

CRIMINAL PROCEDURE AND EVIDENCE CODE

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CHAPTER 8:01

CRIMINAL PROCEDURE AND EVIDENCE CODE

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An Act to amend and consolidate the laws relating to procedure and evidence in criminal proceedings and matters incidental thereto

[1ST FEBRUARY, 1968]

PART I

PRELIMINARY

1.—(1) This Act may be cited as the Criminal Procedure and Evidence Code. Short title

(2) This Act is hereinafter referred to as this Code.

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

Interpretation

“character” includes reputation and disposition;

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

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

“counsel” means legal practitioner;

“court” does not include a Traditional Court;

“evidence” includes—

(a) oral evidence, that is to say all statements which the court permits or requires to be made before it by witnesses in relation to matters of fact under enquiry; and

(b) documentary evidence, that is to say all documents produced for the inspection of the court;

“fact” includes—

(a) any thing, state of things, or relation of things capable of being perceived by the senses; and

(b) any mental condition of which any person is conscious;

“fact in issue” means any fact from which, either by itself or in connexion with other facts, the existence, non-existence, nature or extent of any right, liability or disability, asserted or denied in any proceeding necessarily follows;

Cap. 34:02 “mental hospital” bears the meaning ascribed to that term in section 2 of the Mental Treatment Act;

“non-cognizable offence” means an offence which is not cognizable;

“police officer in charge of a police station” means the senior police officer on duty at a police station at the time in question;

“police station” means any post or place appointed by the Commissioner of Police to be a police station;

“preliminary inquiry” means an inquiry into a criminal charge held by a subordinate court with a view to the committal of the accused person for trial before the High Court;

“proclaimed person” and “proclaimed offender” means any person in respect of whom a proclamation has been published under section 106;

“public prosecutor” means the Chief Public Prosecutor, anyone appointed to be a public prosecutor under section 79, and anyone acting under the directions of the Chief Public Prosecutor;

Cap. 3:02 “Resident Magistrate” means a Resident Magistrate appointed under section 34 of the Courts Act;

“revenue officer” means any officer employed in or about the business of any branch of the public revenue;

“subordinate court” bears the meaning ascribed to that term by section 2 of the Courts Act;

“summary committal procedure” means the procedure provided for in Part IX for the committal of an accused person by a subordinate court for trial before the High Court without the necessity for holding or completing a preliminary inquiry;

“summary trial” means a trial held by a subordinate court under Part VII;

“Sunday” includes public holiday.

Cap. 3:03 “Traditional Court” bears the meaning ascribed to that term by section 2 of the Traditional Courts Act;

Principle on which Code is to be applied

3. The principle that substantial justice should be done without undue regard for technicality shall at all times be adhered to in applying this Code.

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

Finding, etc., not to be set aside merely because proceedings in wrong place

5.—(1) Subject to section 3 and to the other provisions of this Code, no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered on appeal or review on account of any error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during the trial or in any inquiry or other proceedings under this Code unless such error, omission or irregularity has in fact occasioned a failure of justice:

Finding, etc., not to be reversed, etc., on account of errors not occasioning failure of justice

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.

(2) The improper admission or rejection of evidence shall not, of itself, be a ground for the reversal or alteration of any decision in any case unless, in the opinion of the court before which an objection is raised—

(a) the accused would not have been convicted if such evidence had not been given or if there was no other sufficient evidence to justify the conviction; or

(b) it would have varied the decision if the rejected evidence had been received.

6.—(1) Subject to the Traditional Courts Act, all offences under the Penal Code shall be inquired into, tried, and otherwise dealt with according to this Code.

Trial of offences under Penal Code and other laws Cap. 3:03 Cap. 7:01

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

PART II

POWERS OF COURTS AND SPECIAL AREAS

7. Subject to the other provisions of this Code, any offence under the Penal Code may be tried by the High Court.

Offences under Penal Code Cap. 7:01

8. [Repealed by Act No. 31 of 1969].

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

Offences under laws other than Penal Code Cap. 7:01

(2) When no court is so mentioned, it may, subject to the other provisions of this Code, be tried by the High Court, by any subordinate court or by any Traditional Court of competent jurisdiction.

Sentences
which High
Court may
pass

10. The High Court may pass any sentence authorized by law.

Power of
certain courts
to pass
sentence of
imprisonment
for protection
of public

11. Where a person, who is not less than twenty-one years of age—

(a) is convicted by the High Court or by a Resident Magistrate's court or by a court of a magistrate of the first grade of an offence punishable with imprisonment for a term of two years or more; and

(b) has been convicted on at least three previous occasions, since he attained the age of sixteen years, of offences punishable with imprisonment for a term of two years or more; and

(c) has been sentenced on at least two previous occasions to imprisonment,

the court may, if satisfied that it is expedient for the protection of the public that he should be detained in custody for a substantial time, pass, in lieu of any other sentence, a sentence of imprisonment for a term of not less than five nor more than fourteen years, as the court may determine.

Combination
of sentences

12. Subject to section 14 any court may pass any lawful sentence combining any of the sentences which it is authorized by law to pass.

General
jurisdiction of
subordinate
courts
Cap. 7:01
19 of 1995

13.—(1) A Resident Magistrate's court and any court of a magistrate of the first or second grade may try any offence under the Penal Code or any other law other than—

(a) offences under sections 38, 39, 208 and 209 of the Penal Code; and

(b) attempts to commit or aiding, abetting, counselling or procuring the commission of any of the offences specified in paragraph (a).

5 of 1969
19 of 1995

(2) A court of a magistrate—

(a) of the third grade may try any offence specified in the Second Schedule;

(b) of the fourth grade may try any offence specified in the Second Schedule in respect of which the maximum sentence does not exceed the jurisdiction conferred on such court under section 14 (3).

(3) The Chief Justice may, by notice published in the *Gazette*, amend the Second Schedule.

14.—(1) A Resident Magistrate's court, and a court of a magistrate of the first grade may pass any sentence, other than a sentence of death or a sentence of imprisonment for a term exceeding fourteen years, authorized by the Penal Code or any other written law.

Sentences which subordinate courts may pass
Cap. 7:01

(2) The court of a magistrate of the second grade may pass a sentence of imprisonment for a term not exceeding five years or a fine not exceeding K200 or both.

(3) A court of a magistrate of the third grade may pass a sentence of imprisonment for a term not exceeding twelve months or a fine not exceeding K150 or both.

(4) In addition to the powers conferred upon them by subsections (2) and (3), courts of magistrates of the second and third grades may also pass any sentence authorized by section 25 (3) (5) (6) (7) (8) and (9) of the Penal Code.

(5) Where on a trial by a subordinate court a person is convicted of an offence, if the court is of the opinion that greater punishment should be inflicted for the offence than it has power to inflict, the court may, for reasons to be recorded in writing on the record of the case, instead of dealing with him in any other manner, commit him to the High Court or to another subordinate court of higher grade than itself for sentence. The provisions of section 271 relating to the powers of a subordinate court upon a committal for trial shall apply, with necessary modifications, to a committal for sentence under this subsection.

(6) Any person committed to the High Court or to another subordinate court for sentence under this section shall be brought before the court to which he has been committed at the first convenient opportunity.

(7) When any person is brought for sentence before the High Court or a subordinate court, in accordance with subsection (6) the High Court or the subordinate court, as the case may be, shall inquire into the circumstances of the case and shall thereafter proceed as if such person had pleaded guilty before it of the offence in respect of which he has been committed.

(8) Notwithstanding subsection (5), where a person has been committed for sentence under that subsection and has appealed against his conviction, he shall be brought before the High Court for sentence at the time when such appeal is to be determined by the High Court, and where the appeal is dismissed or the finding altered, he shall thereupon be sentenced by the High Court.

(9) Where the High Court, on appeal against conviction, alters the finding, such person shall be deemed to be committed for sentence to the High Court on the offence found by the High Court to have been committed by such person.

Certain sentences to be confirmed on review by High Court before being given effect, etc.

5 of 1969
24 of 1972

15.—(1) Where in any proceedings a subordinate court—

- (a) imposes a sentence of corporal punishment;
- (b) imposes a fine exceeding K100;
- (c) imposes any sentence of imprisonment exceeding—
 - (i) in the case of a Resident Magistrate's court, two years;
 - (ii) in the case of a court of a magistrate of the first or second grade, one year; or
 - (iii) in the case of a court of a magistrate of the third grade, six months;
- (d) imposes any sentence of imprisonment upon a first offender which is not suspended under section 340,

it shall forthwith transmit the record of such proceedings to the High Court in order that the High Court may exercise in respect thereof the powers of review conferred by Part XIII.

(2) No officer in charge of a prison or other person authorized by any warrant or order to carry out any sentence of corporal punishment falling within subsection (1) (a) shall do so, either wholly or in part, until he has received notification from the High Court that it has in exercise of its powers of appeal or review confirmed such sentence.

(3) No person authorized by warrant or order to levy any fine falling within subsection (1) (b), and no person authorized by any warrant for the imprisonment of any person in default of the payment of such fine, shall execute or carry out any such warrant or order until he has received notification from the High Court that it has in exercise of its powers of appeal or review confirmed the imposition of such fine.

(4) An officer in charge of a prison or other person authorized by a warrant of imprisonment to carry out any sentence of imprisonment falling within subsection (1) (c) (i), (ii) or (iii) shall treat such warrant as though it had been issued in respect of a period of two years, one year or six months respectively, as the case may be, until such time as he shall receive notification from the High Court that it has in exercise of its powers of appeal or review confirmed that such sentence may be carried out as originally imposed.

(5) Nothing in this section contained shall affect or derogate from the powers of the High Court to reverse, set aside, alter or otherwise deal with any sentence of a subordinate court on review or appeal.

(6) When a subordinate court has passed a sentence or made an order falling within subsection (1) it shall endorse on the warrant or order that the sentence or order is one required to be

submitted to the High Court for review and which part if any of the sentence or order may be treated as valid and effective pending such review.

(7) In this section "sentence of imprisonment" means a substantive sentence of imprisonment or a sentence of imprisonment in default of payment of fine, costs or compensation or a combination of such sentences and includes a sentence of imprisonment the operation of which is suspended under section 339. 5 of 1969

16.—(1) If a subordinate court imposes a sentence falling within section 15 (1) (c) or (d) the court imposing such sentence may in its discretion and on the application of the person sentenced release the person sentenced on bail pending the order of the High Court. Release on bail pending order of the High Court

(2) If the person sentenced is so released on bail as aforesaid, the term of imprisonment shall run from the date upon which such person begins to serve his sentence after confirmation by or other order of the High Court.

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

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

Provided that—

(a) in no case shall the aggregate of any terms of consecutive sentences of imprisonment imposed on such offender by any Resident Magistrate or magistrate of the first grade exceed fourteen years; and

(b) in no case shall any other subordinate court impose on such offender an aggregate punishment which exceeds twice the amount of punishment which the court is, in exercise of its ordinary jurisdiction, competent to impose.

(3) For the purpose of appeal or review 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.

Appoint-
ment of
special areas

18. The President, in his discretion, may by order direct that any area in Malawi shall be a special area for the purposes of this Code.

Magisterial
powers to
officers in
charge of
special areas
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19. The Minister may by notice published in the *Gazette* confer upon any officer in charge of a special area all or any of the powers conferred or conferrable on a magistrate of the first, second, or third grade.

PART III

GENERAL PROVISIONS

Arrest, how
made

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

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

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

Search of
place
entered by
person to be
arrested

21.—(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 entry thereto and afford all reasonable facilities for a search therein.

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

Powers to
break open
doors and
windows for
purposes of
liberation

22. Any police officer or other person authorized to make an arrest may break open any outer or inner door or window 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 unneces-
sary
restraint

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

24. Whenever a person is arrested—Search of
arrested
persons

(a) by a police officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail but the person arrested cannot furnish bail; or

(b) without warrant, or by a private person under a warrant, and the person arrested cannot legally be admitted to bail or is unable to furnish bail,

the police officer making the arrest or, when the arrest is made by a private person, the police officer to whom he makes over the person arrested may search such person and place in safe custody all articles, other than necessary wearing apparel, found upon him.

25.—(1) Any police officer, or other person authorized in writing in that behalf by the Commissioner of Police, may stop, search and detain—Power of
police officer
to search
and detain
aircraft,
vessel or
vehicle and
persons in
certain cir-
cumstances

(a) any aircraft, vessel or vehicle in or upon which there shall be reason to suspect that anything stolen or unlawfully obtained may be found;

(b) any aircraft, vessel or vehicle which there shall be reason to suspect has been used or employed in the commission, or to facilitate the commission, of any offence under Chapters XXVI, XXVIII or XXIX or section 328 of the Penal Code; or

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(c) any person who may be reasonably suspected of having in his possession or conveying in any manner anything stolen or unlawfully obtained;

and, where anything is found for which such search is being made, may seize such thing.

(2) No person shall be entitled to any damages or compensation for any loss or damage suffered by him in respect of the detention under this section of any aircraft, vessel or vehicle or of the seizure of anything found and seized under this section.

(3) For the purpose of this section the expressions "aircraft", "vessel", and "vehicle" respectively, include everything contained in, being on, or attached to any aircraft, vessel or vehicle, as the case may be, which, in the opinion of the court, forms part of the equipment of such aircraft, vessel or vehicle.

26. Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency.Mode of
searching
women

Power to
seize offen-
sive weapons

27. The officer or other person making any arrest may take from the person arrested any offensive weapon which he has about his person, and shall deliver all weapons so taken to a court or the officer before whom the officer or person making the arrest is required by law to produce the person arrested.

Arrest by
police officer
without
warrant

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

(a) any person whom he suspects upon reasonable grounds of having committed a cognizable offence;

(b) any person who commits a breach of the peace in his presence;

(c) any person who obstructs a police officer while in the execution of his duty, or who has escaped or attempts to escape from lawful custody;

(d) any person who has been proclaimed as an offender under section 106;

(e) any person whom he suspects upon reasonable grounds of being a deserter from the armed forces of Malawi;

(f) any person whom he finds lying or loitering in any highway, yard or other place during the night and whom he suspects upon reasonable grounds of having committed or being about to commit a felony;

(g) any person whom he suspects upon reasonable grounds of having been concerned in any act committed at any place out of Malawi which, if committed in Malawi, would have been punishable as an offence and for which he is under any written law liable to be apprehended and detained in Malawi;

(h) any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of housebreaking;

(i) any released convict committing a breach of any provision prescribed by section 343 or of any rule made thereunder;

(j) any person in whose possession anything is found which may reasonably be suspected to be stolen property or who may reasonably be suspected of having committed an offence with reference to such thing;

(k) any person for whom he has reasonable cause to believe a warrant of arrest has been issued.

Arrest of
vagabonds,
habitual
robbers, etc.

29. Any police officer may in like manner arrest or cause to be arrested—

(a) any person found taking precautions to conceal his

presence within the limits of a police station under circumstances which afford reason to believe that he is taking such precautions with a view to committing a cognizable offence;

(b) any person within the limits of such station who has no ostensible means of subsistence or who cannot give a satisfactory account of himself;

(c) any person who is by repute a habitual robber, house-breaker or thief or a habitual receiver of stolen property knowing it to be stolen, or who by repute habitually commits extortion or in order to facilitate the committing of extortion habitually puts or attempts to put persons in fear of injury.

30. When any police officer of the rank of inspector or above requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing specifying the person to be arrested and the offence or other cause for which the arrest is to be made.

Procedure when police officer deposes subordinate to arrest without warrant

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

Refusal to give name and residence

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

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

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

(4) Any police officer may arrest without a warrant any person who in his presence has committed a non-cognizable offence, if reasonable grounds exist for believing that, except by the arrest of the person offending, he could not be found or made answerable to justice.

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

Disposal of persons arrested by police officer

magistrate or Traditional Court having jurisdiction in the case or before an officer in charge of a police station.

Arrest by
private
person

33.—(1) Any private person may arrest any person who in his view commits a cognizable offence, or whom he reasonably suspects of having committed a felony, or who has been proclaimed as an offender under section 106.

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

Disposal of
person
arrested by
private
person

34.—(1) Any private person arresting any other person without a warrant shall without unnecessary delay make over the person so arrested to a police officer, or in the absence of a police officer shall take such person to the nearest police station.

(2) If there is reason to believe that such person comes under section 28 a police officer shall arrest him.

(3) If there is reason to believe that he has committed a non-cognizable offence, and he refuses on the demand of a police officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under section 31. If there is no sufficient reason to believe that he has committed any offence he shall be at once released.

Detention of
persons
arrested
without
warrant

35. When any person has been taken into custody without a warrant for an offence other than an offence punishable with death, the police officer in charge of the police station to which such person shall be brought may in any case and shall, if it does not appear practicable to bring such person before a subordinate court or a Traditional Court having jurisdiction to try such offence within twenty-four hours after he was so taken into custody, inquire into the case, and, unless the offence appears to the officer to be of a serious nature, release the person on his executing a bond, with or without sureties, for a reasonable amount to appear before a subordinate court or Traditional Court having jurisdiction at a time and place to be named in the bond; but where any person is retained in custody he shall be brought before a subordinate court or Traditional Court having jurisdiction as soon as practicable:

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

- 36.** Police officers in charge of police stations shall report to the nearest magistrate the cases of all persons arrested without warrant within the limits of their respective areas, whether such persons have been admitted to bail or otherwise. Police to report apprehensions
- 37.** When any offence is committed in the presence of a magistrate he may himself arrest or order any person to arrest the offender, and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody. Offence committed in magistrate's presence
- 38.** Any magistrate may at any time arrest or direct the arrest in his presence of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant. Arrest by magistrate
- 39.** If a person in lawful custody escapes or is rescued, the person from whose custody he escapes or is rescued may immediately pursue and arrest him in any place in Malawi. Recapture of person escaping
- 40.** Sections 21 and 22 shall apply to arrest under section 39 although the person making any such arrest is not acting under a warrant and is not a police officer having authority to arrest. Sections 21 and 22 to apply to arrests under section 39
- 41.** 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 authorized 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 buoy, mark used in navigation, air service, electricity supply, railway, telegraph or any public landmark, property or utility. Assistance to magistrate or police officer
- 42.—(1)** Whenever a Resident Magistrate or a magistrate of the first or second grade is informed on oath that any person is likely to commit a breach of the peace or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity, the magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period, not exceeding one year, as the magistrate thinks fit to fix. Security for keeping the peace
- (2)** When any magistrate not empowered to proceed under subsection (1) or a Traditional Court has reason to believe that any person is likely to commit a breach of the peace or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity

and that such breach of the peace or disturbance cannot be prevented otherwise than by detaining such person in custody, such magistrate or Traditional Court may, after recording his or its reasons, issue a warrant for such person's arrest (if he is not already in custody or before the magistrate or Traditional Court), and may send him before a magistrate empowered to deal with the case, with a copy of his or its reasons.

(3) A magistrate before whom a person is sent under this section may in his discretion detain such person in custody until the completion of the inquiry hereinafter prescribed.

Security for
good be-
haviour
from
persons
disseminat-
ing seditious
matters,
etc.

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43. Whenever a Resident Magistrate or a magistrate of the first or second grade has information that there is any person who either orally or in writing or in any other manner, disseminates or attempts to disseminate, or in any wise abets the dissemination of—

(a) any seditious matter, that is to say, any matter the publication of which is punishable under section 51 of the Penal Code; or

(b) any matter concerning a judge which amounts to libel under the Penal Code,

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

Security for
good be-
haviour
from
vagrants and
suspected
persons

44. Whenever a Resident Magistrate or a magistrate of the first or second grade receives information—

(a) that any person is taking precautions to conceal his presence and that there is reason to believe that such person is taking such precautions with a view to committing any offence; or

(b) that there is a person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself,

such magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding one year, as the magistrate thinks fit to fix.

Security for
good be-
haviour
from
habitual
offenders

45. Whenever a Resident Magistrate or a magistrate of the first or second grade receives information that any person—

(a) is by habit a robber, housebreaker or thief; or

(b) is by habit a receiver of stolen property, knowing the same to have been stolen; or

(c) habitually protects or harbours thieves, or aids in the concealment or disposal of stolen property; or

(d) habitually commits or attempts to commit, or aids or abets in the commission of, any offence punishable under Chapters XXXI, XXXIV or XXXVII of the Penal Code; or

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(e) habitually commits or attempts to commit, or aids or abets in the commission of, offences involving a breach of the peace; or

(f) is so desperate and dangerous as to render his being at large without security hazardous to the community,

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

46. When a magistrate acting under section 42, section 43, section 44 or section 45 deems it necessary to require any person to show cause under any such section, he shall make an order in writing setting forth—

Order to be made

(a) the substance of the information received;

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

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

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

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

Procedure in respect of person present in court

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

Summons or warrant in case of person not so present

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

Copy of
order under
section 46 to
accompany
summons or
warrant

49. Every summons or warrant issued under section 48 shall be accompanied by a copy of the order made under section 46, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with or arrested under the same.

Power to
dispense
with per-
sonal
attendance

50. The magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered to execute a bond for keeping the peace, and may permit him to appear by counsel.

Inquiry as to
truth of in-
formation

51.—(1) When an order under section 46 has been read or explained under section 47 to a person present in court, or when any person appears or is brought before a magistrate in compliance with or in execution of a summons or warrant issued under section 48, the magistrate shall proceed to inquire into the truth of the information upon which the action has been taken, and to take such further evidence as may appear necessary.

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

(3) For the purposes of this section the fact that the person is an habitual offender may be proved by evidence of general repute or otherwise.

