforesaid was delivered to the accused person, and at the time and on the date, mentioned therein.

(4) Whenever the Court orders or allows another indictment to be preferred at the same sitting of the Court for the same offence or for a minor offence, the accused person shall not be entitled to have a copy served upon him for a longer period than twenty-four hours before his arraignment on the other indictment.

(5) Notwithstanding the foregoing provisions of this section, an indictment may be filed at any time before the first day of the sitting of the Court, but, in such event, the accused person shall be entitled to apply to the Court for a postponement of the trial to another sitting of the Court on the ground that he has not had sufficient time to prepare his defence.

Bringing of  
prisoners before  
the Court for  
trial.

**17.** (1) The Superintendent of the prison shall, by himself or by his deputy, be in attendance at all times whilst the Court is sitting, and shall bring each prisoner awaiting trial before the Court when his case is called for trial, and during the continuance of the trial shall have him under his

charge and custody, and from time to time remand him to prison by permission or order of the Court during the progress of the trial or on any adjournment thereof.

(2) The Commissioner of Police shall afford any assistance necessary to enable the keeper to comply with the requirements of this section.

#### PART IV

##### DILATORY PLEAS, ARRAIGNMENT, &C

**18.** No person prosecuted shall be entitled, as of right, to traverse, or postpone, the trial of any indictment presented against him in any Court, or to have time allowed him to plead, or demur, to any such indictment: **Further time to plead.**

Provided that, if the Court before whom any person is so indicted, upon the application of such person, or otherwise, is of opinion that he ought to be allowed a further time to plead or demur, or to prepare for his defence or otherwise, such Court may grant such further time to plead or demur, or may adjourn the receiving or taking of the plea or demurrer, and the trial (as the case may be) of such person, to some future time of the sitting of the Court, or to the next, or any subsequent, sitting of the court, and upon such terms as to bail, or otherwise, as to the Court seems meet, and may, in the case of adjournment to another session or sitting, respite the recognizances of the prosecutor and witnesses accordingly; in which case the prosecutor and witnesses shall be bound to attend to prosecute and give evidence at such subsequent session or sitting, without entering into any fresh recognizances for that purpose.

**19.** If any person, being arraigned upon any indictment for any indictable offence, pleads thereto "not guilty", he shall, by such plea, without any further form, be deemed to have put himself upon the country for trial, and the Court may, in the usual manner, order a jury for the trial of such person accordingly. **Plea of not guilty puts defendant on trial.**

**20.** If any person, being arraigned upon any indictment for any indictable offence, stands mute of malice, or will not answer directly to the indictment, in every such case it shall be lawful for the Court, if it thinks fit, to order the proper officer to enter a plea of "not guilty" on behalf of **Persons standing mute.**

such person, and the plea so entered shall have the full force and effect as if such person had actually pleaded the same.

Pleas of  
autrefois convict  
or acquit.

**21.** In any plea of autrefois convict or autrefois acquit, it shall be sufficient for any defendant to state that he has been lawfully convicted or acquitted (as the case may be) of the offence charged in the indictment.

## PART V

### TRIAL, DEFENCE, VERDICT, &c.

Defence by  
counsel.

**22.** All persons tried for any indictable offence shall be admitted, after the close of the case for the prosecution, to make full answer and defence thereto by counsel learned in the law.

Rule for  
addresses by  
counsel to jury.

**23.** (1) Upon any trial, the addresses to the jury shall be regulated as follows:

the counsel for the prosecution, in the event of the defendant, or his counsel, not announcing, at the close of the case for the prosecution, his intention to adduce evidence, shall be allowed to address the jury a second time at the close of such case, for the purpose of summing up the evidence; and the accused, or his counsel, shall then be allowed to open his case, and also to sum up the evidence, if any be adduced for the defence, and the right of reply shall be in accordance with the practice of the Courts in England.

(2) Where the only witness to the facts of the case called by the defence is the person charged he shall be called as a witness immediately after the close of the evidence for the prosecution. 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 to reply:

Provided that the right of reply shall be always allowed to the Director of Public Prosecutions, or to any counsel acting on behalf of the Crown.

Accused entitled  
to inspect  
depositions at  
trial without fee.

**24.** All persons under trial shall be entitled, at the time of their trial, to inspect, without fee or reward all depositions (or copies thereof) taken against them, and returned into the Court before which such trial is had.

**25.** Every person indicted shall be entitled to a copy of the depositions returned into Court:

Accused entitled to a copy of the depositions.

Provided (if the same are not demanded before the opening of the term, sittings or sessions) the Court is of opinion that the same can be made without delay to the trial, but not otherwise; but the Court may, if it see fit, postpone the trial on account of such copy of the depositions not having been previously had by the person charged.

**26.** If, on the trial of any person charged with any felony or misdemeanour, it appears to the jury, upon the evidence, that the defendant did not complete the offence charged, but that he was guilty only of an attempt to commit the same, such person shall not, by reason thereof, be entitled to be acquitted, but the jury shall be at liberty to return, as their verdict, that the defendant is not guilty of the felony or misdemeanour charged, but is guilty of an attempt to commit the same; and thereupon such person shall be liable to be punished in the same manner as if he had been convicted on an indictment for attempting to commit the particular felony or misdemeanour charged in the indictment.

Punishment of person attempting to commit felony or misdemeanour, offence not being completed.

**27.** No person shall be tried or prosecuted for an attempt to commit any felony or misdemeanour, who has been previously tried for committing the same offence.

No person, after trial for any offence, to be tried for attempting to commit same offence.

**28.** If, upon the trial of any person for any misdemeanour, it appears that the facts given in evidence, while they include such misdemeanour, amount in law to a felony, such person shall not by reason thereof, be entitled to be acquitted of such misdemeanour (and the person tried for such misdemeanour, if convicted, shall not be liable to be afterwards prosecuted for felony on the same facts) unless the Court before which such trial is had thinks fit, in its discretion, to discharge the jury from giving any verdict upon such trial, and to direct such person to be indicted for felony, in which case such person may be dealt with, in all respects, as if he had not been put upon his trial for such misdemeanour.

Where a person is on trial for misdemeanour, and the facts amount to felony, such Party is not entitled to acquittal.

Verdict of assault may be found where felony charged.

**29.** On the trial of any person for any felony whatever, where the crime charged includes an assault against the person, although an assault be not charged in terms, the jury may acquit of the felony, and find a verdict of guilty of an assault against the person indicted, if the evidence warrants such finding, and the person so convicted shall be liable to be imprisoned for any term not exceeding two years, with or without hard labour.

Proceedings upon indictment for committing any offence after a previous conviction.

**30.** The proceedings upon any indictment for committing any offence after a previous conviction, or convictions, shall be as follows (that is to say) : the offender shall, in the first instance, be arraigned upon so much only of the indictment as charges the subsequent offence, and if he plead not guilty, or if the Court orders a plea of not guilty to be entered on his behalf, the jury shall be charged, in the first instance, to enquire concerning such subsequent offence only, and, if they find him guilty, or if on arraignment he pleads guilty, he shall then, and not before, be asked whether he was so previously convicted as alleged, and, if he answers that he was so previously convicted, the Court may proceed to sentence him accordingly, but, if he denies that he was so previously convicted, or stands mute of malice, or will not answer directly to such question, the jury shall then be charged to enquire concerning such previous conviction or convictions, and in such case it shall not be necessary to swear the jury again, but the oath already taken by them shall, for all purposes, be deemed to extend to such last mentioned enquiry:

Provided that, if, upon the trial of any person for any such subsequent offence, such person gives evidence of his good character, it shall be lawful for the prosecutor, in answer thereto, to give evidence of the conviction of such person for the previous offence, or offences, before such verdict of guilty is returned, and the jury shall enquire concerning such previous conviction, or convictions, at the same time that they enquire concerning such subsequent offence.

In treason or felony, jury not to enquire of lands, goods, &c.

**31.** The jury empanelled to try any person for treason or felony shall not be charged to enquire concerning his lands, tenements, or goods, nor whether he has fled for such treason or felony.

**32.** There shall be no forfeiture of any chattels which may have moved to or caused the death of any human being, in respect of such death.

No forfeiture of chattel which caused death.

## PART VI

### EVIDENCE, ATTENDANCE OF WITNESSES, AMENDMENT, JUDGMENTS, ETC.

**33.** Depositions taken in the preliminary or other investigation of any charge against any person may be read as evidence in the prosecution of such person for any other offence whatsoever, upon the like proof, and in the same manner in all respects, as they may, according to law, be read in the prosecution of the offence with which such person was charged when such depositions were taken.

Depositions may be read in evidence for other offence than that for which they were taken.

**34.** Every person who is bound by recognizance to attend at any criminal sessions or sittings of the Court as a witness, whether for the prosecution or for the defence, in any case to be tried at such sessions or sittings, shall be bound to attend the Court, whether or not he has received any subpoena or notice, on the day appointed for the trial of such case, and on subsequent days of such sessions or sittings, until the case has been disposed of, or until he has been discharged by the Court from further attendance.

Attendance of witness bound by recognizance to attend.