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

Order to
give security

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

Provided that—

(a) no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 46;

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

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

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

53. Where any person is required by any court to execute a bond, with or without sureties, and in such bond the person executing it binds himself to keep the peace or binds himself to be of good behaviour, the court may require that there shall be included in such bond one or more of the following conditions—

Conditions of bonds

(a) a condition that such person shall remain under the supervision of some other person named in the bond during such period as may be specified therein;

(b) such conditions for securing such supervision as the court may think it desirable to impose;

(c) such conditions with respect to residence, employment, associations, abstention from intoxicating liquor or with respect to any other matter whatsoever as the court may think desirable to impose.

54. If on an inquiry under section 51 it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, the magistrate shall make an entry on the record to that effect, and, if such person is in custody only for the purposes of the inquiry, shall release him, or, if such person is not in custody, shall discharge him.

Discharge of person informed against

55.—(1) If any person in respect of whom an order requiring security is made under section 46 or section 52, is, at the time such order is made, sentenced to or undergoing a sentence of imprisonment, the period for which such security is required shall commence on the expiration of such sentence.

Commencement of period for which security is required

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

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

Contents of bond

57. A magistrate may refuse to accept any surety offered under any of the provisions of this Part on the ground that, for reasons to be recorded by the magistrate, such surety is an unfit person.

Power to reject sureties

58.—(1) If any person ordered to give security under section 52 does not give such security on or before the date on which the period for which such security is to be given commences, the

Procedure on failure of person to give security

magistrate who made the order shall, except in the case mentioned in subsection (2), issue a warrant directing him to be detained in prison until such period expires or until within such period he gives the required security.

(2) When such person has been ordered to give security for a period exceeding one year, the magistrate who made the order shall, if such person does not give such security, issue a warrant directing him to be detained in prison pending the orders of the High Court, and the proceedings shall forthwith be forwarded to such Court.

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

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

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

(6) Imprisonment for failure to give security for keeping the peace shall be without hard labour.

(7) Imprisonment for failure to give security for good behaviour may be with or without hard labour as the magistrate or the High Court in each case directs.

Power to
release
persons im-
prisoned for
failure to
give security

59. Whenever a Resident Magistrate or a magistrate of the first or second grade is of the opinion that any person imprisoned for failing to give security may be released without hazard to the community, such magistrate shall make an immediate report of the case for the orders of the High Court, and such Court may, if it thinks fit, order such person to be discharged.

Power of
High Court
to cancel
bond

60. The High Court may at any time, for sufficient reason to be recorded in writing, cancel any bond for keeping the peace or for good behaviour executed under any of the preceding sections by order of any court.

Discharge of
sureties

61.—(1) Any surety for the peaceable conduct or good behaviour of another person may at any time apply to a Resident Magistrate or a magistrate of the first or second grade to cancel any bond executed under any of the provisions of this Part.

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

(3) When such person appears or is brought before the magistrate, such magistrate shall cancel the bond and shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same description as the original security. Every such order shall for the purposes of sections 56, 57, 58 and 59 be deemed to be an order made under section 52.

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

Police to prevent cognizable offences

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

Information of design to commit such offences

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

Arrest to prevent such offences

65. A police officer may of his own authority interpose to prevent any injury attempted to be committed in his view to any things mentioned in section 41 (a).

Prevention of injury to public property, etc.

PART IV

PROVISIONS RELATING TO ALL CRIMINAL PROCEEDINGS

66. Every court has authority to cause to be brought before it any person who is in Malawi and is charged with an offence committed within Malawi or partly within and partly beyond Malawi or which according to law may be dealt with by it and to deal with the accused person according to its jurisdiction.

General authority of courts of Malawi

67. The High Court may inquire into and try any offence subject to its jurisdiction at any place within Malawi:

Powers of High Court

Provided that—

(a) except where the High Court, for any special reason (to be recorded on the minutes of the proceedings), shall otherwise direct, no criminal case shall be brought under the cognizance of the High Court, unless the same shall have been previously investigated by a subordinate court, and the accused person shall have been committed for trial before the High Court, or

unless the accused person has been committed for trial by summary committal procedure;

(b) a charge may be signed and filed in respect of any offence founded on the facts disclosed in the depositions or in respect of any offence whatsoever where the accused person has been committed for trial by summary committal procedure.

Place and date of sessions of the High Court

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

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

Ordinary place of inquiry and trial

69. Subject to section 67 and to the powers of transfer conferred by sections 74 and 75 every offence shall ordinarily—

(a) be tried by the Traditional Court, if any, having jurisdiction in the case in question within the local limits of whose jurisdiction the offence was committed or the accused was apprehended or is in custody on a charge for the offence; or

(b) be inquired into or tried by the subordinate court nearest to the place at which the offence took place, or where the accused was apprehended or is in custody or has appeared in answer to a summons lawfully issued charging the offence.

High Court to decide in cases of doubt

70. Whenever any doubt arises as to the subordinate court by which any offence should be inquired into or tried, any subordinate court entertaining such doubt may, in its discretion, report the circumstances to the High Court, and the High Court shall decide by which court the offence shall be inquired into or tried. Any such decision of the High Court shall be final and conclusive, except that it shall be open to an accused to show that no court in Malawi has jurisdiction in his case.

Court to be open and may be held on a Sunday

71. All proceedings under this Code shall, except as otherwise expressly provided by any law for the time being in force, be carried on in an open court to which the public generally may have access:

Provided that—

(a) any court shall have power to hear any inquiry or trial, or any part thereof, in closed court and to exclude any particular person from the court, if, in the opinion of the presiding judge or magistrate, it is expedient in the interests of justice or propriety or for other sufficient reason so to do;

(b) nothing in this section shall apply to—

(i) the proceedings of a juvenile court in accordance with the Children and Young Persons Act;

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(ii) any proceedings in the High Court relating solely to a person under the apparent age of eighteen years;

(iii) any proceedings in the High Court, other than the trial of a person of the apparent age of eighteen years or upwards, which the High Court, in its discretion, may think fit to conduct in closed court;

(iv) proceedings before a magistrate under section 83 (2), (3) and (4) or under section 84;

(v) the deliberation of a jury in the course of any proceeding; 23 of 1968

(vi) any proceedings, other than an inquiry or trial, which the Chief Justice may, by writing, direct shall not be subject to this section.

(2) Where the presiding judge or magistrate is of the opinion that, for the purpose of avoiding delay, expense or inconvenience which in the circumstances of the case would be unreasonable, a court should be held on a Sunday, such court may be so held and no finding, sentence or order made or passed by a court of competent jurisdiction shall be reversed or altered only by reason of the fact that the same was made or passed on a Sunday.

72. A magistrate shall on the application of the Director of Public Prosecutions grant a warrant for the removal of any person detained by virtue of a legal warrant in a prison on any criminal charge to any prison specified in such application therein to be detained for further examination or for trial, or till liberated or removed therefrom in due course of law.

Removal of person to another prison by warrant

73.—(1) When an accused appears before a subordinate court, the subordinate court shall, if satisfied that it has no jurisdiction to try or inquire into the case, or may, if it is of the opinion that the case should be tried by or inquired into by another subordinate court, direct that the case be adjourned and transferred to any subordinate court which is competent to try or inquire into the case.

Transfer of case to another subordinate court before inquiry or trial and transfer of trial to another place

(2) The court directing such adjournment and transfer shall order the accused to appear before the court to which the case has been transferred at such time and such place as may be appointed and stated in the presence and hearing of the party or parties or their respective counsel then present, and in the meantime may suffer the accused to go at large, or may commit him to prison, or may release him upon his entering into a bond, with or without sureties, at its discretion, conditioned for his appearance at the time and place appointed before the court to which the case has been transferred:

Provided that no such adjournment shall be for a longer period than is reasonably necessary in the circumstances of the case and shall not in any event exceed sixty days or, if the accused is committed to prison, thirty days; the day following that on which the order is made shall be counted as the first day.

(3) A subordinate court may, on application or of its own motion, at any stage in an inquiry or trial, transfer such inquiry or trial for hearing before itself at some other place.

Transfer to
another
magistrate
after com-
mencement
of inquiry or
trial

74. If in the course of any inquiry or trial before a magistrate the evidence appears to warrant a presumption that the case is one which should be tried or committed for trial by some other magistrate, he shall stay proceedings and submit the case with a brief report thereon to the High Court which shall make such order for the transfer of the case or otherwise as it may deem to be necessary or expedient.

Power of
High Court
to change
venue

75.—(1) Whenever it is made to appear to the High Court—

(a) that a fair and impartial inquiry or trial cannot be had in any criminal court subordinate thereto; or

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

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

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

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

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

(ii) that any particular criminal case or class of cases be transferred from a criminal court subordinate to its authority to any other such criminal court of equal or superior jurisdiction;

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

(2) the High Court may act either on the report of the subordinate court or on the application of a party interested or on its own initiative.

(3) Every application for the exercise of the power conferred by this section shall be made by motion, which shall, except when

the applicant is the Chief Public Prosecutor, be supported by affidavit.

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

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

76.—(1) The Chief Public Prosecutor shall in accordance with, and subject to, section 58 of the Constitution, have vested in him the right and be entrusted with the duty of prosecuting all crimes and offences against the laws of Malawi. Chief Public Prosecutor

(2) Any officer, counsel or other person appointed to be a public prosecutor under section 79 shall, in carrying out his duties as such, be under the direction and control of the Chief Public Prosecutor and be bound to conform to any direction which may be given to him by the Chief Public Prosecutor.

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

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

78. The Chief Public Prosecutor may order in writing that all or any of the powers vested in him by section 77 and by Part IX be vested for the time being in a State Advocate and the exercise of these powers by a State Advocate shall then operate as if they had been exercised by the Chief Public Prosecutor. Delegation of powers by Chief Public Prosecutor

Provided that the Chief Public Prosecutor may in writing revoke any order made by him under this section.

Power to
appoint
prosecutors

79.—(1) The Minister may appoint generally, or in any case, or for any specified class of cases, in any local area one or more officers to be called public prosecutors.

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(2) The Chief Public Prosecutor by writing under his hand may appoint any counsel or person employed in public service, not being a police officer below the rank of assistant superintendent of police, to be a public prosecutor for the purpose of any case or cases or class of cases.

(3) Every public prosecutor shall be subject to the express directions of the Chief Public Prosecutor.

Powers of
public
prosecutors

80. 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 counsel to prosecute in any such case a public prosecutor may conduct the prosecution, and the counsel so instructed shall act therein under his directions.

Withdrawal
from
prosecution
in trials
before
subordinate
courts

81. In any trial before a subordinate court any public prosecutor may, with the consent of the court or on the instructions of the Chief Public Prosecutor, at any time before judgment is pronounced, withdraw from the prosecution of any person; and upon such withdrawal—

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

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

Permission to
conduct
prosecution

82.—(1) Any magistrate inquiring into or trying any case may permit the prosecution to be conducted by any person, but no person other than a public prosecutor or other officer generally or specially authorized by the Chief Public Prosecutor in his behalf shall be entitled to do so without permission.

(2) Any such person or officer shall have the like power of withdrawing from the prosecution as is provided by section 81,

and that section shall apply to any withdrawal by any such person or officer.

(3) Subject to any law for the time being in force, any person conducting the prosecution may do so personally or by counsel.

83.—(1) Proceedings may be instituted—

Complaint
and charge

- (a) by the making of a complaint before a magistrate;
- (b) by bringing before a magistrate a person who has been arrested without warrant; or
- (c) by a public prosecutor or a police officer signing and presenting a formal charge to a magistrate.

(2) A complaint under subsection (1) (a) may be made by any person who believes from reasonable cause that an offence has been committed. When a magistrate has received such a complaint he shall at once examine the complainant upon oath. The substance of the examination shall be reduced to writing and signed by both the complainant and the magistrate.

(3) If the magistrate sees reason to doubt the truth of a complaint made under subsection (1) (a) he may record his reason for doubting the truth of the complaint and may then postpone the issue of process for compelling the attendance of the person complained against and either inquire into the case himself or direct some police officer to make inquiries for the purpose of ascertaining the truth or falsehood of the complaint and report to him the result of such inquiries. The magistrate may dismiss a complaint made under subsection (1) (a) if after examining the complainant and recording his examination and considering the result of such inquiry, if any, there is in his judgment no sufficient ground for proceeding. If he so dismisses a complaint, the magistrate shall record his reasons for the dismissal.

(4) If the magistrate considers that there are sufficient grounds for proceeding with a complaint made under subsection (1) (a), or upon the bringing before him of an accused arrested without warrant under subsection (1) (b), the magistrate shall forthwith draw up and shall sign a formal charge containing a statement of the offence with which the accused is charged.

84.—(1) Upon a formal charge having been completed in accordance with section 83, the magistrate may, in his discretion, issue either a summons or a warrant to compel the attendance of the accused before a subordinate court having jurisdiction to inquire into or try the offence alleged to have been committed.

Issue of
summons or
warrant

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

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

Form and
contents of
summons

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

(2) Every summons shall be directed to the person summoned and shall require him to appear at a time and a place to be therein appointed before a court having jurisdiction to inquire into and deal with the complaint or charge. It shall contain a statement of the offence with which the person summoned is charged and shall also contain the particulars of such offence.

Penalty for
non-atten-
dance of
accused

86. Any accused summoned to attend before a court who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the court, or fails to attend after adjournment of the court after being ordered to attend, shall be liable by order of the court to a fine of £20.

Service of
summons

87.—(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 so served shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

Service
when person
summoned
cannot be
found

88. Where the person summoned cannot by the exercise of due diligence be found, the summons may be served by leaving one of the duplicates for him with some adult male member of his family or with his adult male 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 therefor on the back of the other duplicate.

Procedure
when service
cannot be
effected as
before pro-
vided

89. If service in the manner provided by section 87 or section 88 cannot by the exercise of due diligence be effected, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house in which the person summoned ordinarily resides, and thereupon the summons shall be deemed to have been duly served.

Service on
servant of
Government

90. Where the person summoned is in the service of the Government, the court issuing the summons shall ordinarily send it in duplicate to the head of the office in which such person is employed, and such head shall thereupon cause the summons to be served in the manner provided by section 87 and shall return it to the court under his signature with the endorsement required by that section. Such signature shall be evidence of the service.

91.—(1) Service of a summons on a company incorporated in Malawi or on any other body corporate not being a company referred to in subsection (2) shall be effected in one of the following manners that is to say—

Service of summons on company, etc.

(a) by serving it on the secretary, local manager or other principal officer of the company or body;

(b) by delivering it to an adult person employed by such company or body at its registered office in Malawi;

(c) by sending it in a registered letter addressed to the chief officer of the company or body in Malawi.

(2) Service of a summons on a company incorporated outside Malawi which has established a place of business within Malawi shall be effected by serving it on one of the persons whose names and addresses have been filed with the registrar of companies as being authorized to accept service of process on behalf of the company under section 274 of the Companies Act, 1908.

8 Edw. 7, c. 69

92.—(1) Where the officer who has served a summons is not present at the hearing of the case, an affidavit 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.

Proof of service when serving officer not present

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

93.—(1) Whenever a magistrate issues a summons in respect of any offence other than a felony, he may, if he sees reason so to do, and shall, when the offence with which the accused is charged is punishable—

Power to dispense with personal attendance of accused

(a) with a fine only; or

(b) with both a fine and imprisonment for not longer than three months; or

(c) with a fine or imprisonment for a term not exceeding three months,

dispense with the personal attendance of the accused, provided that the accused pleads guilty in writing or appears by counsel.

(2) But the magistrate inquiring into or trying any case may in his discretion, at any subsequent stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance as hereinafter set forth:

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Provided that no magistrate may impose a sentence of imprisonment without the option of a fine except in the presence of the accused.

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

(4) If a previous conviction, not admitted in writing or through his counsel is alleged against an accused whose attendance has been dispensed with under this section, the magistrate may adjourn the proceedings and direct the personal attendance of the accused, and, if necessary, enforce such attendance in manner hereinafter provided.

(5) The Chief Justice may, after consultation with the Minister, make rules for the better carrying out of this section.

Warrant
after issue of
summons

94. Notwithstanding the issue of a summons, a court may issue a warrant at any time before or after the time appointed in the summons for the appearance of the accused.

Summons
disobeyed

95. If the accused does not appear at the time and place appointed in and by the summons, and his personal attendance has not been dispensed with under section 93, the court may issue a warrant to apprehend him and cause him to be brought before such court. But no such warrant shall be issued unless the court is satisfied that the accused has been served with the summons.

Form, con-
tents and
duration of
warrant of
arrest

96.—(1) Every warrant of arrest shall be under the hand of the judge or magistrate issuing the same and shall bear the seal of the court.

(2) Every warrant shall contain a statement of the offence with which the person against whom it is issued is charged and shall also contain the particulars of such offence and every warrant 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 the charge therein mentioned and to be further dealt with according to law.

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

97.—(1) Any court issuing a warrant for the arrest of any person in respect of any offence other than murder, treason or rape may in its discretion direct by endorsement on the warrant that, if such person executes a bond with sufficient sureties for his attendance before the court at a specified time and thereafter until otherwise directed by the court, the officer to whom the warrant is directed shall take such security and shall release such person from custody.

Court may direct security to be taken

(2) The endorsement shall state—

- (a) the number of sureties;
- (b) the amount in which they and the person for whose arrest the warrant is issued are to be respectively bound; and
- (c) the time at which he is to attend before the court.

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

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

Warrants, to whom directed

99. 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.

Effect of addressing warrant to more than one officer or person

100. A warrant directed to any police officer may also be executed by any other police officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed.

Execution of warrant directed to police officer

101. 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.

Notification of substance of warrant

102. The police officer or other person executing a warrant of arrest shall (subject to the provisions of section 97 as to security) without unnecessary delay bring the person arrested before the court before which he is required by law to produce such person.

Person arrested to be brought before the court without delay

103. A warrant of arrest may be executed at any place in Malawi and on any day (including Sunday).

Where warrant of arrest may be executed

Procedure
on arrest of
person

104.—(1) When a warrant of arrest is executed, the person arrested shall unless the court which issued the warrant is within twenty miles of the place of arrest, or is nearer than any other subordinate court, or unless security is taken under section 97, be taken before the subordinate court nearest to the place of arrest.

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

Provided that if such person has been arrested for an offence other than murder, treason or rape, and he is ready and willing to give bail to the satisfaction of such magistrate, or if a direction has been endorsed under section 97 on the warrant and such person is ready and willing to give the security required by such direction, the magistrate shall take such bail or security, as the case may be, and shall forward the bond to the court which issued the warrant.

(3) Nothing in this section shall be deemed to prevent a police officer from taking security under section 97.

Irregu-
larities
in warrant
23 of 1968

105. Any irregularity or defect in the substance or form of a warrant, and any variance between it and the written complaint or charge, 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.

Proclama-
tion for
person
absconding

106.—(1) If any court has reason to believe (whether after taking evidence or not) that any person against whom a warrant of arrest has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

(2) The proclamation shall be published as follows—

(a) it shall be publicly read in some conspicuous place of the town, village or area in which such person ordinarily resides, or if such person has no ordinary place of residence in Malawi, in which he was last known to be residing;

(b) it shall be affixed to some conspicuous part of the house in which such person ordinarily resides or to some conspicuous

place of the area, town or village in which he was last known to be residing;

(c) a copy thereof shall be affixed to some conspicuous part of the court house.

(3) A statement in writing by the court issuing the proclamation to the effect that the proclamation was duly published on a specified day shall be conclusive evidence that the requirements of this section have been complied with and that the proclamation was published on such day.

107.—(1) The court issuing the proclamation under section 106 may at any time order the attachment of any property, movable or immovable, or both, belonging to the proclaimed person. Attachment of property of proclaimed person

(2) Such order shall be in writing and shall authorize the attachment of any property belonging to the proclaimed person.

(3) If the property ordered to be attached is a debt or movable property, the attachment under this section shall be made—

(a) by seizure; or

(b) by the appointment of a receiver; or

(c) by an order in writing prohibiting the delivery of such property to the proclaimed person or to anyone on his behalf; or

(d) by all or any two of such methods as the court thinks fit.

(4) If the property ordered to be attached is immovable, attachment under this section shall be made—

(a) by taking possession; or

(b) by the appointment of a receiver; or

(c) by an order in writing prohibiting the payment of rent or delivery of property to the proclaimed person, or to anyone on his behalf; or

(d) by all or any two of such methods as the court thinks fit.

(5) If the property ordered to be attached consists of livestock, or is of a perishable nature, the court may, if it thinks it expedient, order immediate sale thereof, and in such case the proceeds of the sale shall abide the order of the court.

(6) The Chief Justice may make rules prescribing the powers, duties and liabilities of a receiver appointed under this section.

(7) If the proclaimed person does not appear within the time specified in the proclamation, the property under attachment

shall be at the disposal of the Government; but it shall not be sold until the expiration of six months from the date of attachment unless it is subject to speedy and natural decay, or the court considers that the sale would be for the benefit of the owner, in either of which cases the court may cause it to be sold when it shall think fit. The purchaser of any property so sold shall acquire a good title to it.

Restoration
of attached
property

108.—(1) If within two years of the date of the attachment any person whose property is or has been at the disposal of the Government under section 107 (7) appears voluntarily or is apprehended and brought before the court by whose order the property was attached or the High Court, and proves to the satisfaction of such court that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant, and that he had not such notice of the proclamation as to enable him to attend within the time specified therein, such property, or, if the same has been sold, the net proceeds of the sale, or, if part only thereof has been sold, the net proceeds of the sale and the residue of the property, shall, after satisfying thereout all costs incurred in consequence of the attachment, be delivered to him.

(2) Any person whose application under this section for the delivery of property or the proceeds of the sale thereof has been rejected by any court may appeal to the High Court, and the provisions of Part XIII relating to appeals shall apply to every such appeal.

Power to
take bond
for
appearance

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

Arrest for
breach of
bond for
appearance

110. When any person who is bound by any bond taken under this Code to appear before a court does not so appear, such court may issue a warrant directing that such person be arrested and produced before it.