**35.** (1) Every person whose attendance as a witness, whether for the prosecution or for the defence, is required in any case, and who has not been bound by recognizance to attend as a witness at the criminal sessions or sittings at which such case is to be tried, shall be summoned by a writ of subpoena.

Writs of subpoena.

(2) Every such subpoena shall issue in the name of the Queen, and shall be tested in the name of the Chief Justice.

**36.** (1) Subject to the provisions of subsection (2), it shall be the duty of the Registrar, on being furnished with the names and places of abode of any witnesses on behalf of the prosecution or defence whose attendance is required to be secured by subpoena, to prepare for service a writ or writs of subpoena directed to such witnesses, together with as many copies thereof, as there may be witnesses named in such writ or writs.

Duty to prepare subpoenas.

(2) Notwithstanding the provisions of subsection (1), it shall be lawful for the Registrar, before a subpoena directed to any witness whose attendance is required on behalf of the defence is prepared, to require to be satisfied by evidence on oath or otherwise that that witness is likely to be able to give material evidence:

Provided that nothing in this subsection shall be deemed to prejudice any right or power of the Court at the trial to call, or permit to be called, any witness.

(3) When application shall be made to postpone any trial by reason of the absence of any witness, it shall be taken as *prima facie* evidence, liable nevertheless to be rebutted, that the party applying for such postponement has not exercised all due and necessary diligence to secure the attendance of such witness if it shall appear that no subpoena to such witness was requested four clear days at the least before the first day of the criminal sessions or sittings.

Service of  
subpœnas.

**37.** The Registrar, by himself or his assistants, shall with all diligence, serve, or attempt to serve, a copy of the writ of subpoena upon each witness to be served, and shall note every such service or attempted service with the time thereof upon the original writ of subpoena, and shall endorse and subscribe thereon a certificate of the service or non-service thereof, as the circumstances of the case may require; any such certificate shall be *prima facie* evidence of the facts stated therein.

Warrant for  
apprehension of  
witness not  
attending on  
recognizance.

**38.** If any person who has been bound by recognizance to attend as a witness, whether for the prosecution or for the defence, at the trial of any case does not attend the Court on the day appointed for the trial of such case, and no reasonable excuse is offered for such non-attendance, the Court may issue a warrant to apprehend such person, and to bring him, at a time to be mentioned in the warrant, before the Court in order to give evidence on behalf of the prosecution or of the defence, as the case may be.

Warrant for  
apprehension of  
witness  
disobeying  
summons.

**39.** If any person to whom any writ of subpoena is directed does not attend the Court at the time and place mentioned therein, and no reasonable excuse is offered for such



non-attendance, then, after proof upon oath, to the satisfaction of the Court, that the writ was duly served, or that the person to whom the writ is directed wilfully avoids service, the Court, being satisfied, by proof upon oath, that he is likely to give material evidence, may issue a warrant to apprehend such person, and to bring him, at a time to be mentioned in the warrant, before the Court in order to give evidence on behalf of the prosecution or of the defence, as the case may be.

**40.** Every person who makes default in attending as a witness in either of the cases mentioned in the two last preceding sections shall be liable, on the summary order of the Court, to a fine of one thousand dollars, and in default of payment, to imprisonment for two months.

**Fine for non-attendance of witness.**

**41.** (1) If a Judge is satisfied, by proof upon oath, that any person likely to give material evidence either for the prosecution or for the defence, on the trial of any case, will not attend to give evidence, without being compelled to do so, he may order that, instead of a subpcena being issued, a warrant shall be issued in the first instance for the apprehension of such person.

**Warrant for apprehension of witness in first instance.**

(2) Every person arrested under any such warrant shall, if the trial of the case for which his evidence is required is appointed for a time which is more than twenty-four hours after the arrest, be taken before a Judge, and the Judge may, on his furnishing security by recognizance, to the satisfaction of the Judge, for his appearance at such trial, order him to be released from custody, or shall, on his failing to furnish such security, order him to be detained for production at such trial.

**42.** (1) If any person attending the Court as a witness, either on his recognizance, or in obedience to a subpcena, or by virtue of a warrant, or being present in Court and being verbally required by the Court to give evidence in any case—

**Mode of dealing with witness refusing to be sworn,**

(a) refuses to be sworn as a witness, or

(b) having been sworn, refuses to answer any question put to him by or with the sanction of the Court, or

(c) refuses or neglects to produce any document which he is required by the Court to produce, without in any such case offering any sufficient excuse for such refusal or neglect, the Court may, if it thinks fit, adjourn or postpone the trial of the case for any period not exceeding eight days, and may in the meantime, by warrant, commit such person to prison.

(2) If such person, upon being brought before the Court at or before such adjourned or postponed trial, again refuses to do what is so required of him, the Court may, if it thinks fit, again adjourn or postpone the trial of the case, and commit him in like manner, and so again from time to time until such person consents to do what is so required of him.

(3) Every such person who is guilty of such refusal or neglect shall also be liable, on the summary order of the Court, either in addition to or in lieu of such punishment, to a fine of one thousand dollars, and in default of payment, to imprisonment for two months.

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

Non-attendance  
of witness at  
adjourned trial.

**43.** Every witness who is present when the trial or further trial of a case is adjourned, or who has been duly notified of the time to which such trial or further trial is so adjourned, shall be bound to attend at such time, and in default of so doing, may be dealt with in the same manner as if he had failed to attend before the Court in obedience to a subpoena to attend and give evidence.

Any person  
confined in any  
prison may be  
conveyed to the  
place at which  
such prisoner is  
required.

**44.** When the attendance of any person, confined in any prison, is required in any Court of Criminal jurisdiction, in any case cognizable therein by indictment, the Court before whom such prisoner is required to attend, or any Judge of such Court, or of any superior Court, may, before, or during, any such term, or sitting, at which the attendance of such person is required, make an order upon the keeper,

or other person, having the custody of such prisoner, to deliver such prisoner to the person named in such order to receive him, and such person shall, at the time prescribed in such order, convey such prisoner to the place at which such person is required to attend, there to receive and obey such further order as to the said Court may seem meet.

**45.** No person offered as a witness shall, by reason of any alleged incapacity from crime or interest, be excluded from giving evidence on the trial of any criminal case, or in any proceeding relating, or incidental, to such case.

**Crime or interest does not incapacitate a witness.**

**46.** Every person, so offered as a witness, shall be admitted and be compelled to give evidence on oath, or solemn affirmation where an affirmation is receivable, notwithstanding that such person has, or may have, an interest in the matter in question, or in the event of the trial in which he is offered as a witness, or of any proceeding relating, or incidental, to such case, and notwithstanding that such person, so offered as a witness, has been previously convicted of a crime or offence.

**Persons so offered as witnesses are compellable to give evidence.**

**47.** All other matters of procedure, not herein nor in any other Act expressly provided for, shall be regulated, as to the admission thereof, by the law of England, and the practise of the Superior Courts of criminal law in England.

**Laws of England in relation to procedure to be in force, unless otherwise provided for.**

**48.** When any trial of an indictment for any felony or misdemeanour is had before a second jury, the Crown and the defendant, respectively, shall be entitled to the same challenges as they were entitled to with respect to the first jury.

**Where second jury, same right to challenge as in the first jury.**

**49.** In making up the record of any conviction, or acquittal, on any indictment, it shall be sufficient to copy the indictment with the plea pleaded thereto, without any formal caption or heading; and the statement of the arraignment, and the proceedings subsequent thereto, shall be entered of record in the same manner as before the passing of this Act, subject to any such alterations in the forms of such entry as may, from time to time, be prescribed by any rule, or rules, of the Supreme Court.

**Mode of making up record on conviction.**

Judgment not to be stayed or reversed for want of a similiter, &c.

**50.** Judgment, after verdict, upon an indictment for any felony or misdemeanour shall not be stayed, or reversed, for want of a similiter, nor by reason that the jury process has been awarded to a wrong officer upon an insufficient suggestion, nor for any misnomer or misdescription of the officer returning such process, or of any of the jurors, nor because any person has served upon the jury who has not been returned as a juror by the Provost-Marshal, or other officer; and, where the offence charged is an offence created by any statute, or subjected to a greater degree of punishment by any statute, the indictment shall, after verdict, be held sufficient, if it describes the offence in the words of the statute creating the offence or prescribing the punishment, although they be disjunctively stated, or appear to include more than one offence or otherwise.

## PART VII

### ARRAIGNMENT AND TRIAL OF INSANE PERSONS

Procedure where person indicted appears on arraignment to be insane.

**51.** If any accused person appears, on arraignment, to be insane, the Court may order a jury to be empanelled to try the sanity of such person, and the jury shall thereupon, after hearing evidence for that purpose, find whether such person is or is not insane and unfit to take his trial.

Procedure where person indicted appears during trial to be insane.

**52.** If, during the trial of any accused person, such person appears, after the hearing of evidence to that effect or otherwise, to the jury before whom he is tried, to be insane, the Court shall in such case direct the jury to abstain from finding a verdict upon the indictment, and, in lieu thereof, to return a verdict that such person is insane:

Provided that a verdict under this section shall not affect the trial of any person so found to be insane for the offence for which he was indicted, in case he subsequently becomes of sound mind.