Power of
court to
order
prisoner to
be brought
before it

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

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

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

Provisions of this Part generally applicable to summonses and warrants

113. 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, ship, aircraft, carriage, box, receptacle or place, the court may by warrant (called a search warrant) authorize a police officer or other person therein named to search the building, ship, aircraft, carriage, box, receptacle or place (which shall be named or described in the warrant) for any such thing and, if anything searched for be found, to seize it and carry it before the court issuing the warrant or some other court to be dealt with according to law.

Power to issue search warrant

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

Execution of search warrant

115.—(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 entry thereto and departure therefrom and afford all reasonable facilities for a search therein.

Persons in charge of closed place to allow entry

(2) If entry into, or departure 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 21 or 22.

(3) Where any person in or about such building or place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched. If such person is a woman, section 26 shall be observed.

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

Detention of property seized

(2) If any appeal is made, or if any person is committed for trial, the court may order it to be further detained for the purpose of the appeal or 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 and is authorized or required by law to dispose of it otherwise.

Provisions
applicable to
search
warrants

117. Section 96 (1) and (3) and sections 98, 99, 100, 103, 104 and 105 shall, so far as may be, apply to all search warrants issued under section 113.

Bail in cer-
tain cases

118.—(1) When any person, other than a person accused of an offence punishable with death, is arrested or detained without warrant by a police officer, or appears or is brought before a court, and is prepared at any time while in the custody of such police officer or at any stage of the proceedings before such court to give bail, such person may be released on bail by such police officer or such court, as the case may be, on a bond, with or without sureties:

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Provided that when a person accused of the offence of rape contrary to section 132 of the Penal Code is brought before a court, such person may be released on bail by such court on a bond with or without sureties.

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

(3) The High Court may, either of its own motion or upon application, direct that any person be released on bail or that the amount of, or any condition attached to, any bail required by a subordinate court or police officer be reduced or varied.

(4) A magistrate, other than a magistrate of the third grade, may direct that the amount of, or any condition attached to, any bail by a police officer be reduced or varied.

(5) No application for a direction that any person in custody pending proceedings in a subordinate court be released on bail shall be entertained by the High Court unless such subordinate court has first refused to direct such release.

Bail bond

119. Before any person is released on bail under section 118, a bond for such sum as the police officer or court, as the case may be, thinks sufficient shall be executed by such person and, where sureties are ordered, by one or more sufficient sureties, conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police officer or court, and containing such other conditions as the police officer or court may think fit.

Discharge
from
custody

120.—(1) As soon as the bond has been executed the person for whose appearance it has been executed shall be released, and when he is in prison the court shall issue an order of release to the officer in charge of the prison, and such officer on receipt of the order shall release him.

(2) Nothing in this section or in section 118 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.

121.—(1) When any person is required by any police officer or court to execute a bond, with or without sureties, such police officer or court may, except in the case of a bond for good behaviour, permit him to deposit a sum of money or property to such amount or value as the police officer or court may require in place of, or in addition to, executing such a bond. Such amount or value shall be fixed with due regard to the circumstances of the case and shall not be excessive.

Deposit in place of, or in addition to, bond

(2) Where any money or property has been deposited in accordance with subsection (1) and it is proved to the satisfaction of a court that the depositor has not fulfilled the conditions upon which such money or property was deposited, the court shall record the grounds of such proof and may call upon the depositor to show cause why such money or property should not be forfeited, and if sufficient cause is not shown or if the court is satisfied that the depositor has absconded or cannot be traced the court may order such money or property to be forfeited.

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

Power to order sufficient bail when that first taken is insufficient

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

Discharge and death of sureties

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

(3) On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the magistrate shall direct the 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 until the trial or until the court shall see fit to admit him to bail upon a fresh bond.

(4) 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.

Person
bound by
bond
absconding
may be
committed

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

Forfeiture
of bond

125.—(1) Whenever it is proved to the satisfaction of the court that any condition of a bond taken under this Part has not been complied with, 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 or if the court is satisfied that the person so bound has absconded or cannot be traced, the court may proceed to recover the penalty by issuing a warrant for the attachment and sale of the movable property belonging to such person, or his estate if he be dead.

(3) If such penalty is not paid and cannot be recovered by such attachment and sale, the person so bound shall be liable, by order of the court, which issued the warrant, to imprisonment for six months.

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

(5) 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.

(6) All orders made under this section by any magistrate shall be appealable to and may be reviewed by the High Court.

Offences to
be specified
in charge
with neces-
sary particu-
lars

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

127.—(1) Any offences, whether felonies or misdemeanours, may be charged together in the same charge if the offences charged are founded on the same facts or form, or are part of, a series of offences of the same or similar character.

Joinder of counts in a charge and joinder of two or more accused in one charge

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

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

(4) The following persons may be joined in one charge 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 more offences than one of the same kind (that is to say, offences punishable with the same amount of punishment under the same section of the Penal Code or of any other written law) committed by them jointly within a period of twelve months;

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

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(e) persons accused of any offence under Chapters XXVI to XXXI, inclusive, of the Penal Code and persons accused of receiving or retaining property, possession of which is alleged to have been transferred by any such offence committed by the first-named persons, or of abetment or of attempting to commit either of such last-named offences;

(f) persons accused of any offence relating to counterfeit coin under Chapter XXXVII of the Penal Code, and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment or of attempting to commit any such offence.

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

Rules for the framing of charges

(a) (i) a count of a charge shall commence with a statement of the offence charged, called the statement of offence;

(ii) the statement of the offence shall describe the offence shortly in ordinary language, avoiding as far as possible the use of technical terms, and without necessarily stating all the essential elements of the offence, and if the offence charged is one created by written law, shall contain a reference to the section, regulation, by-law or rule of the written law creating the offence;

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

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

(iv) such forms as the Chief Justice may by rule prescribe or forms conforming thereto as nearly as may be shall be used in cases to which they are applicable, and in other cases forms to the like effect or conforming thereto as nearly as may be shall be used, the statement of offence and the particulars of offence being varied according to the circumstances of each case;

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

(b) (i) where a written law constituting an offence states the offence to be an omission to do any one of any different acts in the alternative, or the doing or the omission to do any act in any one of any different capacities, or with any one of different intentions, or states any part of the offence in the alternative, the acts, omissions, capacities or intentions, or other matters stated in the alternative in the law 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 a written law, to negative any exception or exemption from, or qualifications to, the operation of the law creating the offence;

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

(ii) where the property is vested in more than one person, and the owners of the property are referred to in a charge, 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 and banknotes may be described as money; and any allegation as to money, so far as regards the description of the property, shall be sustained by proof of any amount of coin or of any bank or currency note (although the particular species of coin of which such amount was composed, or the particular nature of the bank or currency note, shall not be proved); and in cases of stealing and defrauding by false pretences, by proof that the accused 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 of the accused, 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, 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 in ordinary language in such a manner as to indicate with reasonable clearness 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 any particular person, where the written law creating the offence does not make an intent to defraud, deceive or injure a particular person an essential ingredient of the offence;

(h) where any person is charged with an offence and such person would, if convicted thereof, be liable, under the provision of any law, to an enhanced punishment by reason of a previous conviction for any offence, the charge shall not contain any reference to such previous conviction, and he shall be liable to such enhanced punishment if such previous conviction is proved after he has been convicted of the offence with which he is charged;

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

Cap. 7:01 (j) when a person is charged with any offence under section 283, 286, 287 or 288 of the Penal Code it shall be sufficient to specify the gross amount of the property in respect of which the offence is alleged to have been committed and the dates between which the offence is alleged to have been committed without specifying particular times or exact dates.

Previous conviction or acquittal of same offence
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129. Where an act or omission constitutes an offence under two or more written laws, the offender shall, unless the contrary intention appears, be liable to be prosecuted and punished under any one of such laws, but shall not, while a conviction or acquittal of an offence by a court has not been set aside, be liable to be tried again on the same facts for substantially the same offence:

Provided that a person convicted or acquitted of an offence may afterwards be tried for any distinct offence with which he might have been charged under section 127 at the trial at which he was so convicted or acquitted.

Consequences supervening and not known at time of former trial

130. 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.

Pleas that accused has been previously acquitted or convicted of same offence

131.—(1) An accused against whom a charge has been filed may plead—

(a) that he has been previously convicted or acquitted by a court of the same offence; or

(b) that he has obtained the President's pardon for his offence.

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

(3) If the court holds that the plea is true in fact, the accused shall be discharged.

132. 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.

Where original court was not competent to try subsequent charge

133.—(1) When in the course of a trial or preliminary inquiry the court has reason to believe that the accused may be of unsound mind so as to be incapable of making his defence, the court shall adjourn the trial or inquiry for such period, not exceeding one month, as the court may deem fit, and shall thereafter—

Inquiry by court as to unsoundness of mind

(a) order the accused to be kept in custody during such adjournment for observation and treatment in such place as the court may direct;

(b) direct that a medical practitioner examine the accused and inquire into his mental condition, with particular reference to his capability of making his defence, and report to the court thereon, and the medical practitioner shall comply with such direction and his report shall on its mere production be admissible in evidence as proof of its contents;

(c) the court shall forward to the medical practitioner with its order a note containing the reasons for its giving such directions.

If at the time and place to which the hearing shall be adjourned such report is not, or has not been, furnished to it, the court may, without requiring any attendance before it of the accused, adjourn the trial or inquiry for such further period, not exceeding fourteen days, as may appear to it necessary to enable such report to be so furnished.

(2) If at the time and place to which the hearing or the further hearing shall be adjourned, such report is, or has been, furnished to the court, it shall consider the same. Copies of the report shall be supplied by the court to the prosecution and to the accused or his counsel either at the hearing, or, if practicable, before it. The

court may in its discretion cause the medical practitioner who furnished the report to be summoned to give oral evidence at the hearing. If upon consideration of the report and of any evidence which may have been adduced upon the question of the mental condition of the accused by or on behalf of the prosecution or the accused the court is of the opinion that the accused is of unsound mind and consequently incapable of making his defence it shall adjourn further proceedings in the case to a then unspecified time and place.

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

(4) If the case is one in which bail ought not to be taken, or if sufficient security be not given, the court shall make a reception order for the admission of the accused to a mental hospital. No person admitted to a mental hospital under a reception order made under this subsection may be discharged from such hospital without the sanction of the court unless a discontinuance has been entered discontinuing the proceedings in the course of which such order was made. If such a discontinuance has been entered the person detained may be discharged from the mental hospital upon an order in writing by the Secretary for Health or by three of the visitors of the mental hospital one of whom shall be a medical practitioner.

(5) Whenever any preliminary inquiry or trial is postponed the court may at any time resume the preliminary inquiry or trial and require the accused to appear or be brought before such court, when, if the court considers him capable of making his defence, the preliminary inquiry or trial shall proceed. But if the court considers the accused to be still incapable of making his defence, it shall act as if the accused were brought before it for the first time.

23 of 1968 (6) For the avoidance of doubts it is declared that any question arising under this section in any proceedings held before the High Court shall be determined by the judge and not by a jury.

(7) If the trial is one before the High Court, and the High Court has reason to believe that the accused may be of unsound mind so as to be incapable of making his defence at any time after the accused has been given in charge of a jury, the High Court may order the jury to be discharged from giving a verdict on the count or counts in the charge when it makes any adjournment under this section.

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

Defence of
insanity at
preliminary
inquiry

135.—(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, according to law, for his actions at the time the act was done or omission made, then, if it appears to the court before which such person is tried that he did the act or made the omission charged but was insane as aforesaid at the time when he did or made the same, the court shall make a special finding to the effect that the accused is not guilty by reason of insanity. When such special finding is made the court shall make a reception order for the admission of the accused to a mental hospital and the court may, if it thinks fit, make a further order, with or without limitation of time, restricting his discharge from such mental hospital without the sanction of the Minister.

Defence of
insanity on
trial

(2) For the avoidance of doubts it is declared that any question arising under this section in any proceedings held before the High Court shall be determined by the jury and not by the judge.

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136. If, while an accused is detained in a mental hospital under a reception order made under section 133 (4), the medical officer in charge of such mental hospital certifies to the court that he is satisfied that the accused can properly be tried, he shall remit the accused to prison to be brought before the court at such time as the court appoints to be dealt with according to law and the certificate of such medical officer shall be receivable in evidence. The medical officer shall forward a copy of such medical certificate to the officer in charge of the prison to which he remits the accused and such certificate shall be sufficient authority for the reception of the accused into such prison and for his detention until he is so dealt with by the court. The court may in its discretion cause the medical practitioner to be summoned to give oral evidence at the hearing. On the arrival of the accused at the prison the order made under section 133 (4) shall cease to have effect. When the accused is brought before the court, if the court considers him capable of making his defence, the preliminary inquiry or trial shall proceed. If the court considers the accused to be still incapable of making his defence, it shall act as if the accused were brought before it for the first time.

Certificate
of medical
officer as to
sanity to be
evidence

Authority
and effect of
reception
orders made
under
section 133
or 135
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137. Subject to section 133 (4) and section 135, a reception order made thereunder shall have the same authority and effect as a reception order lawfully made under section 20 of the Mental Treatment Act and the court by which any such order as aforesaid is made may give such directions as it thinks fit for the conveyance of the accused to whom the order relates to a place of safety and his detention therein pending his admission to the mental hospital.

Procedure
where
accused does
not under-
stand pro-
ceedings

138. If the accused, though not insane, cannot be made to understand the proceedings, the court may proceed with the preliminary inquiry or trial; and in the case of a court other than the High Court, if such trial results in a conviction, the proceedings shall be forwarded to the High Court with a report of the circumstances, and the High Court shall make thereon such order as it thinks fit.

Mode of de-
livering
judgment
23 of 1968

139.—(1) The judgment in every trial other than a jury trial in any criminal court in the exercise of its original jurisdiction shall be pronounced, or the substance of such judgment shall be explained, in open court, either immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties and their counsel, if any:

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

(2) The accused shall, if in custody, be brought up or, if not in custody, be required by the court to attend to hear judgment delivered, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only:

Provided that if the court intends to acquit the accused it may dispense with his attendance.

(3) No judgment delivered by any court shall be deemed to be invalid by reason only of the absence of any party or his counsel 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 counsel, or any of them, the notice of such day and place.

(4) Nothing in this section shall be construed to limit in any way the provisions of section 5.

Contents of
judgments
23 of 1968

140.—(1) Every judgment shall, except as otherwise expressly provided by this Code, be in writing and shall contain the point or points for determination, the decision thereon and the reasons for the decision and shall be dated and signed by the presiding officer:

Provided that—

(i) the provisions of this section requiring reasons to be given for a decision shall not apply to the judgment of a magistrate in any proceedings for the trial of an offence if the maximum punishment prescribed by law for such an offence does not exceed imprisonment for one month and a fine of ten pounds; but such reasons shall be recorded and certified to the High Court by the magistrate concerned in the event of an appeal to the High Court against such decision or if the High Court shall at any time require;

(ii) the requirements of this section other than the requirements that judgments be in writing and signed shall not apply to any judgment given in accordance with the verdict of a jury.

(2) In the case of a conviction the judgment shall specify the offence of which, and the section of the Penal Code or other law under which the accused is convicted, and the punishment to which he is sentenced. Cap. 7:01

(3) In the case of an acquittal the judgment shall state the offence of which the accused is acquitted.

141. On the application of the accused a copy of the judgment, or, when he so desires, a translation in his own language, if practicable, shall be given to him without delay. There shall be payable for such copy such fee, if any, as may be prescribed.

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

142.—(1) It shall be lawful for a judge or a magistrate to order any person convicted before him of an offence to pay to the public or private prosecutor, as the case may be, such reasonable costs as to such judge or magistrate may seem fit, in addition to any other penalty imposed:

Costs against accused or private prosecutor

Provided that such costs shall not exceed fifty pounds in the case of a subordinate court.

(2) It shall be lawful for a judge or a magistrate who acquits or discharges a person accused of an offence, if the prosecution for such offence was originally instituted on a summons or warrant issued by a court on the application of a private prosecutor, to order such private prosecutor to pay to the accused such reasonable costs as to such judge or magistrate may seem fit:

Provided that such costs shall not exceed fifty pounds in the case of an acquittal or discharge by a subordinate court:

Provided further that no such order shall be made if the judge or magistrate shall consider that the private prosecutor had reasonable grounds for making his complaint.

(3) The costs awarded under this section may be awarded in addition to any compensation awarded under section 144.

(4) In this section—

“public prosecutor” means any person prosecuting for or on behalf of the State and any public prosecutor appointed under section 79;

“private prosecutor” means any prosecutor other than a public prosecutor.

143. An appeal shall lie from any order awarding costs under section 142 if made by a magistrate to the High Court and if by a judge to the Supreme Court of Appeal. The appellate court shall have power to make such order regarding the costs of the appeal as it shall deem reasonable.

Order to pay costs appealable

144. Sums allowed for costs under section 142 or any compensation awarded shall in all cases be specified in the judgment of the court. If the person who has been ordered to pay such costs or compensation fails to pay, he shall, in default of seizure and sale levied in accordance with section 330, be liable to imprisonment in accordance with the scale laid down in section 29 of the Penal Code unless such costs or compensation be sooner paid:

Costs and compensation to be specified in order, how recoverable

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Provided that in no case shall the period of imprisonment imposed under this section exceed three months.

Power of
courts to
award
expenses or
compensa-
tion out of
fine

145.—(1) Whenever any court imposes a fine, or confirms on appeal, review or otherwise a sentence of fine, or a sentence of which a fine forms part, the court may, when giving judgment, order the whole or any part of the fine recovered to be applied—

(a) in defraying expenses properly incurred in the prosecution;

(b) in the payment to any person of compensation for any loss or injury caused by the offence when substantial compensation is in the opinion of the court recoverable by civil suit.

Payment of
amount
awarded
under
section 145,
etc.

146.—(1) If the fine referred to in section 145 is imposed in a case which is subject to appeal no such expenses or compensation shall be paid out of the fine before the period allowed for presenting the appeal has elapsed, or, if an appeal is presented, before the decision of the appeal.

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

Property
found on
accused
person

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

(a) that the property or a part thereof be restored to the person who appears to the court to be entitled thereto, and, if he 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.

Restitution
of stolen
property

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148.—(1) If any person guilty of any offence mentioned in Chapters XXVI to XXXII, inclusive, of the Penal Code, in stealing, taking, obtaining, extorting, converting, or disposing of, or in knowingly receiving any property, is prosecuted to conviction, the property shall be restored to the owner or his representative.

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

Provided that where goods have been obtained by fraud or other wrongful means not amounting to stealing, the property in such goods shall not revert in the person who was the owner of

the goods, or his personal representative, by reason only of the conviction of the offender:

And provided that 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 the offender has sold the stolen property to any person, that such person has had no knowledge that the same was stolen, and that 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 moneys 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 before which the conviction takes place direct to the contrary in any case in which the title to the property is not in dispute) be suspended—

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

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

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

(5) Any person aggrieved by an order made under this section may appeal to the High Court, and upon the hearing of such appeal the High 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.

(6) In this section the word “goods” includes all chattels personal (other than things in action and money), emblements, industrial growing crops, and, where there is a contract for sale, things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

149.—(1) At any time in the course of, or after the conclusion of, an inquiry or trial, the court may make such order as it thinks fit for the disposal, by destruction, confiscation, delivery to any

Disposal of
property

or addition of a new charge as it thinks necessary to make in the circumstances of the case, unless, having regard to the merits of the case, such amendments cannot be made without injustice.

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

(4) Every such new or altered charge shall be read and explained to the accused.

(5) The court shall thereupon call upon the accused to plead to the altered charge and to state whether he is ready to be tried on such new or altered charge.

(6) If the accused declares that he is not ready, the court shall duly consider the reasons he may give and, if proceeding immediately with the trial is not likely in the opinion of the court to prejudice the accused in his defence or the prosecution in the conduct of the case, the court may, after such charge or alteration has been framed or made, proceed with the trial as if the new or altered charge had been the original charge.

(7) If the new or altered charge is such that proceeding immediately with the trial is likely in the opinion of the court to prejudice the accused or the prosecution, the court may direct a new trial or adjourn for such period as is necessary.

(8) If the offence stated in the new or altered charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has already been obtained for a prosecution on the same facts as those on which the new or altered charge is founded.

(9) Variance between the charge and the evidence adduced in support of it with respect to the time at which the alleged offence was committed is not material and the charge need not be amended for such variance if it is proved that the proceedings were instituted within the time limited by law for the institution thereof.

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

Person charged with any offence may be convicted of attempt

153.—(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 or the jury finds, as the case may be, 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

Alternative verdicts in various offences involving the homicide of children
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child, the balance of her mind was then disturbed, she may, notwithstanding that the circumstances were such that but for section 230 of the Penal Code she might be convicted of murder, be convicted of the offence of infanticide although she was not charged with it.

(2) When a person is charged with the murder or manslaughter of any child or with infanticide, or with an offence under section 149 or section 150 of the Penal Code (relating to the procuring of abortion), and the court is of opinion or the jury finds, as the case may be, that he is not guilty of murder, manslaughter or infanticide or of an offence under section 149 or section 150 of the Penal Code, but that he is guilty of the offence of killing an unborn child, he may be convicted of that offence although he was not charged with it.

(3) When a person is charged with killing an unborn child and the court is of opinion or the jury finds, as the case may be, that he is not guilty of that offence but that he is guilty of an offence under either section 149 or section 150 of the Penal Code, he may be convicted of that offence although he was not charged with it.

(4) When a person is charged with the murder or infanticide of any child or with killing an unborn child and the court is of opinion or the jury finds, as the case may be, that he is not guilty of any of the said offences, but that he is guilty of the offence of concealment of birth, he may be convicted of the offence of concealment of birth although he was not charged with it.

Alternative
verdict in
charge of
man-
slaughter
from driving
of motor
vehicle
Cap. 69:01
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154. When a person is charged with manslaughter in connexion with the driving of a motor vehicle by him and the court is of opinion or the jury finds, as the case may be, that he is not guilty of that offence, but that he is guilty of an offence under section 118, 119, 121 or 123 of the Road Traffic Act, or under any law in substitution therefor, he may be convicted of that offence although he was not charged with it.

155.—(1) When a person is charged with rape and the court is of opinion or the jury finds, as the case may be, that he is not guilty of that offence but that he is guilty of an offence under one of the sections 137, 138, 141 and 157 of the Penal Code, he may be convicted of that offence although he was not charged with it.

Alternative
verdict in
charges of
rape and
kindred
offences
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(2) When a person is charged with an offence under section 157 of the Penal Code and the court is of opinion or the jury finds, as the case may be, that he is not guilty of that offence but that he is guilty of an offence under one of the sections 138 and 139 of the Penal Code, he may be convicted of that offence although he was not charged with it.

(3) When a person is charged with the defilement of a girl under the age of thirteen years and the court is of opinion or the jury finds, as the case may be, that he is not guilty of that offence but that he is guilty of an offence under one of the sections 137 and 141 of the Penal Code, he may be convicted of that offence although he was not charged with it.

156. When a person is charged with an offence mentioned in Chapter XXIX of the Penal Code and the court is of opinion or the jury finds, as the case may be, that he is not guilty of that offence but that he is guilty of any other offence mentioned in the said Chapter, he may be convicted of that other offence although he was not charged with it.

Person
charged with
burglary,
etc., may be
convicted of
kindred
offence
Cap. 7:01
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157.—(1) When a person is charged with stealing anything and—

Alternative
verdicts in
charges of
stealing and
kindred
offences

(a) it is proved that he received the thing knowing the same to have been stolen, he may be convicted of the offence of receiving although he was not charged with it;

(b) it is proved that he obtained the thing in any such manner as would amount, under the Penal Code or any other law for the time being in force, to obtaining it by false pretences with intent to defraud, he may be convicted of the offence of obtaining it by false pretences although he was not charged with it;

Cap. 7:01

(c) the facts proved amount to an offence under section 329 of the Penal Code, he may be convicted of the offence under that section although he was not charged with it.

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

158. Sections 150 to 157, inclusive, shall be construed as in addition to, and not in derogation of, any other written law and the other provisions of this Code, and sections 152 to 157,

Construction
of sections
150 to 157

inclusive, shall be construed as being without prejudice to the generality of sections 150 and 151.

Person charged with misdemeanour not to be acquitted if felony proved, unless court so directs **159.** If on any trial for misdemeanour the facts proved in evidence amount to a felony, the accused shall not be therefore acquitted of such misdemeanour, and no person tried for such misdemeanour shall be liable afterwards to be prosecuted for felony on the same facts, unless the court shall think fit, in its discretion, to direct such person to be prosecuted for felony whereupon such person may be dealt with as if not previously put on trial for misdemeanour.

Right of accused to be defended
Cap. 3:04 **160.** Any person accused of an offence before any criminal court, or against whom proceedings are instituted under this Code in any such court, may, subject to section 40 of the Legal Education and Legal Practitioners Act, of right be defended by a legal practitioner.

Promotion of reconciliation **161.** In all cases the court or a Traditional Court may promote reconciliation and encourage and facilitate the settlement in an amicable way of proceedings for common assault, or for any other offence of a personal or private nature not amounting to felony, and not aggravated in degree, on terms of payment of compensation or other terms approved by the court or Traditional Court, and may thereupon order the proceedings to be stayed or terminated.

PART V

MODE OF TAKING AND RECORDING EVIDENCE IN INQUIRIES AND TRIALS

Evidence to be taken in presence of accused **162.** Except as otherwise expressly provided, all evidence taken in any inquiry or trial under this Code shall be taken in the presence of the accused, or, when his personal attendance has been dispensed with, in the presence of his counsel, if any.

Manner of recording evidence before magistrate **163.** Subject to any rules made under section 161, in inquiries and trials (other than trials under section 159) by or before a magistrate, the evidence of the witnesses shall be recorded in the following manner—

(a) the evidence of each witness shall be taken down in writing in the language of the court by the magistrate, or in his presence and hearing under his personal direction and superintendence, and shall be signed by the magistrate, and shall form part of the record;

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

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

164.—(1) Whenever any evidence is given in a language not understood by the accused, and he is present in person, it shall be interpreted to him in a language understood by him.

Interpreta-
tion of
evidence to
accused or
his counsel

(2) If he appears by counsel and the evidence is given in a language other than the language of the court, and not understood by the counsel, it shall be interpreted to such counsel in the language of the court.

(3) 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.

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

Cases heard
by one
magistrate
may be con-
tinued by
another
magistrate

Provided that—

(a) in any trial the magistrate so succeeding shall, save where he is of the opinion that the presence of a witness cannot be obtained without an amount of delay or expense which, in the circumstances of the case, he considers unreasonable, resummon and rehear the witnesses or any of them if so requested by the accused;

(b) the High Court may, whether there be an appeal or not, set aside any conviction passed on evidence not wholly recorded by the magistrate before whom the conviction was had, if it is of opinion that the accused has been materially prejudiced thereby, and may order a new inquiry or trial.

166. Whenever any magistrate who has presided at any trial which has resulted in the conviction of the accused, ceases to exercise jurisdiction before sentence has been passed, and is succeeded, whether by virtue of an order of transfer under this Code or otherwise, by another magistrate who has and who exercises such jurisdiction, the magistrate so succeeding may sentence the accused or may make any order in such case which he could have made if he himself had convicted the accused.

Sentence by
one magis-
trate of per-
son con-
victed by
another
magistrate

Record of
evidence in
High Court
and subor-
dinate courts

167. The Chief Justice may from time to time, by rules, prescribe the manner in which evidence shall be taken down in cases coming before the High Court and subordinate courts and the judges and magistrates, as the case may be, shall take down the evidence or the substance thereof, in accordance with such rules.

PART VI

EVIDENCE IN CRIMINAL PROCEEDINGS

Application
of Part

168. This Part shall apply to all criminal proceedings in or before the High Court and all subordinate courts.

When a fact
said to be
proved, dis-
proved and
not proved
23 of 1968

169. (1) A fact is said to be proved when, after considering the matters before it, the court or jury, as the case may be, either believes it to exist or to have existed or considers its existence at the relevant time so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists or existed.

(2) A fact is said to be disproved when, after considering the matters before it, the court or jury, as the case may be, either believes that it does not exist or did not exist or considers its non-existence at the relevant time so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist or did not exist at the relevant time.

(3) A fact is said to be not proved when it is neither proved nor disproved.

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(4) "Sufficient evidence" when used in relation to a fact means evidence by reason of which the court or jury, as the case may be, regards such fact as proved, unless and until it is disproved.

Presump-
tions
23 of 1968

170.—(1) Whenever it is provided by this Code that the court or jury, as the case may be, may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it.

(2) Whenever it is directed by this Code that the court or jury, as the case may be, shall presume a fact, it shall regard such fact as proved, unless and until it is disproved.

(3) When one fact is declared by this Code to be conclusive proof of another, the court or jury, as the case may be, shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

(4) A court or jury, as the case may be, may presume the existence of any fact which it thinks likely to have happened, regard being had to the course of natural events, human conduct and public and private business, in relation to the facts of a particular case.

171.—(1) Subject to any other law, evidence may be given in any proceeding of the existence or non-existence of every fact in issue, and of such other facts as are hereinafter declared to be relevant, and of no others. Relevancy of facts

(2) Facts are relevant which—

(a) though not themselves in issue, are so connected with a fact in issue as to form part of the same transaction, whether they occurred at the same time and place or at different times and places;

(b) are the occasion, the cause or the effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction;

(c) show or constitute a motive or preparation for any fact in issue or relevant fact;

(d) in so far as they are necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of any thing or person whose identity is relevant or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of persons by whom any such fact was transacted;

(e) though not otherwise relevant—

(i) are inconsistent with any fact in issue or relevant fact;

(ii) by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable;

(f) show the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-will or goodwill towards any particular person, or show the existence of any state of body or bodily feeling, when the existence of any such state of mind or body or such bodily feeling is in issue or relevant;

(g) where there is a question as to the existence of any right or custom, show or constitute—

(a) any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted or denied, or which was inconsistent with its existence;

(b) particular instances in which the right or custom was claimed, recognized, or exercised, or in which its exercise was disputed, asserted or departed from;

(h) when there is a question whether an act was accidental or intentional, or done with a particular knowledge or intention, show that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned;

(i) when there is a question whether a particular act was done, show the existence of any course of business, according to which it naturally would have been done.

(3) The conduct of any person is relevant in reference to any fact in issue, and the conduct of any person, an offence against whom is the subject of any proceeding, is relevant if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto. When the conduct of any person is relevant, any statement made to him, or in his presence and hearing, which affects such conduct, is relevant. Subject to any other provisions of this Code relating to the relevancy of statements, the expression "conduct" in this subsection does not include statements, unless those statements accompany and explain acts other than statements.

(4) Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence anything said, done or written by one of such persons in reference to their common intention after the time when such intention was first entertained by any one of them is a relevant fact against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

Admissibility of evidence

172.—(1) When either party proposes to give evidence of any fact, the court may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the court shall admit the evidence if it thinks that the fact, if proved, would be relevant, and not otherwise.

(2) If the fact to be proved is one of which evidence is admissible only upon proof of some other fact, such last-mentioned fact must be proved before evidence is given of the fact first-mentioned unless the party undertakes to give proof of such fact and the court is satisfied with such undertaking.

(3) If the relevancy of one alleged fact depends upon another alleged fact being first proved, the court may, in its discretion, either permit evidence of the first fact to be given before the second fact is proved or require evidence to be given of the second fact before evidence is given of the first fact.

173. A statement, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which in the circumstances of the case appears to the court unreasonable, is itself a relevant fact—

Statement of person who cannot be called as witness

(a) when the statement was made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death in a case in which the cause of that person's death comes into question and whether the person who made it was or was not, at the time when the statement was made, under expectation of death and whatever may be the nature of the criminal proceeding in which the cause of his death comes into question;

(b) when the statement was made by such person in the ordinary course of business and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business or in the discharge of professional duty, or of an acknowledgement written or signed by him of the receipt of money, goods, securities or property of any kind or of a document used in commerce written or signed by him, or of the date of a letter or other document usually dated, written or signed by him;

(c) when the statement was against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages;

(d) when the statement gave the opinion of such person as to the existence of any public right or custom, or matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter had arisen;

(e) when the statement relates to the existence of any relationship by blood, marriage or adoption between persons as to whose relationship by blood, marriage or adoption the person making the statement had special means of knowledge and when the statement was made before the question in dispute was raised;

(f) when the statement relates to the existence of any relationship by blood, marriage or adoption between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased persons belonged, or in any family pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised;

(g) when the statement is contained in any deed, will or other document which relates to any transaction by which any right or custom in question was created, claimed, modified, recognized, asserted or denied, or which was inconsistent with its existence;

(h) when the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

Relevancy
of state-
ments made
in special
circum-
stances

174.—(1) A statement contained in any entry in a book of account, regularly kept in the course of business, is a relevant fact whenever it refers to a matter into which the court has to inquire, but such statement shall not alone be sufficient evidence to charge any person with liability.

(2) An entry in any public or other official book, register or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record is kept, is itself a relevant fact.

(3) A statement of fact in issue or relevant fact, made in a published map or chart generally offered for public sale or in a map or plan made under the authority of the Government, as to matters usually represented or stated in such maps, charts or plans, is itself a relevant fact.

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(4) When the court or jury, as the case may be, has to form an opinion as to the existence of any fact of a public nature, any statement of it—

(a) made in a recital contained in any Act; or

(b) in a notification by or on behalf of the Government published in the *Gazette*; or

(c) in any printed paper purporting to be the Government *Gazette* of any country of the Commonwealth,
is a relevant fact.

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(5) When a court or jury, as the case may be, has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be published under the authority of the Government of such country and to contain any such law and any report of any ruling of the courts of such country contained in a book purporting to be a report of such ruling are relevant.

Proof of
facts by
written
statement

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

(2) The 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) 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) shall not apply if the parties agree before or during the hearing that the statement shall be so tendered.

(3) 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, made before or at the hearing, of any party to the proceedings require that person to attend before the court to give evidence.

(4) 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.

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

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

(b) by addressing it to him and leaving it at his usual or last known place of abode or place of business or, in a case where he has given an address for service, at that address;

(c) by sending it in a prepaid registered letter or by the recorded delivery service addressed to him at his usual or last known place of abode or place of business, or, in a case where he has given an address for service, at that address; or

(d) in the case of a body corporate by serving it in one of the manners prescribed for the service of a summons upon such body corporate by section 91.

Cap. 7:01

(6) Section 101 of the Penal Code (false statements by any person lawfully sworn as a witness or as an interpreter in any judicial proceedings) shall apply in relation to the making by any person of a written statement tendered in evidence by virtue of this section as it applies in relation to the making of an oral statement by a person lawfully sworn as a witness.

Confessions
23 of 1968

176.—(1) Evidence of a confession by the accused shall, if otherwise relevant and admissible, be admitted by the court notwithstanding any objection to such admission upon any one or more of the following grounds (however expressed) that such confession was not made by the accused or, if made by him, was not freely and voluntarily made and without his having been unduly influenced thereto.

(2) No confession made by any person shall be admissible as evidence against any other person except to such extent as that other person may adopt it as his own.

(3) Evidence of a confession admitted under subsection (1) may be taken into account by a court, or a jury, as the case may be, if such court or jury is satisfied beyond reasonable doubt that the confession was made by the accused and that its contents are materially true. If it is not so satisfied, the court or the jury shall give no weight whatsoever to such evidence. It shall be the duty of the judge in summing up the case specifically to direct the jury as to the weight to be given to any such confession.

(4) Nothing in this section except subsection (2) shall apply to any confession made by an accused at his trial or in the course of any preliminary inquiry relating thereto.

Evidence of
persons who
are danger-
ously ill

177. Whenever it is made to appear to the satisfaction of a magistrate that any person is dangerously ill and in the opinion of a medical practitioner not likely to recover from such illness and is able and willing to give material information relating to an offence or to any person accused of an offence and it is not practicable to examine or take a deposition in accordance with any other provision of this Code of the person so being ill, it shall be lawful for the magistrate to take in writing the statement on oath of such person. The magistrate taking such a statement shall sign it and set out his reason for taking the same, the date and the place of taking it, and the names of the persons (if any) present at the time. If afterwards upon the trial of any offender or offence to which the same may relate the person who made this statement is proved to be dead, or if it is proved that there is no reasonable probability that such person will ever be able to travel or give evidence, it shall be lawful to read such statement in evidence either for or against the accused without further proof thereof—

the case, the court considers unreasonable, but save as aforesaid the court may refuse to admit in evidence the report of an expert who fails to attend court or reply to interrogatories after having been required to do so under subsection (4).

(6) Nothing in this section shall—

(a) affect the admissibility of evidence under the provisions of sections 173, 175, 177, 178 or sections 204 to 208 (inclusive); or

(b) be deemed to affect any provision of this or any other written law under which any certificate or other document is made admissible in evidence and the provisions of this section shall be construed in addition to, and not in substitution of, any such provision.

181.—(1) A previous conviction may be proved in any legal proceeding against any person by producing a record or extract of such conviction and by giving proof of the identity of the person against whom the conviction is sought to be proved with the person appearing in the record or extract of conviction to have been convicted.

How previous convictions may be proved

(2) A record or extract of a conviction shall consist of a certificate in such form, if any, as may be prescribed containing the substance and effect only (omitting any formal part of the charge and conviction) and purporting to be signed, in the case of a conviction by the High Court, by the Registrar of the High Court or other officer having the custody of the records of the Court and, in the case of any other conviction, by the clerk or other officer having custody of the records of the court by which such conviction was made.

(3) A record or extract of any conviction made in pursuance of this section shall be admissible in evidence without proof of the signature or official character of the person appearing to have signed the same.

(4) The mode of proving a previous conviction authorized by this section shall be in addition to and not in exclusion of any other authorized mode of proving such a conviction.

(5) A conviction made before the day upon which this section came into operation may be proved in the same manner as if it had taken place after such day.

182.—(1) No fact of which the court or the jury, as the case may be, will take judicial notice need be proved.

Judicial notice
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(2) A court or a jury, as the case may be, shall take judicial notice of the following facts—

(a) all Acts and Ordinances enacted or hereafter to be enacted, and all Acts of Parliament of the United Kingdom now or heretofore in force in Malawi;

(b) all Orders in Council, laws, statutory instruments or subsidiary legislation now or heretofore in force or hereafter to be in force in Malawi;

(c) the course of proceedings of Parliament, and of the legislatures, assemblies, councils or other authorities for the purpose of making laws and regulations established under any law for the time being relating thereto;

(d) the accession to office, name, titles, functions and signature of the President;

(e) the accession to office, names, titles, functions and signatures of the persons filling for the time being any public office in any part of Malawi if the fact of their appointment to such office is notified in the *Gazette*;

(f) the seals of all the courts of Malawi duly established and all seals which any person is authorized to use by any Act or other written law;

(g) the accession and signature of the Head of the Commonwealth;

(h) the territories of the Commonwealth;

(i) the existence, title and national flag of every state or sovereign recognized by the Government;

(j) the divisions of time, the geographical divisions of the world and public holidays;

(k) the commencement, continuance and termination of hostilities between the Government and any other state or body of persons;

(l) the names of the members and officers of the court and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process and of all counsel and other persons authorized by law to appeal or act before it;

(m) the rule of the road on land or water.

(3) In all such cases and also on matters of public history, literature, science or art, the court or jury, as the case may be, may resort for its aid to appropriate books or documents of reference.

(4) If the court or jury, as the case may be, is called upon by any person to take judicial notice of any fact, it may refuse to do so

unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

183.—(1) Subject to this section, any fact of which oral evidence may be given in any criminal proceedings may be admitted for the purpose of those proceedings by or on behalf of the prosecution or the accused, and the admission of any such fact under this section shall be conclusive evidence in those proceedings of the fact admitted. Proof by formal admission

(2) An admission under this section—

(a) may be made before or at the proceedings;

(b) if made otherwise than in court, shall be in writing;

(c) if made in writing by an individual, shall purport to be signed by the person making it and, if so made by a body corporate, shall purport to be signed by a director or manager, or the secretary or clerk, or some other similar officer of the body corporate;

(d) if made on behalf of a defendant who is an individual, shall be made by his counsel;

(e) if made before the trial by a defendant who is an individual, must be approved by his counsel either at the time it was made or subsequently.

(3) An admission under this section for the purpose of proceedings relating to any matter shall be treated as an admission for the purpose of any subsequent criminal proceedings relating to that matter (including any appeal, review or retrial).

(4) An admission under this section may with the leave of the court be withdrawn in the proceedings for the purpose of which it is made or any subsequent criminal proceedings relating to the same matter.

(5) In this section “director”, in relation to any statutory body within the meaning ascribed to that term by section 2 of the Statutory Bodies (Control of Contracts) Act, being a body corporate whose affairs are managed by its members, means a member of that body corporate. Cap. 18:07

184. Oral evidence must, in all cases whatever, be direct, that is to say— Hearsay evidence not admissible, etc.

(a) if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;

(b) if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;

(c) if it refers to a fact which could be perceived by any other sense, or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;

(d) if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds:

Provided that—

(i) the opinions of experts expressed in any treatise commonly offered for sale, and the grounds upon which such opinions are held, may be proved by the production of such treatises, if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the court regards as unreasonable; and

(ii) if oral evidence refers to the existence or condition of any material thing other than a document, the court may, if it thinks fit, require the production of such material thing for its inspection.

Previous judgments relevant to bar a second trial

185. The existence of any judgment, order or decree which by law prevents any court from holding a trial is a relevant fact when the question is whether such court ought to hold such trial.

Relevancy of certain judgments conferring legal character, etc.

186.—(1) A final judgment, order or decree of a competent court or Traditional Court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order or decree is conclusive proof—

(a) that any legal character which it confers accrued at the time when such judgment, order or decree came into operation;

(b) that any legal character to which it declares any such person to be entitled, accrued to that person at the time when such judgment, order or decree declares it to have accrued to that person;

(c) that any legal character which it takes away from any such person ceased at the time from which such judgment, order or decree declares that it ceased or should cease; and

(3) Every accused called as a witness in pursuance of this section, or in pursuance of section 255 (1) or 314, shall unless otherwise ordered by the court, give his evidence from the witness box or other place from which the other witnesses give their evidence.

194. A husband or wife of an accused shall be a competent and compellable witness for the prosecution or for the defence at every stage of any proceedings:

Evidence by husband and wife of an accused
23 of 1968

Provided that such husband or wife shall not be called as a witness for the defence except upon the application of the accused.

195. If it is made to appear that evidence material to any criminal cause or matter before, or pending before, any court can be given by, or is in the possession of, any person, it shall be lawful for a police officer of the rank of Assistant Superintendent or above, or the Registrar of the High Court, or the magistrate having cognizance of such cause or matter, to issue a summons to such person requiring his attendance before such court or requiring him to bring and produce to such court for the purpose of evidence all documents and writings in his possession or power which may be specified or otherwise sufficiently described in the summons.

Summons for witness
5 of 1969

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

Warrant for witness who disobeys summons

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

Warrant for witness in first instance

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

Mode of dealing with witness arrested under warrant

199.—(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.

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

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

Penalty for
non-atten-
dance of
witness

200.—(1) Any person summoned to attend as a witness who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the court, or fails to attend after adjournment of the court after being ordered to attend, shall be liable by order of the court to a fine of £20.