Special verdict where accused person found guilty, but insane at date of act or omission charged.

**53.** Where, in an indictment, 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 according to law for his actions at the time when the act was done or the omission made, then, if it appears to the jury before whom 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 jury shall return a special verdict to the effect that the accused person was guilty of the act or omission charged against him, but was insane as aforesaid at the time when he did the act or made the omission.

**54.** Where any person is found to be insane under the provisions of section 51 or section 52, or has a special verdict found against him under the provisions of the last preceding section, the Court shall direct the finding of the jury to be recorded, and thereupon the Court may order such person to be detained in safe custody, in such place as the Court may appoint, until Her Majesty's pleasure shall be known.

**Provision for custody of accused person found insane.**

**55.** The Court shall immediately report the finding of the jury and the detention of such person to the Governor-General, who shall order such person to be dealt with as a criminal of unsound mind under the laws of Antigua and Barbuda for the time being in force for the care and custody of criminals of unsound mind, or otherwise as he may think proper.

**Judge to report finding to Governor-General.**

## PART VIII

### PUNISHMENT-IMPRISONMENT

**56.** Any person, indicted for any offence made capital by any statute, shall be liable to the same punishment, whether he be convicted by verdict or confession, and this, as well in the case of accessories as of principals.

**Similar punishment for capital offences whether by verdict or confession.**

**57.** If any person be convicted of felony not punishable with death, committed after a previous conviction for felony, such person shall, on subsequent conviction, be imprisoned for any term not exceeding seven years, with or without hard labour, unless some other punishment be directed by any statute for the particular offence, in which case the offender shall be liable to the punishment thereby awarded, and not to any other

**Mode of punishment for felony not capital.**

**58.** Whosoever escapes, or rescues, or aids, in rescuing, any other person from lawful custody, or makes or causes any breach of prison, if such offence does not amount to felony, is guilty of a misdemeanour, and shall be liable

**Rescue of a prisoner in custody and felonious rescue.**

to be imprisoned for any period not exceeding two years; and whosoever is convicted of a felonious rescue shall, in any case where no special punishment is provided by any statute, be liable to be imprisoned for any term not exceeding seven years, with or without hard labour.

Procuring discharge of prisoner by false pretence.

**59.** Whosoever, knowingly and unlawfully under colour of any pretended authority, directs, or procures, the discharge of any prisoner not entitled to be so discharged, is guilty of a misdemeanour, and shall be liable to be imprisoned for any period not exceeding two years, and the person so charged shall be held to have escaped.

Prisoner escaping to undergo unexpired term with further imprisonment.

**60.** Any person escaping from imprisonment shall, on being retaken, undergo, in the prison he escaped from, the remainder of his term unexpired at the time of his escape, in addition to the punishment which may be awarded for such escape.

Punishment of felonies less than capital.

**61.** Every person convicted of felony, not punishable with death, shall be punished in the manner (if any) prescribed by the statute, or statutes, especially relating to such felony, and every person convicted of any felony, for which no punishment is specially provided, shall be liable to be imprisoned for any term not exceeding seven years.

Where no definite term of imprisonment is fixed by law.

**62.** When imprisonment is to be awarded for any offence, and no definite period is fixed by law, the term of such imprisonment shall always be in the discretion of the Court passing the sentence, and when a fine is to be awarded for any offence, and no amount is fixed, the amount shall be in the discretion of the Court passing the sentence.

Sentence to commence from day of passing same.

**63.** The period of imprisonment, in pursuance of any sentence, shall commence on and from the day of passing such sentence, but no time, during which the convict may be out on bail, shall be reckoned as part of the term of imprisonment to which he is sentenced.

Imprisonment for a subsequent felony before expiration of imprisonment for prior offence.

**64.** Whenever sentence is passed for felony on a person already imprisoned under sentence for another crime, the Court may award imprisonment, for the subsequent offence, to commence at the expiration of the imprisonment to which such person has been previously sentenced; and,

where such person is already under sentence of imprisonment, the Court may award sentence, for the subsequent offence, to commence at the expiration of the imprisonment for which such person has been previously sentenced, although the aggregate term of imprisonment may exceed the term for which such punishment could otherwise have been awarded.

**65.** When a person has been convicted of an offence for which imprisonment may be awarded, then the Court may sentence the offender to be imprisoned, or, if hard labour be part of the punishment, to be imprisoned and kept to hard labour.