(2) Such fine shall be levied by attachment and sale of any movable property belonging to such witness.

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

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

Power to
summon
material
witnesses or
examine
person
present

201. Any court may of its own motion at any stage of any inquiry, trial or other proceeding under this Code summon or call any person as a witness, or examine any person in attendance though not summoned as a witness, or re-call and re-examine any person already examined, and the court shall summon and examine or re-call 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 counsel for the prosecution or the accused or his counsel shall have the right to cross-examine 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 such person as a witness.

Refractory
witnesses

202.—(1) Whenever a 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 a period not exceeding eight days, and may in the meantime commit such person to prison, unless he sooner consents to do what is required of him.

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

(3) Nothing herein contained shall affect the liability of 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.

(4) Nothing in this section shall apply to the refusal or neglect of an accused to be sworn or to answer any question or to do any other thing required of him in pursuance of section 255, 256, or 314. 23 of 1968

203.—(1) If it is proved that an accused has absconded, and that there is no immediate prospect of arresting him, the court competent to try him or commit him for trial for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions. Such depositions may, on the arrest of the accused, be given in evidence against him on the inquiry into or trial for 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. Power to take evidence of witnesses in absence of accused

(2) If it appears that an offence punishable with death or imprisonment for a term of not less than seven years has been committed by some person or persons unknown, the High Court may direct that any magistrate shall hold an inquiry and examine any witnesses who can give evidence concerning the offence. Any depositions so taken may be given in evidence against any person who is subsequently accused of the offence if the deponent is dead, or incapable of giving evidence or beyond the limits of Malawi.

204. Whenever in the course of any proceeding under this Code the High Court or a subordinate court is satisfied that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the Issue of commission for examination of witness within Malawi

circumstances of the case, would be unreasonable, the High Court or subordinate court may issue a commission to any magistrate to take the evidence of such witness.

Duties of
magistrate to
whom com-
mission
issued

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

Parties may
examine
witnesses

206.—(1) The parties to any proceeding under this Code in which a commission under section 204 is issued may respectively forward any interrogatories in writing which the court directing the commission may think relevant to the issue, and the magistrate to whom the commission is directed shall examine the witness upon such interrogatories.

(2) Any such party may appear before such magistrate, by counsel, or, if not in custody, in person, and may examine, cross-examine and re-examine (as the case may be) the said witness.

Return of
commission

207. After any commission issued under section 204 has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the court by which it was issued and the commission, the return thereto, and the deposition shall be open at all reasonable times to inspection of the parties, and may, subject to all just exceptions, be read in evidence in the case by either party, and shall form part of the record.

Examination
of witnesses
outside
Malawi

Cap. 4:03

208.—(1) Whenever in the course of any proceedings under this Code the High Court is satisfied that the examination of a witness outside Malawi is necessary for the ends of justice, the High Court may issue an order for the examination of such witness to a court of competent jurisdiction outside Malawi under, and in accordance with, the Evidence by Commissions Act, or any other written law for the time being in force relating to the taking of evidence in criminal proceedings outside Malawi.

(2) Whenever in the course of any proceedings under this Code before a magistrate it appears that the examination of a witness outside Malawi is necessary for the ends of justice, such magistrate shall apply to the High Court, stating the reasons for the application, and the High Court may issue an order under subsection (1) of this section for the examination of such witness.

Adjourn-
ment of pro-
ceedings

209. Where a commission is issued under section 204 or an order is made under section 208, the proceedings may be adjourned for a specified time reasonably sufficient for the execution and return of the commission or of compliance with the order.

210. All persons shall be competent to testify unless the court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by immature or extreme old age, disease, whether of mind or body, or any other cause of the same kind, subject however in the case of persons of immature age to section 6 of the Oaths, Affirmations and Declarations Act, relating to the reception of their unsworn evidence. Who may testify
Cap. 4:07

211. A witness who is unable to speak may give his evidence in any manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open court. Evidence so given shall be deemed to be oral evidence. Dumb witness

212. Subject to this Code and any other law for the time being in force, no particular number of witnesses shall in any case be required for the proof of any fact. Number of witnesses

213. The order in which witnesses are produced and examined shall be regulated by Parts VII to X inclusive and, subject thereto, by the discretion of the court. Order of examination of witnesses

214.—(1) The examination of a witness by the party who calls him shall be called his examination-in-chief. Examination, cross-examination and re-examination

(2) The examination of a witness by the adverse party shall be called cross-examination.

(3) The examination of a witness subsequent to the cross-examination, by the party who called him, shall be called his re-examination.

(4) A witness shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.

(5) The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

(6) The re-examination shall be directed to the explanation of matters referred to in cross-examination; and if new matter is, by permission of the court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

(7) When a witness is cross-examined, he may in addition to the questions elsewhere in this Part referred to, be asked any questions which tend—

(a) to test his veracity;

(b) to discover who he is and what is his position in life;

(c) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture. When any such question relates to a matter relevant to the proceeding, section 228 shall apply thereto.

Court to
decide when
questions
shall be
asked and
when wit-
ness com-
pelled to
answer
23 of 1968

215.—(1) If any question asked under section 214 (7) relates to a matter not relevant to the proceeding, except in so far as it affects the credit of the witness by injuring his character, the court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it. In exercising its discretion, the court shall have regard to the following considerations—

(a) such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the court or jury, as the case may be, as to the credibility of the witness on the matter to which he testifies;

(b) such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the court or jury, as the case may be, as to the credibility of the witness on the matter to which he testifies;

(c) such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence;

(d) the court or jury, as the case may be, may, if it sees fit, draw from the witness's refusal to answer, the inference that the answer if given would be unfavourable.

(2) No such question as is referred to in subsection (1) may properly be asked unless the person asking it has reasonable

grounds for thinking that the imputation which it conveys is well founded.

(3) If the court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any counsel, report the circumstances of the case to the High Court or other authority to which such counsel is subject in the exercise of his profession.

(4) The court may forbid any question or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

(5) The court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the court needlessly offensive in form.

216. A person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross-examined unless and until he is called as a witness.

Cross-examination of persons summoned to produce a document

217. Any question suggesting the answer which the person putting it wishes or expects to receive is called a leading question.

Leading questions

218.—(1) In any trial before the High Court leading questions must not, if objected to by the adverse party, be asked in examination-in-chief or in re-examination, except with the permission of the Court.

When leading questions may be asked

(2) In any trial before a subordinate court leading questions must not, except with the permission of the court, be asked in examination-in-chief or in re-examination.

(3) The High Court or a subordinate court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, already been sufficiently proved.

(4) Leading questions may be asked in cross-examination without permission of the court in trials before the High Court and subordinate courts.

219.—(1) Any witness may be asked, whilst under examination, whether any contract, grant or other disposition of property, as to which he is giving evidence, was not contained in a document, and if he says that it was, or if he is about to make any statement as to the contents of any document which, in the opinion of the court, ought to be produced, the adverse party

Evidence as to matters in writing and cross-examination as to previous writings

may object to such evidence being given until such document is produced, or until facts have been proved which entitle the party who called the witness to give secondary evidence of it. A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are themselves relevant facts.

(2) A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

Communica-
tion during
marriage

220. A husband shall not be compelled to disclose any communication made to him by his wife during their marriage and a wife shall not be compelled to disclose any communication made to her by her husband during their marriage.

Affairs of
State

221. No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the Ministry concerned, who shall give or withhold such permission as he thinks fit.

Official
communica-
tions

222. No public officer shall be compelled to disclose communications made to him in the course of his duty, when he considers the public interests would suffer by the disclosure.

Judges,
magistrates,
police and
revenue
officers

223.—(1) No judge or magistrate shall, except upon the special order of some court to which he is subordinate, be compelled to answer any questions as to his own conduct in court as such judge or magistrate, or as to anything which came to his knowledge in court as such judge or magistrate; but he may be examined as to other matters which occurred in his presence while he was so acting.

(2) No magistrate or police officer shall be compelled to say whence he received any information as to the commission of any offence, and no revenue officer shall be compelled to say whence he received any information as to the commission of any offence against the public revenues.

Professional
communica-
tions

224.—(1) No counsel shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such counsel by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of such employment:

Provided that nothing in this section shall protect from disclosure—

(a) any such communication in furtherance of any illegal purpose;

(b) any fact observed by any counsel in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

It is immaterial whether the attention of such counsel was or was not directed to such fact by or on behalf of his client. The obligation referred to in this subsection continues after the employment has ceased.

(2) This section applies to interpreters and to the clerks and servants of counsel.

225. If a party to any proceedings gives evidence he shall not be deemed to have consented thereby to such disclosure as is mentioned in section 224 and if any such party calls any such counsel as a witness, he shall be deemed to have consented to such disclosure only if he questions such counsel on matters which, but for such question, he would not be at liberty to disclose.

Privilege not waived by volunteering evidence

226. No one shall be compelled to disclose to the court or to the jury any confidential communication, which has taken place between him and any counsel advising or representing him unless he has offered himself as a witness or is giving evidence upon being required to do so under section 254 (1) or section 314 in which cases he may be compelled to disclose any such communications as may appear to the court necessary to be known in order to explain any evidence which he has given but no others.

Confidential communications with counsel
23 of 1968

227. No one shall be compelled to produce documents in his possession which any other person would be entitled to refuse to produce if they were in his possession, unless such last-mentioned person consents to their production.

Production of documents another person having possession could refuse

228. A witness shall not be excused from answering any question as to any matter relevant to the matter in issue upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose such witness to a penalty or forfeiture of any kind, or that it may establish or tend to establish that he owes a debt or is otherwise subject to a civil suit:

Witness not excused from answering question on ground answer will incriminate

Provided that no such answer which a witness shall be compelled to give may subject him to any arrest or prosecution or be proved against him in any subsequent criminal proceeding, except a prosecution for giving false evidence by such answer.

Exclusion of
evidence of
contradict
answers to
questions
testing
veracity

229. When a witness has been asked and has answered a question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict his answer; but, if he answers falsely, he may afterwards be charged with giving false evidence:

Provided that—

(a) if a witness is asked whether he has been previously convicted of any crime, and denies it, evidence may be given of his previous conviction;

(b) if a witness is asked a question tending to impeach his impartiality and answers it by denying the facts suggested, he may be contradicted.

Question by
party to his
own witness

230. The court may, in its discretion, permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party.

Impeaching
credit of
witness

231.—(1) The credit of a witness may be impeached in the following ways by the adverse party, or with the consent of the court, by the party who calls him—

(a) by the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;

(b) by proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence;

(c) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;

(d) when a man is prosecuted for rape or indecent assault, or for an attempt to commit either of those offences, by evidence that the prosecutrix was of generally immoral character.

(2) A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

232.—(1) When a witness whom it is intended to corroborate gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred, if the court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies.

Evidence tending to corroborate evidence of relevant fact admissible

(2) Evidence of a statement made at the time when, or shortly before, or shortly after an offence is alleged to have been committed and directly relating to a fact relevant in the case is admissible if it was made by a person who is a witness and if such statement is used for showing its consistency with his evidence.

233. In order to show the consistency of the testimony of a witness, any former statement made by such witness relating to the same fact, at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

Former statements of witness may be proved to show consistency of later testimony as to same fact

234. Whenever any statement, relevant under section 173 or section 178 is proved, all matters may be proved either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness and had denied upon cross-examination the truth of the matter suggested.

What matters may be proved in connection with proved statement relevant under section 173 or 178

235.—(1) A witness may, with the permission of the court, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the court considers it likely that the transaction was at that time fresh in his memory.

Refreshing memory

(2) The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it he knew it to be correct.

(3) Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the court, refer to a copy of such document:

Provided the court be satisfied that there is sufficient reason for the non-production of the original.

(4) An expert may refresh his memory by reference to professional treatises.

(5) A witness may also testify to facts mentioned in any such document as is mentioned in this section although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

(6) Subject to the provisions of this Code or any other law to the contrary, any writing referred to under this section must be produced and shown to the adverse party if he requires it; such party may, if he pleases, cross-examine the witness thereupon.

Giving as
evidence
document
called for
and pro-
duced on
notice

236. When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so.

Using as
evidence
document
production
of which
was refused
on notice

237. When a party has refused to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence without the consent of the other party or the order of the court.

Court's
power to put
questions or
order pro-
duction

238. The judge or magistrate may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant; and may order the production of any document or thing; and neither parties nor their counsel shall be entitled to make any objection to any such question or order, nor, without the leave of the court, to cross-examine any witness upon any answer given in reply to any such question:

Provided that—

(a) the judgment must be based upon facts declared by this Code to be relevant, and duly proved;

(b) this section shall not authorize any judge or magistrate to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under section 193 (2) or under sections 219 to 227, inclusive, if the question were asked or the document were called for by the adverse party; nor shall the judge ask any question which it would be improper for any other person to ask under section 229 nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

240. The improper admission or rejection of evidence shall not be ground of itself for a new trial, or reversal of any decision in any case, if it shall appear to the court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

No new trial for improper admission or rejection of evidence

241.—(1) A witness summoned to produce a document shall, if it is in his possession or power, bring it to court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided by the court.

Production of documents

(2) The court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine its admissibility and if for such a purpose it is necessary to cause any document to be translated, the court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence; and if he disobeys such direction, he shall be held to have committed an offence under section 95 of the Penal Code.

Cap. 7:01

242. An accomplice shall be a competent witness against an accused person; and a conviction shall not be set aside merely because it proceeds upon the uncorroborated testimony of an accomplice.

Accomplice

243. When any statement of which evidence is given forms part of a longer statement or of a conversation or part of an isolated document, or is contained in a document which forms part of a book or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, book or series of letters or papers as the court considers necessary in that particular case to the full understanding of the nature and effect of the statement and the circumstances in which it was made.

What evidence is to be given when a statement forms part of a conversation, document, etc.

244.—(1) No person shall be convicted of an offence under section 51 of the Penal Code (which relates to seditious offences) on the uncorroborated testimony of one witness.

Corroboration in cases of sedition, perjury, etc.
Cap. 7:01

(2) No person shall be convicted of committing perjury or subornation of perjury solely upon the evidence of one witness as to the falsity of any statement alleged to be false.

245.—(1) The Chief Justice may make rules relating to documentary evidence in criminal proceedings under this Code.

Chief Justice may make rules relating to documentary evidence

(2) In particular and without prejudice to the generality of the power conferred by subsection (1), such rules may provide for—

- (a) the admission of documentary evidence in criminal proceedings under this Code;
- (b) the manner in which such documentary evidence is to be proved;
- (c) notices for the production of documentary evidence;
- (d) the proof of public and private documents and copies thereof;
- (e) presumptions to be made regarding documentary evidence;
- (f) the exclusion of oral evidence by documentary evidence;
- (g) the weight to be given to any particular documentary evidence;
- (h) such other matters regarding documentary evidence as may be considered necessary.

PART VII

PROCEDURE IN TRIALS BEFORE SUBORDINATE COURTS

Summary
trial pro-
cedure

246.—(1) The procedure prescribed in this Part shall be observed in trials by subordinate courts whether resulting from a complaint under section 83 (2) or a charge under section 83 (1) or (4).

(2) Other relevant provisions of this Code shall apply to trials before subordinate courts, except in so far as express provision is made in this Part which is inconsistent with such other relevant provisions.

Absence of
complainant
51 of 1971

247.—(1) When proceedings have been instituted under section 83 and, at the time fixed for the hearing of the case or the time to which the hearing is adjourned, the complainant, or the prosecutor, as the case may be, is either absent or unable or unwilling to proceed with the case against the accused, the court, if it is satisfied that the complainant or prosecutor has had reasonable notice of the time and place fixed for the hearing, shall, unless it considers there is good reason to adjourn the hearing, discharge the accused. Such discharge shall not operate as a bar to any subsequent proceeding against the accused on account of the same facts.

(2) If the Court is not satisfied as provided in subsection (1) or considers that there is a good reason for adjournment, the court shall adjourn the hearing.

Absence of
accused

248.—(1) If, upon the day fixed for trial or the day to which the hearing or further hearing is adjourned, the accused shall not appear and, in the case of proceedings originating by summons, it appears to the court by evidence on oath that the summons was duly served a reasonable time before the time appointed for

appearing, the court may, instead of directing the issue of a warrant of arrest under section 95, proceed with the hearing or further hearing as if the accused were present:

Provided that no sentence of imprisonment, other than a sentence in default of payment of a fine, shall be imposed on any person under this subsection.

(2) If the court convicts the accused in his absence, it may set aside such conviction upon being satisfied that his absence was due to causes over which he had no control, and that he had a probable defence on the merits.

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

249. If a complainant, at any time before a final order is passed in any proceeding conducted by him after complaint made under section 83 (2), satisfies the court that there are sufficient grounds for permitting him to withdraw his complaint, the court may permit him to withdraw the same and shall thereupon acquit the accused. Withdrawal
of complaint

250.—(1) Before or during the hearing of any case, the court may in its discretion adjourn the hearing to a time and place to be then stated to the parties or their respective counsel, and in the meantime the court may release the accused without security or 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 so stated or may commit him to prison. If the accused has not been committed to prison, such adjournment may, with the consent of both parties, be for any period not exceeding three months, or, in the absence of such consent, thirty days. If the accused has been committed to prison no such adjournment shall be for more than fifteen days. The day following that on which any such adjournment is made shall be counted as the first day thereof. Adjourn-
ment

(2) If a court purports to adjourn any proceeding for a period exceeding the maximum period for which in the circumstances an adjournment may be granted in conformity with subsection (1), the purported adjournment shall not of itself affect the validity of the proceedings or the power of the presiding magistrate to continue to hear and to determine the same. The High Court may, on the application of the court or of either party, or of its own volition, give such directions as it deems necessary for the resumption of the proceedings.

Plea of
guilty

251.—(1) When an accused appears or is brought before a court, a charge containing the particulars of the offence of which he is accused shall be read and explained to him and he shall be asked whether he admits or denies the truth of the charge.

(2) If the accused admits the truth of the charge his admission shall be recorded as nearly as possible in the words used by him and he may be convicted and sentenced thereon:

Provided that before a plea of guilty is recorded, the court shall ascertain that the accused understands the nature and consequences of his plea and intends to admit without qualification the truth of the charge against him.

Plea of not
guilty

252. If the accused does not admit the truth of the charge or does not plead or claims to be tried, the court shall proceed to hear the case as hereinafter provided.

Evidence for
the prosecution

253. In cases where section 252 applies, the court shall proceed to hear the complainant or the public prosecutor and to take all such evidence as is produced in support of the prosecution. Before they are examined, witnesses for the prosecution shall be sworn or affirmed in accordance with the Oaths, Affirmations and Declarations Act.

Cap. 4:07

Procedure
on close of
case for
prosecution

254.—(1) If, upon taking all the evidence referred to in section 253 and any evidence which the court may decide to call at that stage of the trial under section 201, the court is of opinion that no case is made out against the accused sufficiently to require him to make a defence, the court shall deliver a judgment in the manner provided for in sections 139 and 140 acquitting the accused.

(2) If, when the evidence referred to in subsection (1) has been taken, the court is of opinion that a case is made out against the accused sufficiently to require him to make a defence in respect of the offence charged or some other offence which such court is competent to try and in its opinion it ought to try, it shall consider the charge recorded against the accused and decide whether it is sufficient and, if necessary, shall amend the same, subject to section 151.

(3) The charge, if amended, shall be read to the accused, and he shall be asked whether he admits the truth of the charge or has any defence to make.

(4) If the accused does not admit the truth of the charge as amended or if no amendment is made, the accused shall be informed by the court that he is required himself to give evidence upon oath and he shall be asked whether he has any witness to examine or other evidence to adduce in his defence.

255.—(1) The court shall then hear the accused and his witnesses and his other evidence, if any. Before they are examined, witnesses for the defence shall be sworn or affirmed in accordance with the Oaths, Affirmations and Declarations Act. The accused shall at any time while he is making his defence be allowed to recall and re-examine any witness present in the court or its precincts.

Case for the defence

Cap. 4:07

(2) If the accused, whether before or after giving evidence, applies to the court to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination or the production of any document or other thing, the court shall issue such process unless it considers that such application should be refused on the ground that it is for the purpose of vexation or delay or for defeating the ends of justice, in which case such grounds shall be recorded by the court in writing:

Provided however that the court may, before summoning a witness on such application, require that his reasonable expenses incurred in attending for the purpose of the trial shall be deposited at the court.

256.—(1) When the court is satisfied that the defence should proceed then, after such address, if any, as the accused or his counsel shall elect to make at the opening of the case, the accused shall, from the witness box, or such other place as the court may see fit to direct, and upon oath, give his evidence and answer any question or produce anything lawfully put to or required of him by the court or in cross-examination.

Evidence for the defence

(2) If the accused refuses or neglects to—

- (a) be sworn;
- (b) give evidence;
- (c) answer any question lawfully put to him by the court or in cross-examination; or
- (d) produce any document or thing which he is required to produce,

such refusal or neglect may be commented upon by the prosecution and may be taken into account by the court in reaching its decision.

(3) Where an accused elects to call witnesses other than himself on his behalf, he shall do so after he himself has been called as a witness.

257. If the accused adduces evidence in his defence introducing new matter which the prosecutor could not by the exercise of

Evidence in reply

(c) if the accused elects—

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

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

immediately after the evidence of such witnesses.

(5) If the accused or his counsel addresses the court in accordance with subsection (4) (a) or (c) the prosecution shall have the right of reply.

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

Discharge of
accused

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

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

Commit-
ment
for trial

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

Conflict of
evidence

272. Where there is a conflict of evidence, the court shall consider the evidence to be sufficient to put the accused on his trial if the evidence against him is such as, if uncontradicted, would raise a probable presumption of his guilt, notwithstanding that it is contradicted in material points by evidence in favour of the accused, unless the court, for reasons to be recorded in the proceedings, shall see fit to deviate from this rule.

273. All persons committed for trial by a subordinate court shall be committed for trial at the next convenient sessions of the High Court. Committal to next sessions

274. If, at the close of or during the inquiry, it shall appear to the subordinate court that the offence is of such a nature that it may suitably be dealt with under the powers possessed by the court, the court may, subject to Part VII, hear and finally determine the matter: Summary adjudication

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

275. When the accused is committed for trial before the High Court, the subordinate court committing him shall bind by bond, with or without surety or sureties, as it may deem requisite, the complainant and every witness to appear at the trial to give evidence, and also to appear and give evidence, if required, at any further examination concerning the charge which may be held by direction of the Director of Public Prosecutions. Complainant and witnesses to be bound over

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

277.—(1) A person who has been committed for trial before the High Court shall be entitled at any time before the trial to have a copy of the depositions on payment of the prescribed fee, if any, or, if the court thinks fit, without payment. Accused entitled to copy of depositions

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

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

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

(2) Where a witness has been, or is to be treated as having been, bound over conditionally to attend the trial, the Director of Public Prosecutions or the person committed for trial may give notice at any time before the opening of the sessions of the High Court to the committing subordinate court and at any time thereafter to the Registrar of the High Court that he desires the witness to attend the trial, and any such court or Registrar to whom any such notice is given shall forthwith notify the witness that he is required so to attend in pursuance of his bond.

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

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

Transmis-
sion of
records to
High Court
and Director
of Public
Prosecutions

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

Power of
Director of
Public
Prosecutions
to direct
further in-
vestigation
and to order
further
depositions

280.—(1) If, after receipt of the authenticated copy of the written charge, the depositions and statement provided for by section 279, and before the trial before the High Court, the Director of Public Prosecutions shall be of opinion that further investigation is required before such trial, it shall be lawful for him to direct that the original depositions be remitted to the court which committed the accused for trial, and such court shall thereupon re-open the case and after taking the depositions of such witnesses as may have been called as a result of such further investigation, dispose of the case in accordance with sections 268 to 278 inclusive.

(2) If, after receipt of the authenticated copy of the depositions and statement as aforesaid and before the trial before the High

Court, the Director of Public Prosecutions shall be of opinion that there is, in any case committed for trial, any material or necessary witness for the prosecution or the defence who has not been bound over to give evidence on the trial of the case, the Director of Public Prosecutions may require the subordinate court which committed the accused for trial to take the depositions of such witness and compel his attendance either by summons or by warrant as hereinbefore provided.

281. If, before the trial before the High Court, the Director of Public Prosecutions is of opinion, upon the record of the committal proceedings received by him, that the case is one which may suitably be tried by a subordinate court, he may cause the depositions to be returned to the court which committed the accused, and thereupon the case shall be reopened, tried and determined in the same manner as if such person had not been committed for trial:

Return of depositions with a view to summary trial

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

282.—(1) If, after the receipt of the authenticated copy of the depositions as aforesaid, the Director of Public Prosecutions shall be of the opinion that the case is one which should be tried before the High Court, a charge shall be drawn up in accordance with this Code in the form set out in the Third Schedule, and, when signed by the Director of Public Prosecutions, shall be filed in the Registry of the High Court.

Filing of a charge

(2) In such charge the Director of Public Prosecutions may charge the accused with any offences which in his opinion are disclosed by the depositions either in addition to, or in substitution, for, the offences upon which the accused has been committed for trial.

283. The Registrar or his deputy shall endorse on or annexe to every charge filed under section 282, and to every copy thereof delivered to the officer of the court or police officer for service thereof, a notice of trial, which notice shall specify the particular sessions of the High Court at which the accused is to be tried on the said charge. Such notice shall be in the form set out in the Third Schedule or as near thereto as may be.

Notice of trial

284. The Registrar shall deliver or cause to be delivered to the officer of the court or police officer serving the charge a copy thereof with the notice of trial endorsed on the same or annexed thereto, and, if there are more persons committed for trial than one, then as many copies as there are such persons, and the officer of the court or police officer aforesaid shall, as soon as,

Copy of charge and notice of trial to be served

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

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

Return of
service

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

Postpone-
ment of trial

286. It shall be lawful for the High Court upon the application of the prosecution or the accused, if the court considers that there is sufficient cause for the delay, to postpone the trial of any accused to the next sessions of the Court held in the Region, or at some other convenient place, or to a subsequent sessions, and to respite the bonds of the complainant and witnesses, in which case the respited bonds shall have the same force and effect as fresh bonds to prosecute and give evidence at such subsequent sessions would have had.

Directions as
to amend-
ment and
service

287. The High Court may give such directions for the service of any notices which the Court may deem necessary in consequence of any order made under section 286.

PART IX

SUMMARY COMMITTAL PROCEDURE FOR TRIAL OF PERSONS BEFORE THE HIGH COURT

Interpreta-
tion

288. In this Part, unless the context otherwise requires—

“Director of Public Prosecutions” includes a State Counsel acting under his direction;

“summary procedure case” means any case certified under this Part as a proper case for trial before the High Court after summary committal procedure.

289. Notwithstanding anything contained in Part VIII, in any case where a person is charged with an offence, the Director of Public Prosecutions may issue a certificate in writing that the case is a proper one for trial by the High Court as a summary procedure case and such case shall, upon production to a subordinate court of such certificate, be dealt with by the subordinate court in accordance with this Part.

Certifying of case as a summary procedure case

290. No such preliminary inquiry as is referred to in Part VIII shall be held in respect of any case in which the Director of Public Prosecutions has issued and the prosecution has produced to a subordinate court a certificate issued under section 289, but the subordinate court before which the accused is brought shall, upon production of such certificate and whether or not a preliminary inquiry has already been commenced, forthwith commit the accused for trial before the High Court upon such charge or charges as may be designated in the certificate. Forthwith upon the committal of the accused for trial under this section, the court shall ask him whether he intends to call witnesses at the trial and, if so, whether he desires to give their names and addresses so that they may be summoned. The court shall thereupon record the names and addresses of any such witnesses whom he may mention.

No preliminary inquiry in summary procedure case

291. Upon the committal of the accused for trial in a summary procedure case the record of the proceedings, including, in any case where a preliminary inquiry has been commenced, any depositions taken and any exhibits produced, shall be transmitted without delay by the committing court to the Registrar of the High Court, and an authenticated copy of the record shall also be transmitted to the Director of Public Prosecutions.

Record to be forwarded

292.—(1) The Director of Public Prosecutions shall forthwith after receipt of the authenticated copy of the record in a summary procedure case as aforesaid, draw up and sign a charge in accordance with this Code, which shall be filed in the registry of the High Court, or enter a discontinuance.

Filing of a charge

(2) In such charge the Director of Public Prosecutions may alter or redraft the charge or charges against the accused or frame an additional charge or charges against him.

(3) Sections 283 to 287 inclusive shall apply with suitable modifications to a charge filed under this section as they do to a charge filed under section 282.

293. In every summary procedure case the prosecution shall, not less than twenty-one clear days before the date fixed for the trial of the case, furnish to the accused or his counsel, if any, and to the Registrar of the High Court a list of the persons whom it is intended to call as witnesses for the prosecution at the trial

Statements, etc., to be supplied to accused

and a statement of the substance of the evidence of each witness which it is intended to adduce at the trial.

PART X

TRIALS BEFORE THE HIGH COURT

Trials before
the High
Court
33 of 1970
20 of 1996

294.—(1) Subject to subsection (2) all criminal trials before the High Court shall be by jury. A jury shall, except where otherwise specially provided, consist of twelve persons.

(2) The Minister may direct that any case or class of cases shall be triable by the High Court without a jury, and in any such case or class of cases instead of the procedure set out in this Part the High Court shall, with any necessary modifications, follow the procedure set out in Part VII for trials before subordinate courts.

Qualifications
and liability
to serve as a
juror
20 of 1996

295. Every person between the ages of twenty-one and sixty shall, subject to the exemptions contained in section 296, be qualified and liable to serve as a juror at any trial before the High Court.

Exemptions
from liability
for jury
service

296. The following persons are exempt from liability to serve as jurors, that is to say—

- (a) members of the Cabinet and Ministers;
- (b) judges, magistrates and officers of the courts, including Traditional Courts;
- (c) members of Parliament;
- (d) police officers and persons holding public offices in the Ministry of Justice;
- (e) persons actively discharging the duties of priests or ministers of their respective religions;
- (f) medical practitioners, registered dentists and apothecaries in active practice;
- (g) legal practitioners in active practice;
- (h) officers and others in the armed forces of Malawi, on full pay;
- (i) persons exempted from personal appearance in court under the provisions of any law for the time being in force;
- (j) persons disabled by bodily or mental infirmity;
- (k) persons upon whom a court in Malawi has imposed a sentence of death or of imprisonment for any term exceeding six months, such sentence not having been set aside, or reduced to imprisonment for a term of less than six months, on appeal or review;
- (l) other persons exempted by the Minister by notice from liability to serve as jurors.

297.—(1) The Registrar shall, in accordance with such directions as may, from time to time, be given by the Chief Justice, prepare and maintain a jury list for the whole Malaŵi containing names and addresses of all persons who are qualified and liable to serve as jurors and who have a place of residence in Malaŵi.

Preparation
of lists of
jurors
20 of 1996

(2) The Registrar may, from time to time, in accordance with such directions as may be given by the Chief Justice, revise the list of jurors under this section, and for such purpose may amend or delete any name or address appearing therein or add any new name or address thereto.

298.—(1) The Registrar ordinarily seven days at least before the day fixed for the holding of any sessions of the High Court shall summon from among the persons whose names appear on the lists of jurors such number of persons as he deems necessary to provide jurors for the trials which are intended to take place at such sessions.

Summoning
of jurors

(2) Every summons to a juror shall be in writing and shall require his attendance as a juror at a time and place to be mentioned therein.

299. The High Court may for reasonable cause excuse any person from attendance as a juror at any particular sessions, and may, if it shall think fit, at the conclusion of any trial, direct that jurors who have served at such trial shall not be summoned to serve again as jurors for a period not exceeding twelve months.

Excusing
from
attendance

300. Every person summoned as a juror who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the High Court, or who fails to attend after adjournment of the High Court after being ordered to attend, shall be guilty of an offence and liable to a fine of £50.

Penalty for
non-
attendance

301. If any person summoned as a juror is not qualified or liable to serve as a juror, or is exempt from service, such want of qualification or exemption shall be a good cause of challenge and the person so summoned shall be discharged on such challenge or on his own application if the High Court is satisfied as to the fact of such want and so directs; but no such want of qualification or exemption, if not submitted to the High Court before such person is sworn, shall afterwards be accepted as a ground for impeaching any verdict given by a jury upon which such person has served.

Want of
qualification
ground for
challenge but
not for
avoiding trial

302.—(1) Every accused person shall be tried at the sessions then in progress, or, failing that, at the next convenient sessions.

When
accused to be
tried

(2) The High Court, in its discretion, on the application of the prosecution or the accused, by motion in open court supported in the case of the application of the accused by

affidavit, may postpone the trial of any person charged at any sessions to the next or subsequent sessions.

Third
Schedule

(3) All charges upon which persons are tried before the High Court shall be brought in the name of the Republic of Malawi and be in accordance with the form in the Third Schedule and shall be signed by the Attorney General or by the Director of Public Prosecutions or by some person authorized by either of them in that behalf and in the latter case the words "by authority of the Attorney General" or the words "by authority of the Director of Public Prosecutions," as the case may be, shall be prefixed to the signature.

Charge to be
read and
accused asked
to plead

303.—(1) When the High Court is ready to start the trial the accused shall appear or be brought before it and the charge shall be read out in court and explained to him, and he shall be asked whether he admits or denies the truth of the charge.

(2) If the accused admits the truth of the charge his admission shall be recorded as nearly as possible in the words used by him and he may be convicted thereon.

Selection of
jurors
18 of 1996
20 of 1996

304.—(1) If the accused does not admit the truth of the charge, the High Court shall enter a plea of not guilty and shall then either forthwith or after such adjournment as it may order, proceed to choose the jurors as hereinafter directed for the trial of the case.

20 of 1996

(2) The High Court shall by ballot choose such jurors by choosing twelve from among those summoned to serve as jurors at the sessions. A ballot under this section shall be conducted by such method as the Chief Justice may from time to time direct.

(3) The accused, or his counsel, or counsel for the prosecution, may object to any juror so chosen on any ground and the objection shall be allowed if the High Court considers it well-founded.

(4) If the High Court is satisfied that an objection is well-founded, it shall choose another of those summoned in the place of the person to whom such objection was made. Such other person shall be chosen from those whose names are on the same list as the person to whom objection has been made.

Jurors to be
sworn and
foreman
appointed

305.—(1) At the commencement of every trial every juror shall swear that he shall listen to the evidence, and give a true verdict to the best of his skill and knowledge without fear, favour or affection in accordance with the evidence.

(2) When the jurors have been sworn they shall appoint one of their number to be foreman.

(3) If the majority of the jury do not agree on the appointment of a foreman within such time as to the High Court seems reasonable, the High Court shall appoint a foreman.

306. The foreman shall preside over any deliberation of the jury and ask any information from the High Court that is required by the jury or any of the jurors and shall announce the verdict of the jury. Duties of foreman

307. The jury having been sworn, and a foreman having been elected or appointed, the jury shall be informed of the charge against the accused. Giving the accused in charge

308.—(1) In the event of the death, illness, default of attendance or discharge by the High Court for any other reason of any number of jurors not exceeding four during a trial, it shall be lawful for the High Court to order the trial to be proceeded with in like manner as if the full number of jurors had continued to serve on the jury and any verdict returned by the remaining jurors in which not less than eight of such jurors concur shall be of equal validity as if it has been returned by a jury consisting of the full number of jurors. Provision in case of death, illness, or non-attendance of juror
20 of 1996

(2) If more than four jurors are prevented from attending or absent themselves, the proceedings shall be stayed, the jury shall be discharged and a new trial shall be held before a fresh jury.

309.—(1) After the accused has been put in charge of the jury, they shall be kept in some convenient place in court apart by themselves (retirement of individual jurors for personal purposes only excepted, and then in charge of an officer of the High Court) until the judge has summed up the evidence and has left the case with the jury: Keeping jury together

Provided that if the High Court adjourns during the hearing of the case (either during the sitting or at the end of a day's sitting) the High Court may either allow the jury to disperse, or may direct that they be removed in charge of an officer of the High Court or some other proper person to some convenient place, there to take refreshment at their own expense and rest, until the High Court reassembles, and such officer shall be sworn that he will suffer none save himself to speak to or to communicate with them without the leave of the High Court.

(2) If, after the case has been left with the jury they desire to withdraw for the purpose of considering their verdict, then they shall be kept by an officer of the High Court in some convenient place apart by themselves, but they shall be allowed reasonable refreshment at their own expense, with power also to retire alone for personal purposes, until they are agreed upon their verdict or are discharged therefrom by the High Court; and the officer shall be sworn that he will suffer none to have access to them nor speak to them himself, except to ask whether they, or at least five of them, are agreed upon their verdict or to communicate between them and the High Court.

Post-
ponement of
trial and the
effect of order
postponing
trial or order
for separate
trial

310.—(1) When before or at any stage of a trial the High Court is of opinion that the postponement of the trial is expedient the High Court may make such order as to postponement of the trial as appears necessary.

(2) Where an order is made for the postponement of a trial or an order is made for a separate trial—

(a) the High Court may order the jury to be discharged from giving a verdict on any count or counts the trial of which is postponed or is ordered to take place separately;

(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 charge, and the procedure on the postponed trial shall be the same in all respects (provided that the jury, if any, have been discharged) as if the trial had not commenced; and

(c) the High Court may make such order as to releasing the accused on bail, and as to the enlargement of bonds and otherwise as the High Court thinks fit.

(3) Any power of the High Court under this section shall be in addition to and not in derogation of any other power of the High Court for the same or similar purposes.

311.—(1) When the jury has been sworn the counsel for the prosecution may open his case by stating shortly the nature of the offence charged and the evidence by which he proposes to prove the guilt of the accused.

Counsel for the prosecution to open his case and examine witnesses

(2) The counsel for the prosecution shall then examine his witnesses.

(3) A person who has not given evidence at a preliminary inquiry or whose statement of evidence has not been furnished under section 293 (which relates to summary committal) or section 175 (which relates to written statements) shall not be called as a witness by the prosecution at any trial unless the accused or his counsel and the Registrar, or his deputy, have been previously served with reasonable notice in writing of the intention to call such person, stating the person's name and address and the substance of the evidence intended to be given:

Provided that—

(i) no notice need be given under this subsection if the accused waives his right thereto;

(ii) nothing in this subsection shall apply to any person summoned as a witness under section 180.

312. The statement or evidence of the accused recorded by the committing magistrate under section 268 may be put in by the prosecution and read as evidence.

Duly recorded statement or evidence of accused may be put in as evidence

313. When the case for the prosecution is closed and upon hearing any evidence which the High Court may decide to call at that stage of the trial under section 201 the High Court shall forthwith call on the accused to enter upon his defence.

Close of case for prosecution 32 of 1969

The defence

314.—(1) The accused or his counsel may then open his case, stating the facts or law on which he intends to rely, and making such comments as he thinks necessary on the evidence for the prosecution. The accused shall thereupon from the witness box, or such other place as the High Court may direct, and upon oath, give his evidence and answer any questions, or produce any thing, lawfully put to, or required of, him by the High Court or in cross-examination.

(2) If the accused refuses or neglects to—

(a) be sworn;

(b) give evidence;

(c) answer any question lawfully put to him by the High Court or in cross-examination;

(d) produce any document or thing which he is lawfully required to produce;

such refusal or neglect may be commented upon by the prosecution and may be taken into account by the jury in reaching its verdict.

(3) Where an accused elects to call witnesses other than himself, his evidence shall be taken before that of any other witness for the defence.

(4) After the accused and his witnesses, if any, have been called and after their examination, cross-examination and re-examination, if any, the accused or his counsel may sum up his case. -

Additional witnesses for the defence

315. The accused shall be allowed to examine any witness not previously bound over to give evidence at the trial, if such witness is in attendance, or if his attendance may be procured without unreasonable expense, delay or inconvenience, but he shall not be entitled as of right to have any witnesses summoned other than the witnesses whom he named to the subordinate court committing him for trial as witnesses whom he desired to be summoned.

Evidence in reply

316. If the accused adduces evidence in his defence introducing new matter which counsel for the prosecution could not by the exercise of reasonable diligence have foreseen, the High Court may allow the counsel for the prosecution to call evidence to rebut the said matter.

317.—(1) If the accused has called no witness other than himself, counsel for the prosecution may, if he wishes, reply upon the whole case immediately before the accused or his counsel is afforded the opportunity to sum up his case.

Summing up by the accused or his counsel and reply by prosecution 3 of 1969

(2) If, and only if, the accused has called any witness other than himself, counsel for the prosecution may, after the accused or his counsel has been afforded the opportunity to sum up his case, reply upon the whole case:

Provided that counsel for the prosecution may address the High Court on any point of law raised for the first time in the case by counsel for the accused in his summing up or in commenting upon evidence in reply.

318. During any trial, and at any stage thereof prior to the close of the evidence, the High Court may adjourn for the purpose of inspecting any place, or any thing which it is not possible or convenient to bring into Court, the inspection of which may be material to the proper determination of the proceedings in question and, if the High Court sees fit, may permit evidence to be given at such place or in the vicinity of such thing.

View by jury

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

Summing up to jury

320.—(1) In a trial before a jury it is the duty of a judge—

Duties of judge in trials before a jury

(a) to preside over and control the proceedings in accordance with the provisions of this Code and any other relevant written law;

(b) to decide all questions of law arising in the course of the trial including questions as to the admissibility of evidence;

(c) to decide upon the meaning and construction of all documents given in evidence at the trial;

(d) to decide on all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given;

(e) to decide whether any question which arises is for himself or for the jury, and upon this point his decision shall bind the jurors.

(2) The judge may, if he thinks proper, in the course of his summing up, express to the jury his opinion upon any question of fact or upon any question of mixed law and fact relevant to the proceedings.

- Duty of jury** **321.** It is the duty of the jury to consider the evidence and, subject to any direction of the judge, return a true verdict.
- Jury to consider verdict** **321A.** (1) After the summing up, the jury shall consider the evidence, and for that purpose may retire.
 (2) Subject to section 309, except with the leave of the High Court, no person other than a juror shall speak or hold any communication with any member of the jury while the jury are considering their verdict.
- Effect of plea of guilty prior to verdict** **321B.** If at any time after the accused is given in charge but before the verdict of the jury has been finally communicated to the judge the accused pleads guilty to any charge against him the judge may convict him of such charge as if the accused had pleaded guilty thereto before he had been given in charge of the jury and the jury shall be discharged from giving its verdict thereon.
- Verdict majority of not less than five to be verdict of jury 20 of 1996** **321C.** In the event of any of the jurors, after reasonable consultation, dissenting from the remainder, the verdict of a majority consisting of not fewer than eight jurors or, in any case to which section 308 applies, the verdict of the eight remaining jurors, shall be taken to be the verdict of the jury.
- Court may direct further consideration** **321D.** If in any case it seems to him for any reason to be desirable, the judge may direct a jury to consider its verdict further.
- How verdict to be given, etc. 20 of 1996** **321E.**—(1) The verdict of the jury shall in all cases be given in open court by the foreman in the presence of all the jury and of the accused and shall thereupon be recorded by the Registrar, or his deputy, who shall before taking the verdict ask the jurors if they are all or, if not all, not fewer than eight are, agreed thereon and whether they find the accused person guilty or not guilty of each of the offences charged against him and the jury shall pronounce a general verdict of guilty or not guilty thereon.
 (2) When by accident or mistake a wrong verdict is delivered, the jury may, before or immediately after it is recorded, amend the verdict and it shall stand as ultimately amended.
 (3) Unless otherwise ordered by the High Court, the jury shall return a verdict on all charges on which the accused is tried and the judge may ask them such questions as are necessary to ascertain what their verdict is. Such questions and the answers to them shall be recorded.