**Persons convicted may be sentenced by the Court to be imprisoned, &c.**

## PART IX

### JUDGMENT OF DEATH

**66.** Whenever any offender has been convicted, before any Court of criminal jurisdiction, of an offence for which the offender is liable to, and receives, sentence of death, the Court shall order and direct execution to be done on the offender in the manner provided by law.

**Execution of prisoner under sentence of death.**

**67.** In the case of any prisoner sentenced to the punishment of death, a report of such case shall, without delay and previously to the sentence being carried into execution, be made by the judge before whom such prisoner was convicted (or by the Chief Justice, if a report from the judge cannot be obtained) to the Governor-General and, at the time when that report is made, a copy thereof shall be submitted by the judge or, as the case may be, the Chief Justice to the Advisory Committee on the Prerogative of Mercy established by the Constitution; and if the judge or, as the case may be, the Chief Justice thinks such prisoner ought to be recommended for the exercise of the Royal mercy, or if from the non-decision of any point of law reserved in the case, or from any other causes, it is necessary to delay the execution, he, or any other Judge of the same Court, or who might have held, or sat in, such Court, may, from time to time, either in term, or in vacation, reprieve such offender for such period, or periods, beyond the time fixed for the execution of sentence, as may be necessary for the consideration of the case by the Crown.

**Judge to report case of any prisoner under sentence of death, and Judge in certain cases may reprieve.**

Prisoner, after sentence of death, to be kept apart in safe custody.

**68.** Every person sentenced to suffer death shall, after judgment, be confined, in some safe place within the prison, apart from all other prisoners, and no person but the keeper of the prison and his servants, the medical officer or surgeon of the prison, a chaplain or a minister of religion, shall have access to any such convict without the permission in writing of the Court or Judge, before whom such convict has been tried, or of the Provost-Marshal.

Governor-General to appoint place of execution.

**69.** Judgment of death to be executed on any prisoner shall be carried into effect in such place as the Governor-General shall direct.

Execution within walls of prison.

**70.** In case such execution shall be directed to take place within the walls of the prison, the following sub-sections of this section numbered from one to twelve inclusive, shall be applicable to such execution:—

(1) The Provost-Marshal charged with the execution, and the Superintendent and medical officer or surgeon of the prison, and such other officers of the prison, and such persons as the Provost-Marshal requires, shall be present at the execution.

(2) Any Justice of the Peace and such relatives of the prisoner or other persons as it seems to the Provost-Marshal proper to admit within the prison for the purpose, and any minister of religion who may desire to attend, may also be present at the execution.

(3) As soon as may be after judgment of death has been executed on the offender, the medical officer or surgeon of the prison shall examine the body of the offender, and shall ascertain the fact of death, and shall sign a certificate thereof, and deliver the same to the Provost-Marshal.

(4) The Provost-Marshal and the Superintendent of the prison, and such Justices and other persons present (if any) as the Provost-Marshal requires, or allows, to be present, shall also sign a declaration to the effect that judgment of death has been executed on the offender.

(5) The duties imposed upon the Provost-Marshal, Superintendent, medical officer or surgeon by the four



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preceding subsections may and shall, in his absence, be performed by his lawful deputy or assistant, or other officer, or person ordinarily acting for him or conjointly with him, in the performance of his duties.

(6) A Coroner of the district, or place, wherein judgment of death is executed on any offender, shall, within twenty-four hours after the execution, hold an inquest on the body of the offender, and the jury at the inquest shall enquire into and ascertain the identity of the body, and whether judgment of death was duly executed on the offender, and the inquisition shall be in duplicate, and one of the originals shall be delivered to the Provost-Marshal.

(7) No officer of the prison, or prisoner confined therein, shall, in any case, be a juror on the inquest.

(8) The Governor-General may make such rules and regulations, to be observed on the execution of judgment of death in every prison, as he may deem expedient for the purpose, as well of guarding against any abuse in such execution, as also of giving greater solemnity to the same, and of making known without the prison walls the fact that such execution is taking place.

(9) If any person, knowingly and wilfully, signs any false certificate, or declaration, required with respect to any execution, he shall be guilty of a misdemeanour, and, on conviction thereof, shall be liable, at the discretion of the Court, to imprisonment for any term less than two years.

(10) Every certificate and declaration, and the duplicate of the judgment required by this Act, shall, in each case, be sent, with all convenient speed, by the Provost-Marshal to the Governor-General or to such other officer as may be appointed for the purpose by the Governor-General; and printed copies of the same several instruments shall, as soon as possible, be exhibited, and shall, for twenty-four hours at least, be kept exhibited on, or near, the principal entrance of the prison within which judgment of death is executed.

(11) The omission to comply with any provision of the preceding ten subsections of this Act shall not make the

execution of death illegal in any case where such execution would otherwise have been legal.

(12) Except in so far as is hereby otherwise provided, judgment of death shall be carried into effect in the same manner as if the said eleven subsections had not been passed.

## PART X

### PARDONS

Crown may extend Royal mercy.

**71.** The Crown may extend the Royal mercy to any person sentenced, by virtue of any statute, to imprisonment, although such person be imprisoned for non-payment of money to some party other than the Crown.

When pardon granted, offender still liable for any other felony or offence.

**72.** When the Crown is pleased to extend the Royal mercy to any offender convicted of a felony punishable with death or otherwise, and, by warrant under the hand and seal of the Governor-General, grants to such offender either a free or a conditional pardon, the discharge of such offender out of custody, in the case of a free pardon, and the performance of the condition, in the case of a conditional pardon, shall have the effect of a pardon under the Great Seal of such offenders as to the felony for which pardon has been granted; but no free pardon, nor any discharge in consequence thereof, nor any conditional pardon, nor the performance of the condition thereof, in any of the cases aforesaid, shall prevent, or mitigate, the punishment to which such offender might otherwise be lawfully sentenced on subsequent conviction for any felony, or offence, other than that for which the pardon was granted.

Nothing herein to affect the Royal Prerogative.

**73.** Nothing in this Act shall, or doth, in any manner limit, or affect, Her Majesty's Royal Prerogative of Mercy.

## PART XI

## UNDERGOING SENTENCE EQUIVALENT TO PARDON

**74.** When any offender has been convicted of a felony not punishable with death, and has endured the punishment to which such offender was adjudged, or if such felony be punishable with death and the sentence has been commuted, then, if such offender has endured the punishment to which his sentence was commuted, the punishment so endured shall, as to the felony whereof the offender was so convicted, have the like effects and consequences as a pardon under the Great Seal; but nothing herein contained, nor the enduring of such punishment, shall prevent, or mitigate, any punishment to which the offender might otherwise be lawfully sentenced on a subsequent conviction for any other felony.

**Imprisonment to have the effect of a pardon, but the person pardoned is liable for subsequent felony.**

## PART XII

## GENERAL PROVISIONS

**75.** When any felony, punishable under the laws of Antigua and Barbuda had been committed within the jurisdiction of any Court of Admiralty in Antigua and Barbuda, the same may be dealt with, enquired of, and tried and determined, in the same manner as any other felony committed within Antigua and Barbuda.

**Felonies within Admiralty jurisdiction.**

**76.** Nothing contained in this Act shall alter, or affect, any of the laws relating to the government of Her Majesty's land or naval forces.

**Nothing to affect Her Majesty's land or naval forces.**

**77.** Where, on any adjournment of a criminal proceeding, either in the Supreme Court or before a Magistrate, the accused is admitted to bail the recognizance may be conditioned for his appearance at every time and place to which the proceeding may be, from time to time, adjourned:

**Continuous bail.**

Provided that nothing in this section contained shall prejudice the power of the Court or Magistrate, at any subsequent adjournment of the proceeding, to refuse to admit the accused to bail, or, as a condition of such person being admitted to bail, to require him to enter into another recognizance as the Court or Magistrate may direct.

Taking of  
recognizance of  
bail.

**78.** For removing doubts it is hereby declared that where, as a condition of the release of any person, he is required to enter into a recognizance with sureties, the recognizances of the sureties may be taken separately, and either before or after the recognizances of the principal; and, if so taken, the recognizances of the principal and sureties shall be as binding as if they had been taken together and at the same time.

Definition of  
"month" in  
sentence of  
imprisonment.

**79.** In any sentence of imprisonment the word "month" shall, unless the contrary is expressed, be construed as meaning "calendar month".

Recovery of  
costs.

**80.** (1) Where by virtue of any law in force in Antigua and Barbuda the Court makes an order for the payment of costs against any offender convicted on indictment by the said Court, such order shall be enforced (except where the law under which the order is made provides some other method of enforcement), by the issue of a writ of execution to levy upon and sell the goods, chattels, lands and tenements of the person against whom the order is made; and in case such person shall not have sufficient goods, chattels, lands and tenements on which a levy may be made to satisfy such order, he shall undergo a sentence of imprisonment with or without hard labour for a period not exceeding twelve months unless such costs are sooner paid.

Schedule.

(2) Where any offender convicted as aforesaid had made default in complying with an order of the Court for the payment of costs within the time limited therein for that purpose, a writ of execution in the form set out in the Schedule shall be issued against him from the Registrar's Office to levy upon and sell the goods, chattels, lands and tenements of such offender. The writ, which shall be delivered to the Provost-Marshal, shall be his authority for levying and recovering the sum due for the said costs, and for taking into custody the body of the said offender in case sufficient goods, chattels, lands and tenements shall not be found whereon levy may be made.