321F. When it sufficiently appears to the High Court that a jury cannot agree upon a verdict, and that there is not such a majority agreeing as may be taken as a verdict of the jury as hereinbefore provided, the High Court shall discharge such jury and shall as soon as is convenient cause a new jury to be empanelled and sworn and charged with any accused and the charge against such accused may be tried as if such first jury had not been empanelled.

Failure of
jury to agree

321G. When the verdict of the jury is unanimous, or there is such a majority agreeing as may be taken as a verdict as hereinbefore provided, the judge shall give judgment in accordance with that verdict.

Verdict of
jury

321H. If the accused is convicted or if the accused pleads guilty, it shall be the duty of the Registrar or other Officer of the High Court to ask him whether he has anything to say why sentence should not be passed upon him according to law, but the omission so to ask him shall have no effect on the validity of the proceedings.

Calling upon
the accused

321I. No judgment shall be stayed or reversed on the ground of any objection, which if stated after the charge was read over to the accused, or during the trial, might have been cured by amending the charge, nor for any informality in swearing the jurors, witnesses or any of them.

Objections
cured by
verdict

321J. The High Court may, after verdict but before passing sentence, receive such evidence as it thinks fit, in order to inform itself as to the sentence proper to be passed.

Evidence for
arriving at a
proper
sentence

PART XI

CONSIDERATION BY HIGH COURT AND SUBORDINATE COURTS OF OTHER OFFENCES ADMITTED BY ACCUSED

322.—(1) Where an accused has been convicted of any offence the court may, with the consent of the prosecution and on application by the accused that the court take into consideration in deciding his sentence other untried offences of a like character which the accused admits having committed, take such other offences into consideration in deciding the sentence, if the court is satisfied that the accused freely and voluntarily admits having committed such other offences.

Considera-
tion of other
offences
admitted by
accused

(2) If the court takes such other untried offences into consideration in deciding the sentence, the court shall record the date, place and nature of such other offences so admitted and the

(ii) in any other case, convert the finding of acquittal into one of conviction and either make an order under sections 337, 338 or 339 or pass sentence or remit the case to the subordinate court for sentence,

and in any of the cases mentioned in this subsection the Court may make any amendment or any consequential or incidental order that may appear just and proper.

(3) Nothing in this section shall authorize the High Court to impose a greater punishment for the offence, which in the opinion of the High Court the accused has committed, than the trial court could have imposed:

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 offence or not, the High Court may, if it reverses the finding of conviction, itself convert the finding of acquittal into one of conviction.

(4) An appellant whether in custody or not shall be entitled to be present at the hearing of his appeal:

Provided that where the Director of Public Prosecutions indicates to the High Court that he does not wish to be heard in support of a conviction appealed against, the High Court may allow the appeal summarily and in the absence of the appellant notwithstanding that the date fixed for hearing has not arrived.

(5) The High Court may itself hear evidence relating to the previous convictions of any appellant.

Orders conformable to judgment or order

354. When a case is decided on appeal by the High Court, it may—

(a) itself make such orders as are conformable to its judgment or order and copies of such judgment and order, and of the orders conformable thereto, shall in due course be transmitted to the court by which the conviction, sentence or order appealed from was recorded or made; or

(b) certify its judgment or order to such last-mentioned court which shall thereupon make such orders as are conformable to that judgment or order.

If any amendment of the record is necessary by reason of any such judgment or order, it shall be made by the subordinate court.

Stay of execution and admission to bail pending appeal

355.—(1) Subject to this Code, neither a notice of intention to appeal given under section 349 nor a petition of appeal under section 350 shall operate as a stay of execution of any sentence or order, but the subordinate court which passed the sentence or made the order, or the High Court, may order that any such

sentence or order be stayed pending the hearing of an appeal and if the appellant is in custody that he may be released on bail, with or without sureties, pending such hearing.

(2) If the appeal is ultimately dismissed and an original sentence of imprisonment confirmed, or some other sentence of imprisonment substituted therefor, the time during which the appellant has been released on bail shall be excluded in computing the term of imprisonment to which he is finally sentenced.

356.—(1) In dealing with an appeal from a subordinate court the High 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 a subordinate court. Further evidence

(2) When the additional evidence is taken by a subordinate court, such court shall certify such evidence to the High Court, which shall thereupon proceed to dispose of the appeal.

(3) Unless the High Court otherwise directs, the accused or his counsel 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 a subordinate court.

357. Every appeal from a subordinate court (except an appeal from a sentence of fine) shall finally abate on the death of the appellant. Abatement of appeals

358. [Repealed by Act No. 24 of 1968]. 24 of 1968

359. The High Court may in its discretion in any case in which an appeal to the Supreme Court of Appeal is filed grant bail pending the hearing of an appeal. Admission to bail pending appeal

360. The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of reviewing the proceedings and satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court. Power of High Court to call for records for review

361.—(1) Any Resident Magistrate may call for and examine the record of any criminal proceedings before a subordinate court of the first, second or third grade, for the purpose of satisfying himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior subordinate court. Power of Resident Magistrates to call for records of inferior courts and to report to the High Court

(2) If any Resident Magistrate acting under subsection (1) considers that any finding, sentence or order of the subordinate court of the first, second or third grade is illegal or improper, or

that any such proceedings are irregular, he shall forward the record, with such remarks thereon as he thinks fit, to the High Court.

Powers of the
High Court
on review
19 of 1977

362.—(1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been forwarded under section 361, or which otherwise comes to its knowledge, the High Court, by way of review, may exercise the same powers as are conferred upon it on appeal by section 353 (2) (a), (b), and (c) and by section 356.

(2) No order made in exercise of the powers conferred in this section shall be made to the prejudice of an accused unless he has first had an opportunity of being heard either personally or by counsel in his own defence.

(3) The proceedings by way of review may take place notwithstanding—

(a) that an appeal lies from the finding made, or sentence imposed, in the proceedings under review; and

(b) that the time limited for the bringing of such appeal has not elapsed:

Provided, however, that the High Court may not review any proceedings in which a sentence of corporal punishment has been imposed unless—

(i) the time limited for the bringing of an appeal against the finding made, or the sentence imposed, in such proceedings has elapsed; or

(ii) the accused has declared in writing that he does not intend to appeal against either such finding or such sentence.

(4) The exercise of the High Court of its powers of review under this section in relation to any proceedings shall not operate as a bar to any appeal which may lie against the finding made, or the sentence imposed, in such proceedings:

Provided, however, that such review shall operate as a bar to such appeal if the proceedings by way of review took place in open court and the accused had an opportunity of being heard either personally or by counsel.

Discretion of
Court as to
hearing
parties

363. No party has any right to be heard either personally or by counsel before the High Court when exercising its powers of review:

Provided that such Court may, if it thinks fit, when exercising such powers, hear any party either personally or by counsel, and that nothing in this section shall be deemed to affect section 362 (2).

PART XIV

MISCELLANEOUS

364.—(1) The Chief Justice may make rules of Court providing for the performance of their duties in connexion with proceedings under this Code by court officials, interpreters and other persons.

Rules relating to duties of court officials, interpreters, etc.

(2) Without derogating from the powers conferred by subsection (1), such rules may provide among other things for the occasions upon which interpreters shall be required to take oaths, or make affirmations, for the purposes of proceedings in the High Court or subordinate courts.

364A.—(1) The Chief Justice may make rules relating to the imposition and performance of community service pursuant to an order made under section 339 (2).

Rules relating to community service 9 of 1999

(2) Without derogating from the power conferred by subsection (1), such rules may provide for—

(a) the procedure before, during and after imposing an order to perform community service;

(b) the regulation of hours to be performed by the person ordered to perform community service;

(c) the appointment of a national committee on community service;

(d) the appointment of national co-ordinators and regional co-ordinators of community service; and

(e) such other matters as are necessary for the proper administration and execution of a community service order.

365. Shorthand notes may be taken of the proceedings at the trial of any person before the High Court, and a transcript of such notes shall be made if the Court so directs, and such transcript may for all purposes be deemed to be the official record of the proceedings at such trial.

Shorthand notes of proceedings

366. If any person affected by any judgment or order passed in any proceedings under this Code desires to have a copy of the judgment or order or any deposition or other part of the record, he shall on applying for such copy be furnished therewith upon payment of such fee as may be prescribed.

Copies of proceedings

367. The Chief Justice may by notice published in the *Gazette* prescribe the forms which are to be used for the purposes of this Code.

Forms

368. The Minister may make rules providing for the payment of allowances to jurors, complainants and witnesses for attending before a court for the purposes of any inquiry, trial or other proceeding under this Code. Subject to any such rules, a

Allowances to jurors, complainants and witnesses 23 of 1968

court may order payment on the part of the Government of the reasonable expenses of any juror, complainant or witness for so attending.

PART XV

SAVINGS AND CONSEQUENTIAL AMENDMENTS

Savings
Cap. 14:03
Cap. 14:02
Cap. 69:01

Saving
pending
proceedings
23 of 1968

Application
of Code to
criminal
proceedings
in any
Traditional
Court

369. This Code shall be in addition to and not in derogation of the Restriction and Security Orders Act, the Preservation of Public Security Act and the Road Traffic Act.

370. All proceedings instituted, commenced or taken in accordance with the Criminal Procedure Code, 1929 (now repealed) or any other written law in respect of any criminal proceeding or matter pending at the date of the coming into operation of this Code shall be valid and effectual and shall be continued in accordance with the said Criminal Procedure Code, this Code or such other written law, as the case may be.

371.—(1) The Minister may by notice published in the *Gazette* from time to time specify that any provisions of this Code shall apply to criminal proceedings in any Traditional Court and such provisions shall so apply.

(2) Except as expressly provided for in this Code, by any notice under subsection (1), or by any other written law, no provision of this Code shall apply to any criminal proceeding in any Traditional Court.

FIRST SCHEDULE

COGNIZABLE OFFENCES

PART I

OFFENCES UNDER THE PENAL CODE

Explanatory Note—The entries in the second column of this Schedule headed "Offence" are not intended as definitions of the offences described in the several corresponding sections of the Penal Code or even as abstracts of these sections, but merely as references to the subject of the section, the number of which is given in the first column.

1	2	3
Section	Offence	Whether the police may arrest without warrant or not
21.	Aiding, abetting, counselling or procuring the commission of an offence	May arrest without warrant if arrest for the offence aided, abetted, counselled or procured may be made without warrant but not otherwise

Division I—Offences Against Public Order

CHAPTER VII—TREASON AND OTHER OFFENCES AGAINST THE REPUBLIC

1 Section	2 Offence	3 Whether the police may arrest without warrant or not
38.	Treason	May arrest without warrant
39.	Misprision of treason	ditto
40.	Promoting war amongst Afri- cans	ditto
41.	Inciting to mutiny	ditto
42.	Aiding in acts of mutiny	Shall not arrest without warrant
43.	Inducing desertion	ditto
44.	(1) Aiding prisoner of war to escape	May arrest without warrant
	(2) Permitting prisoner of war to escape	Shall not arrest without warrant
46.	(1) Importing, etc., prohibited publications	May arrest without warrant
	(2) Possessing prohibited publications	ditto
48.	(1) Failing to deliver prohib- ited publications to police	May arrest without warrant
51.	(1) Seditious offences	ditto
	(2) Possessing seditious publi- cations	ditto
	(10) Using or attempting to use a confiscated printing machine	ditto
	(11) Printing or publishing a newspaper in contraven- tion of an order made under section 51 (2)	ditto
54.	Administering or taking oath to commit capital offence	ditto
55.	Administering or taking other oaths	ditto
56.	(1) Compelling another person to take an oath	ditto
	(2) Being present at and con- senting to the administer- ing of an oath	ditto
59.	(1) Unlawful drilling	ditto
	(2) Being unlawfully drilled	ditto
60.	Publishing false reports	Shall not arrest without warrant
60A.	Communication of false state- ments, etc., which may be published generally outside Malawi	May arrest without warrant

CHAPTER VIII—OFFENCES AFFECTING RELATIONS WITH FOREIGN STATES
AND EXTERNAL TRANQUILLITY

1 Section	2 Offence	3 <i>Whether the police may arrest without warrant or not</i>
61.	Defamation of foreign princes	Shall not arrest without warrant
62.	Foreign enlistment	ditto
63.	Piracy	May arrest without warrant
65.	Managing unlawful society	ditto
66.	Being member of unlawful society	ditto

CHAPTER IX—UNLAWFUL ASSEMBLIES, RIOTS AND OTHER OFFENCES
AGAINST PUBLIC TRANQUILLITY

71.	Unlawful assembly	May arrest without warrant
71.	Riot	ditto
76.	Rioting after proclamation	ditto
77.	Obstructing proclamation	ditto
78.	Rioters destroying buildings	ditto
79.	Rioters damaging building	ditto
80.	Riotously preventing sailing of ship	May arrest without warrant
81.	Prohibition of carrying offensive weapons without lawful authority or reasonable excuse	May arrest without warrant subject to the provisions of subsection (3) of the section
82.	Forcible entry	May arrest without warrant
83.	Forcible detainer	ditto
84.	Committing affray	ditto
85.	Challenging to fight a duel	Shall not arrest without warrant
86.	Threatening violence	May arrest without warrant
87.	Proposing violence at assemblies	ditto
88.	Intimidation	ditto
89.	Assembling for purpose of smuggling	ditto

DIVISION II—OFFENCES AGAINST THE ADMINISTRATION
OF LAWFUL AUTHORITY

CHAPTER X—CORRUPTION AND THE ABUSE OF OFFICE

1 Section	2 Offence	3 Whether the police may arrest without warrant or not
90.	Official corruption	Shall not arrest without warrant
91.	Extortion by public officers	ditto
92.	Receiving property to show favour	ditto
93.	Officer discharging duties in respect of property in which he has a special interest	ditto
94.	False claims by officials	ditto
95.	Abuse of office	ditto
	Abuse of office (if for purposes of gain)	ditto
96.	False certificates by public officers	May arrest without warrant
97.	Unauthorized administration of oaths	ditto
98.	False assumption of authority	ditto
99.	Personating public officers	ditto
100.	Threat of injury to persons em- ployed in public service	ditto

CHAPTER XI—OFFENCES RELATING TO THE ADMINISTRATION OF JUSTICE

103.	False statements by interpreters	Shall not arrest without warrant
104.	Perjury or subornation of perjury	ditto
105.	Fabricating evidence	ditto
106.	False swearing	ditto
107.	Deceiving witnesses	ditto
108.	Destroying evidence	ditto
109.	Conspiracy to defeat justice and interference with witnesses	ditto
110.	Compounding felonies	ditto
111.	Compounding penal actions	ditto
112.	Advertising for stolen property	ditto
113.	Offences relating to judicial pro- ceedings	May arrest without warrant

CHAPTER XII—RESCUES, ESCAPES AND OBSTRUCTING OFFICERS OF
COURTS OF LAW

114.	Rescue— (a) if person rescued is under sentence of death or im- prisonment for life or charged with offence punish- able with death or imprison- ment for life;	May arrest without warrant
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1	2	3
Section	Offence	Whether the police may arrest without warrant or not
170.	Keeping or permitting the keeping of a common betting house ...	Shall not arrest without warrant
171.	(1) Carrying on a lottery ...	ditto
	(2) Printing or publishing advertisement relating to a lottery	ditto
176.	Organizing, managing or conducting pools... ..	ditto
177.	Chain letters	ditto
179.	Trafficking in obscene publications	May arrest without warrant
180.	Being an idle or disorderly person	ditto
181.	Conduct likely to lead to breach of peace	Shall not arrest without warrant
182.	Use of insulting language ...	ditto
183.	Nuisances by drunken persons ...	ditto
	(1) Found drunk and incapable	May arrest without warrant
	(2) Riotous or disorderly behaviour or in possession of a firearm while drunk ...	ditto
184.	Being a rogue or vagabond ...	ditto
191.	(1) Wearing uniform without authority	ditto
	(2) Bringing contempt on uniform	ditto
	(3) Importing or selling uniform without authority ...	ditto
192.	Doing any act likely to spread infection of dangerous disease ...	ditto
193.	Adulteration of food or drink intended for sale	Shall not arrest without warrant
194.	Selling, or offering or exposing for sale, noxious food or drink ...	ditto
195.	Adulteration of drugs intended for sale	ditto
196.	Selling adulterated drugs	ditto
197.	Fouling water of public spring or reservoir	May arrest without warrant
198.	Making the atmosphere noxious to health	Shall not arrest without warrant
199.	Carrying on offensive trade ...	ditto

CHAPTER XVIII—DEFAMATION

200.	Libel	Shall not arrest without warrant
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DIVISION IV—OFFENCES AGAINST THE PERSON

CHAPTER XIX—MURDER AND MANSLAUGHTER

208.	Manslaughter	May arrest without warrant
209.	Murder	ditto

1 Section	2 Offence	3 Whether the police may arrest without warrant or not
	(b) if person rescued is imprisoned on a charge or under sentence for any other offence;	May arrest without warrant
	(c) in any other case	ditto
115.	Escape	ditto
116.	Permitting prisoners to escape ...	ditto
117.	Aiding prisoners to escape ...	ditto
118.	Removal, etc., of property under lawful seizure	ditto
119.	Obstructing court officers ...	ditto

CHAPTER XIII—MISCELLANEOUS OFFENCES AGAINST PUBLIC AUTHORITY

120.	Frauds and breaches of trust by public officers	Shall not arrest without warrant
121.	Neglect of official duty	ditto
122.	False information to person employed in public service ...	May arrest without warrant
123.	Disobedience of statutory duty ...	Shall not arrest without warrant
124.	Soliciting persons to break the law	May arrest without warrant
125.	Soliciting public officers, etc., to fail to carry out their duties ...	ditto

DIVISION III—OFFENCES INJURIOUS TO THE PUBLIC IN GENERAL

CHAPTER XIV—OFFENCES RELATING TO RELIGION

127.	Insult to religion of any class ...	May arrest without warrant
128.	Disturbing religious assemblies ...	ditto
129.	Trespassing on burial places ...	ditto
130.	Uttering words with intent to wound religious feelings ...	Shall not arrest without warrant
131.	Hindering burial of dead body, etc.	May arrest without warrant

CHAPTER XV—OFFENCES AGAINST MORALITY

132.	Rape	May arrest without warrant
134.	Attempted rape	ditto
135.	Abduction	ditto
136.	Abduction of girl under sixteen ...	ditto
137.	(1) Indecent assault on females	
	(3) Insulting the modesty of a woman	ditto
138.	(1) Defilement of girl under thirteen	ditto
	(2) Attempted defilement of girl under thirteen	ditto
139.	Defilement of an idiot or imbecile	ditto
140.	Procuration	ditto
141.	Procuring defilement by threats or fraud or administering drugs ...	ditto

1 Section	2 Offence	3 Whether the police may arrest without warrant or not
142.	Householder permitting defilement of girl under thirteen on his premises ...	May arrest without warrant
143.	Detention with intent or in brothel	ditto
145.	Male person living on earnings of prostitution or persistently soliciting ...	ditto
146.	Woman aiding, etc., for gain prostitution of another woman ...	ditto
147.	Keeping a brothel ...	ditto
148.	Conspiracy to defile ...	ditto
149.	Attempt to procure abortion ...	ditto
150.	Woman attempting to procure her own abortion ...	ditto
151.	Supplying drugs or instruments to procure abortion ...	ditto
153.	Unnatural offences ...	ditto
154.	Attempt to commit unnatural offence ...	ditto
155.	Indecent assault on boys under fourteen ...	ditto
156.	Indecent practices between males	ditto
157.	(1) Incest by males ... Proviso: if female person is under the age of thirteen years ...	ditto
	(3) Attempt to commit incest ...	ditto
158.	Incest by females ...	ditto

CHAPTER XVI—OFFENCES RELATING TO MARRIAGE AND
DOMESTIC OBLIGATIONS

161.	Fraudulent pretence of marriage...	May arrest without warrant
162.	Bigamy ...	ditto
163.	Dishonestly or fraudulently going through ceremony of marriage...	ditto
164.	Desertion of children ...	Shall not arrest without warrant
165.	Neglecting to provide food, etc., for children ...	ditto
166.	Master not providing for servants of apprentices ...	ditto
167.	Child stealing ...	May arrest without warrant

CHAPTER XVII—NUISANCES AND OFFENCES AGAINST HEALTH AND
CONVENIENCE

168.	Committing common nuisance ...	Shall not arrest without warrant
169.	(3) Keeping common gaming house ...	ditto
	(4) Being found in common gaming house ...	ditto