Power of High  
Court to fine on  
conviction of  
felony.

**81.** (1) Where any offender is convicted by the Court for felony (not being a felony the sentence for which is fixed by law) the Court shall have power to fine the offender in

lieu of or in addition to dealing with him in any other manner in which the Court has power to deal with him.

(2) For the purposes of this section, the expression "a felony the sentence for which is fixed by law" means a felony for which the Court is required to sentence the offender to death or imprisonment for life or to detention during Her Majesty's pleasure.

**82.** (1) Subject to the provisions of this section, where a fine is imposed by the Court an order may be made in accordance with the provisions of this section—

**Power of Court  
in relation to  
fines.**

(a) allowing time for the payment of the amount of the fine;

(b) directing payment of the said amount by instalments of such amounts and on such dates respectively as may be specified in the order;

(c) fixing a term of imprisonment which the person liable to make the payment is to undergo if any sum which he is liable to pay is not duly paid or recovered:

Provided that any term of imprisonment fixed under this sub-section in default of payment of a fine shall not exceed twelve months.

(2) Any order made under this section providing for any such matters as are mentioned in paragraph (a) or paragraph (b) of the foregoing sub-section may be made by the Court upon application in writing to the Registrar of the Court and may amend any previous order made under this section so far as it provides for those matters:

Provided that no application shall be made under this sub-section after the refusal of a previous application made thereunder.

(3) Where any person liable for the payment of a fine to which this section applies is sentenced by the Court to, or is serving or otherwise liable to serve, a term of imprisonment, the Court may order that any term of imprisonment fixed under paragraph (c) of sub-section (1) shall not begin to run until after the end of the first-mentioned term of imprisonment.

Incidental provisions as to fines.

Schedule.

**83.** (1) Save as is otherwise provided in subsection (3), all fines payable by virtue of the last foregoing section shall be paid to the Registrar of the Court who shall issue a receipt therefor, and where default is made in payment of the fine or any instalment thereof, the Registrar shall cause a warrant to issue against the defaulter committing him to prison. The warrant shall be in the form set out in the Schedule.

(2) Where an order is made directing payment of a fine by instalments and default is made in the payment of any one instalment, the same proceedings may be taken as if default had been made in payment of all the instalments then remaining unpaid.

(3) Where an order is made fixing a term of imprisonment in default of payment of a fine, then—

(a) on payment of the fine to the Registrar of the Court, or (if the person in respect of whom the order was made is in prison) to the Superintendent of the prison, the order shall cease to have effect; and, if the said person is in prison and is not liable to be detained for any other cause, he shall forthwith be discharged;

(b) on payment to the Registrar of the Court or to the Superintendent of the prison of a part of the fine, the total number of days in the term of imprisonment shall be reduced proportionately, that is to say, by such number of days as bears to the said total number of days less one day the proportion most nearly approximating to, without exceeding, the proportion which the part paid bears to the amount of the fine.

(4) Any sums received by the Superintendent of the prison under the last foregoing subsection shall be paid by him to the Registrar of the Court.



WARRANT OF COMMITTAL  
IN THE EASTERN CARIBBEAN COURT

Antigua Circuit

To each and all the constables of Antigua and Barbuda  
and

To the Superintendent of Her Majesty's Prison in Antigua and Barbuda.

THE QUEEN vs. A.B

A.B., hereinafter called the accused, was this day/ on the day of , 19 , convicted by the Supreme Court sitting in the Circuit of the offence of and ordered by the said Court to pay a fine (*here set forth the adjudication shortly*)

And the accused has (paid part of the said fine, to wit, the amount of \$ but has) made default in payment (of a balance of \$ ) It is ordered that the accused be imprisoned in Her Majesty's Prison aforesaid and there kept for a period of months/weeks/days unless the said fine/balance be sooner paid. You the said constables are hereby commanded to take the accused and convey him to the said Prison and there deliver him to the Superintendent thereof together with this Warrant; and you the Superintendent of the said Prison are hereby authorized to receive the accused into your custody, and keep him for the period of months/weeks/days unless the said fine/balance be sooner paid, and if the said sum/balance is paid to you the Superintendent of the said Prison, you shall forthwith discharge the accused from your custody unless he is liable to be detained in the said Prison for any other cause.

Dated the                    day of                    ,  
19

By order of the Court,  
*Registrar.*

Fine.....\$  
.....\$  
Imprisonment in default  
.....\$