1	2	3
Section	Offence	Whether the police may arrest without warrant or not
CHAPTER XXI—OFFENCES CONNECTED WITH MURDER AND SUICIDE		
223.	Attempted murder	May arrest without warrant
224.	Attempted murder by convict ...	ditto
225.	Being accessory after the fact to murder	ditto
226.	Sending written threat to murder ...	ditto
227.	Conspiracy to murder	ditto
228.	Aiding suicide	ditto
229.	Attempted suicide	ditto
230.	Infanticide	ditto
231.	Killing unborn child	ditto
232.	Concealing the birth of a child ...	ditto
CHAPTER XXII—OFFENCES ENDANGERING LIFE OR HEALTH		
233.	Disabling in order to commit felony or misdemeanour	ditto
234.	Stupefying in order to commit felony or misdemeanour ...	ditto
235.	Acts intended to cause grievous harm or to prevent arrest ...	ditto
236.	Preventing escape from wreck ...	ditto
237.	Intentionally endangering safety of persons travelling by railway ...	ditto
238.	Doing grievous harm	ditto
239.	Attempting to injure by explosive substances	ditto
240.	Administering poison with intent to harm	ditto
241.	Wounding and similar acts	ditto
242.	Failing to provide necessities of life	ditto
CHAPTER XXIII—CRIMINAL RECKLESSNESS AND NEGLIGENCE		
246.	Rash and negligent acts	May arrest without warrant
247.	Other negligent acts causing harm	ditto
248.	Dealing in poisonous substances in negligent manner	Shall not arrest without warrant
249.	Endangering safety of persons travelling by railway	May arrest without warrant
250.	Exhibiting false light, mark or buoy	ditto
251.	Conveying person by water for hire in unsafe or overloaded vessel...	ditto
252.	Causing danger or obstruction in public way or line of navigation	ditto
CHAPTER XXIV—ASSAULTS		
253.	Common assault	Shall not arrest without warrant
254.	Assault occasioning actual bodily harm	May arrest without warrant

1	2	3
Section	Offence	Whether the police may arrest without warrant or not
255.	Assaulting person protecting wreck	May arrest without warrant
256.	Various assaults	ditto

CHAPTER XXV—OFFENCES AGAINST LIBERTY

260.	Kidnapping	May arrest without warrant
261.	Kidnapping or abducting in order murder a person	ditto
262.	Kidnapping or abducting with intent to confine a person	ditto
263.	Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc.	ditto
264.	Wrongfully concealing or keeping in confinement a kidnapped or abducted person	ditto
265.	Kidnapping or abducting child under fourteen with intent to steal from its person	ditto
266.	Punishment for wrongful confinement	ditto
267.	Buying or disposing of any person as a slave	ditto
268.	Habitually dealing in slaves	ditto
269.	Unlawful compulsory labour	ditto

DIVISION V—OFFENCES RELATING TO PROPERTY

CHAPTER XXVI—THEFT

278.	Theft	May arrest without warrant
279.	Stealing wills	ditto
280.	Stealing postal matter, etc.	ditto
281.	Stealing cattle, etc.	ditto
282.	Stealing from the person in a dwelling-house, in transit, etc.	ditto
283.	Stealing by persons in the public service	ditto
284.	Negligence by public officer in preserving money, etc.	ditto
286.	Stealing by clerks and servants	ditto
287.	Stealing by directors or officers of companies	ditto
288.	Stealing by agents, etc.	ditto
289.	Stealing by tenants or lodgers	ditto
290.	Stealing after previous conviction	ditto

CHAPTER XXVII—OFFENCES ALLIED TO STEALING

291.	Concealing registers	May arrest without warrant
292.	Concealing wills	ditto
293.	Concealing deeds	ditto
294.	Killing animals with intent to steal	ditto
295.	Severing with intent to steal	ditto

LAWS OF MALAWI

Criminal Procedure and Evidence Code *Cap. 8:01*

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1	2	3
Section	Offence	Whether the police may arrest without warrant or not
296.	Fraudulent disposal of mortgaged goods	May arrest without warrant
297.	Fraudulently dealing with ore or or minerals in mines	ditto
298.	Fraudulent appropriation of mechanical or electrical power	ditto
299.	Unlawfully using vehicle, animal, etc.	ditto

CHAPTER XXVIII—ROBBERY AND EXTORTION

300.	Robbery	May arrest without warrant
	Robbery with violence	ditto
302.	Attempted robbery	ditto
	Attempted robbery with violence	ditto
303.	Assault with intent to steal	ditto
304.	Demanding property by written threats	ditto
305.	Threatening with intent to extort— in certain specified cases;	ditto
	in other cases	ditto
306.	Procuring execution of deeds, etc., by threats	ditto
307.	Demanding property with menaces with intent to steal	ditto

CHAPTER XXIX—BURGLARY, HOUSEBREAKING AND SIMILAR OFFENCES

309.	Housebreaking	May arrest without warrant
	Burglary	ditto
310.	Entering dwelling-house with intent to commit felony	ditto
	If offence is committed in the night	ditto
311.	Breaking into building and committing felony	ditto
312.	Breaking into building with intent to commit felony	ditto
313.	Being found armed, etc., with intent to commit felony	ditto
	If offender has been previously convicted of a felony relating to property	ditto
314.	Criminal trespass	ditto
	If the property upon which offence committed is building used as human dwelling or as a place of worship or as a place for custody of property	ditto

L.R.O. 1/1968

1 Section	2 Offence	3 Whether the police may arrest without warrant or not
CHAPTER XXX—MISCELLANEOUS PROVISIONS		
316.	Unauthorized user of land and premises ...	Shall not arrest without warrant
317.	(4) Damaging or unlawfully removing detained aircraft, vessel or vehicle ...	ditto
CHAPTER XXXI—FALSE PRETENCES		
319.	Obtaining property by false pretence ...	May arrest without warrant
320.	Obtaining execution of a security by false pretence ...	ditto
321.	Cheating ...	ditto
322.	Obtaining credit, etc., by false pretence ...	ditto
323.	Conspiracy to defraud ...	ditto
324.	Frauds on sale or mortgage of property ...	ditto
325.	Pretending to tell fortunes ...	ditto
326.	Obtaining registration, etc., by false pretence ...	ditto
327.	False declaration for passport ...	ditto
CHAPTER XXXII—RECEIVING PROPERTY STOLEN OR UNLAWFULLY OBTAINED AND LIKE OFFENCES		
328.	(1) Receiving or retaining stolen property ...	May arrest without warrant
	(2) Receiving property unlawfully obtained, converted or disposed of ...	ditto
329.	Failing to account for possession of property suspected to be stolen or unlawfully obtained ...	ditto
331.	Receiving goods stolen outside Malawi ...	ditto
CHAPTER XXXIII—FRAUDS BY TRUSTEES AND PERSONS IN A POSITION OF TRUST, AND FALSE ACCOUNTING		
332.	Fraudulently disposing of trust property ...	May arrest without warrant
333.	Directors and officers of corporations fraudulently appropriating property, or keeping fraudulent accounts, or falsifying books or accounts ...	ditto
334.	False statements by officials of corporations ...	ditto
335.	Fraudulent false accounting by clerk or servant ...	ditto
336.	False accounting by public officer	ditto

1	2	3
Section	Offence	Whether the police may arrest without warrant or not
DIVISION VI—MALICIOUS INJURIES TO PROPERTY		
CHAPTER XXXIV—OFFENCES CAUSING INJURY TO PROPERTY		
337.	Arson	May arrest without warrant
338.	Attempt to commit arson	ditto
339.	Setting fire to crops or growing plants	ditto
340.	Attempting to set fire to crops or growing plants	ditto
341.	Casting away a ship	ditto
342.	Attempt to cast away ship	ditto
343.	Killing or wounding animals in the case of certain animals;	ditto
	in any other case	ditto
344.	(1) Destroying or damaging pro- perty in general	ditto
	(2) Destroying or damaging an inhabited house or a vessel with explosives	ditto
	(3) Destroying or damaging river bank or wall, or naviga- tion works, or bridges	ditto
	(4) Destroying or damaging wills or registers	ditto
	(5) Destroying or damaging wreck	ditto
	(6) Destroying or damaging railways	ditto
	(7) Destroying or damaging property of special value	ditto
	(8) Destroying or damaging deeds or records	ditto
345.	Attempt to destroy or damage property by use of explosives	ditto
346.	Communicating infectious disease to animals	ditto
347.	Removing boundary marks with intent to defraud	ditto
348.	Removing or injuring survey or boundary marks	ditto
349.	Injuring or obstructing railway works, etc.	ditto
350.	Threatening to burn any building, etc., or to kill or wound any cattle	ditto
DIVISION VII—FORGERY, COINING, COUNTERFEITING AND SIMILAR OFFENCES		
CHAPTER XXXVI—FORGERY		
351.	Forgery (where no special punish- ment is provided)	May arrest without warrant
357.	Forgery of a will, document of title, security, cheque, etc.	ditto

1	2	3
Section	Offence	Whether the police may arrest without warrant or not
358.	Forgery of judicial or official document ...	May arrest without warrant
359.	Forgery, etc., of stamps ...	ditto
360.	Uttering false document ...	ditto
361.	Uttering cancelled or exhausted document ...	ditto
362.	Procuring execution of document by false pretences ...	ditto
363.	Obliterating or altering the crossing on a cheque ...	ditto
364.	Making or executing document without authority ...	ditto
365.	Demanding property upon forged testamentary instrument ...	ditto
366.	Importing or purchasing forged notes ...	ditto
367.	Falsifying warrant for money payable under public authority ...	ditto
368.	Permitting falsification of register or record ...	ditto
369.	Sending false certificate of marriage to Registrar ...	ditto
370.	Making false statement for insertion in register of births, deaths or marriages ...	ditto

CHAPTER XXXVII—OFFENCES RELATING TO COIN AND TO BANK AND CURRENCY NOTES

372.	-Counterfeiting coin ...	May arrest without warrant
373.	Making preparation for coining— if the offence is committed with respect to current coin; ... if the offence is committed with respect to coin of a foreign Sovereign or State ...	ditto
374.	Making or having in possession paper or implements for forgery	ditto
375.	Clipping current coin ...	ditto
376.	Melting down currency ...	ditto
378.	Being in possession of clippings ...	ditto
379.	Uttering counterfeit coin ...	ditto
380.	Repeated uttering of counterfeit coin ...	ditto
381.	Uttering metal or coin not current as coin ...	ditto
382.	Selling articles bearing designs in imitation of currency ...	ditto
383.	Exporting counterfeit coin ...	ditto

LAWS OF MALAWI

Criminal Procedure and Evidence Code Chap. 9:01

129

1	2	3
Section	Offence	Whether the police may arrest without warrant or not
CHAPTER XXXVIII—COUNTERFEIT STAMPS		
385.	Being in possession, etc., of die or paper used for purpose of making revenue stamps ...	May arrest without warrant
386.	Being in possession, etc., of die or paper used for postage stamps...	ditto
CHAPTER XXXIX—COUNTERFEITING TRADE MARKS		
388.	Counterfeiting, etc., trade mark...	Shall not arrest without warrant
CHAPTER XL—PERSONATION		
389.	Personation in general ... If representation is that the offender is a person entitled by will or operation of law to any specific property and he commits the offence to obtain such property	May arrest without warrant ditto
390.	Falsely acknowledging deeds, recognizances, etc. ...	ditto
391.	Personation of a person named in a certificate ...	ditto
392.	Lending, etc., certificate for purposes of personation ...	ditto
393.	Personation of person named in a testimonial of character ...	ditto
394.	Lending, etc., testimonial of character for purposes of personation ...	ditto
CHAPTER XLI—SECRET COMMISSIONS AND CORRUPT PRACTICES		
396.	Corrupt practices ...	Shall not arrest without warrant
397.	Secret commissions on Government contracts ...	ditto
DIVISION VIII—ATTEMPTS AND CONSPIRACIES TO COMMIT CRIMES AND ACCESSORIES AFTER THE FACT		
CHAPTER XLII—ATTEMPTS		
401.	Attempt to commit a felony or misdemeanour ...	According to whether or not the offence is one for which the police may arrest without a warrant
402.	Attempt to commit a felony punishable with death or imprisonment for fourteen years or upwards ...	May arrest without warrant
403.	Neglecting to prevent commission or completion of a felony ...	Shall not arrest without warrant

L.R.O. 1/1974

1	2	3
Section	Offence	Whether the police may arrest without warrant or not
CHAPTER XLIII—CONSPIRACIES		
404.	Conspiracy to commit a felony ...	May arrest without warrant
405.	Conspiracy to commit a misdemeanour	According as to whether or not the misdemeanour is one for which the police may arrest without warrant
406.	Conspiracy to effect certain specified purposes	Shall not arrest without warrant
CHAPTER XLIV—ACCESSORIES AFTER THE FACT		
407.	Being an accessory after the fact to a felony	May arrest without warrant
409.	Being accessory after the fact to a misdemeanour	Shall not arrest without warrant

PART II

OFFENCES UNDER OTHER LAWS

Explanatory Note: The entries in the third column of this Part of this Schedule headed "Offences" are not intended as definitions of the offences described in the several corresponding sections of the laws referred to in the second column or even as abstracts of those sections, but merely as references to the subject of the section, the number of which is given in the first column.

Section	Law	Offence	Whether the police may arrest without warrant or not
3.	Hijacking Act, Cap. 7:03	Offences against aircraft	May arrest without warrant
10.	Hijacking Act, Cap. 7:03	Offences against motor vehicles, trains and vessels	May arrest without warrant
2.	Decency in Dress Act, Cap. 7:04	Wearing of certain kinds of dress by a female person in a public place	May arrest without warrant

SECOND SCHEDULE

OFFENCES TRIABLE BY SUBORDINATE COURTS OF THE THIRD GRADE
OFFENCES UNDER THE PENAL CODE

Section	Offence
47.	Offences in relation to publications importation of which is prohibited (Whole)
60.	Publication of false news likely to cause fear and alarm to the public
64.	Unlawful assembly
81.	Prohibition of carrying offensive weapons without lawful authority or reasonable excuse

<i>Section</i>	<i>Offence</i>
82.	Forcible entry
83.	Forcible detainer
84.	Fighting in public
85.	Challenging to fight a duel
86.	Threatening violence
88.	Intimidation (Whole)
89.	Assembling for the purpose of smuggling
98.	False assumption of authority
99.	Personating public officers
100.	Threat of injury to persons employed in public service
107.	Deceiving witnesses
108.	Destroying evidence
113.	Offences relating to judicial proceedings
114.	Rescue (Paragraph (c) only)
115.	Escape
116.	Permitting prisoners to escape
118.	Removal, etc., of property under lawful seizure
119.	Obstructing court officers
122.	False information to person employed in the public service

<i>Section</i>	<i>Offence</i>
123.	Disobedience of statutory duty
127.	Insult to religion of any class
128.	Disturbing religious assemblies
129.	Trespassing on burial places
130.	Writing or uttering words with intent to wound religious feelings
131.	Hindering burial of dead body, etc.
135.	Abduction of girls under sixteen
137.	Insulting the modesty of a woman (Subsection (3) only)
141.	Procuring defilement of woman by threats or fraud or administering drugs
143.	Detention with intent or in brothel
145.	Male person living on earnings of prostitution or persistently soliciting
146.	Woman aiding, etc., for gain prostitution of another woman
147.	Brothels
164.	Desertion of children
165.	Neglecting to provide food, etc, for children
166.	Master not providing for servants or apprentices
168.	Common nuisance
169.	Gaming houses
170.	Betting houses
171.	Lotteries
174.	Exemption of private lotteries
177.	Chain letters
179.	Traffic in obscene publications
180.	Idle and disorderly persons
181.	Conduct likely to cause a breach of the peace
182.	Use of insulting language
183.	Nuisances by drunk persons, etc.
184.	Rogues and vagabonds
185.	Removal orders
189.	Penalty for failing to comply with removal order, etc.
190.	Review of removal order
191.	Wearing uniform without authority prohibited
192.	Negligent act likely to spread disease dangerous to life
193.	Adulteration of food or drink intended for sale
194.	Sale of noxious food or drink
195.	Adulteration of drugs
196.	Sale of adulterated drugs
197.	Fouling water
198.	Fouling air
199.	Offensive trades
241.	Wounding and similar acts. (Whole)
246.	Reckless and negligent acts
247.	Other negligent acts causing harm
248.	Dealing in poisonous substances in negligent manner
249.	Endangering safety of persons travelling by railway
251.	Conveying person by water for hire in unsafe or overloaded vessel
252.	Danger or obstruction in public way or line of navigation
253.	Common assault
254.	Assaults occasioning actual bodily harm

<i>Section</i>	<i>Offence</i>
256.	Other aggravated assaults
269.	Unlawful compulsory labour
278.	General punishment for theft. (As read with sections 270 to 277 inclusive)
281.	Stealing cattle
294.	Killing animals with intent to steal
299.	Unlawful use of vehicles, animals, etc.
303.	Assault with intent to steal
314.	Criminal trespass
316.	Unauthorized user of land and premises
319.	Obtaining by false pretences
321.	Cheating
322.	Obtaining credit by false pretences
325.	Pretending to tell fortunes
326.	Obtaining registration, etc., by false pretence
327.	False declaration for passport
328.	Receiving property unlawfully obtained. (Subsection (2) only as read with subsection (3))
329.	Person suspected of having or conveying stolen property
337.	Arson (Whole)
338.	Attempts to commit arson
339.	Setting fire to crops
340.	Attempting to set fire to crops, etc.
344.	(1) Malicious damage. (Subsection (1) only)
347.	Removing boundary marks with intent to defraud
348.	Wilful damage, etc., to survey and boundary marks
349.	Penalties for damage, etc., to railway works
386.	Paper and dies for postage stamps
389.	Personation in general
391.	Personation of a person named in a certificate
392.	Lending, etc., certificate for personation
393.	Personation of person named in a testimonial of character
394.	Lending, etc., testimonial for personation
400.	Attempts, provided that a person may only be tried for an attempt to commit an offence which the court has power to hear
403.	Neglect to prevent a felony

*Offences under Other Laws*CONVICTED PERSONS (EMPLOYMENT ON PUBLIC WORK)
ACT (Cap. 9:03)

The whole

POLICE ACT (Cap. 13:01)

- 26 Penalty for disobeying order or violating conditions of a permit issued under section 25
- 27 Unlawful assemblies
- 28 Penalty for any violation of an order prohibiting meetings and processions
- 29 Prohibition of weapons at assemblies, meetings and processions

Offences under Other Laws

PRESERVATION OF PUBLIC SECURITY ACT (Cap. 14:02)

The whole

All regulations made thereunder

FIREARMS ACT (Cap. 14:08)

The whole

All regulations made thereunder

LOCAL GOVERNMENT (URBAN AREAS) ACT (Cap. 22:01)

Parts:

IV Elections and membership

VIII By-laws

XII Miscellaneous

All by-laws made under the Act and in force within the area of the Court's jurisdiction

LOCAL GOVERNMENT (DISTRICT COUNCILS) ACT (Cap. 22:02)

The whole

All by-laws made under the Act and in force within the area of the Court's jurisdiction

CHIEFS ACT (Cap. 22:03)

The whole

PUBLIC HEALTH ACT (Cap. 34:01)

The whole

All rules and regulations made thereunder

TAXATION ACT (Cap. 41:01)

The whole

All rules made thereunder

CUSTOMS AND EXCISE ACT (Cap. 42:01)

Section:

142 Smuggling

BUSINESSES LICENSING ACT (Cap. 46:01)

The whole

HIDE AND SKIN TRADE ACT (Cap. 50:02)

The whole

All rules made thereunder

<i>Section</i>	<i>Offence</i>
INTOXICATING LIQUOR ACT (Cap. 50:03)	
The whole	
All rules made thereunder	
REGULATION OF MINIMUM WAGES AND CONDITIONS OF EMPLOYMENT ACT (Cap. 55:01)	
The whole	
SHOP HOURS ACT (Cap. 55:05)	
The whole	
AFRICAN EMIGRATION AND IMMIGRANT WORKERS ACT (Cap. 56:02)	
4	Africans not to leave Malawi unless in possession of identity certificate or, in the case of females and juveniles, of travelling permits
15	Provisions regarding entry into Malawi by Africans normally resident in Zambia or Southern Rhodesia
21	Production of work book
FOREST ACT (Cap. 63:01)	
The whole	
All rules made thereunder	
PLANT PROTECTION ACT (Cap. 64:01)	
The whole	
All rules made thereunder	
NOXIOUS WEEDS ACT (Cap. 64:02)	
The whole	
TOBACCO ACT (Cap. 65:02)	
The whole	
All rules made thereunder	
PROTECTION OF ANIMALS ACT (Cap. 66:01)	
The whole	
CONTROL AND DISEASES OF ANIMALS ACT (Cap. 66:02)	
The whole	
All regulations made thereunder	
GAME ACT (Cap. 66:03)	
The whole	
All rules made thereunder	

<i>Section</i>	<i>Offence</i>
WILD BIRDS PROTECTION ACT (Cap. 66:04)	
The whole	
All rules made thereunder	
FISHERIES ACT (Cap. 66:05)	
The whole	
All rules made thereunder	
CROCODILES ACT (Cap. 66:06)	
The whole	
ROAD TRAFFIC ACT (Cap. 69:01)	
5.	Registration of motor vehicles and trailers. (As read with section 9)
6.	Change of ownership
8.	Requirements of owners to furnish evidence of weights, etc., of motor vehicles or trailers
10.	Temporary registration cards
14.	Special examination of motor vehicles and trailers. (No restriction on previous convictions)
16.	Obligatory test certificates. (No restriction on previous convictions)
18.	Destruction or permanent removal of motor vehicles or trailers
21.	Offences in connection with registration marks. (As read with section 20)
23.	Motor vehicles and trailers to be licensed
26.	Penalty for affixing false licence or token
36.	(Excluding subsection (3)) Necessity to hold driving licence (No restriction on previous convictions)
39.	Driving tests
40.	Provisional licences. (No restriction on previous convictions)
43.	Age of driver. (No restriction on previous convictions)
68.	Certificate of insurance. (No restriction on previous convictions)
69.	Driver to give name and address
75.	Public service vehicles or goods vehicles not to be operated without permit
76.	Notice to be given to Commissioner of alteration to vehicles
81.	Carrying passengers on a goods vehicle. (No restriction on previous convictions)
82.	Goods vehicles not to be used on certain routes. (No restriction on previous convictions)

<i>Section</i>	<i>Offences</i>
84.	Records or returns
85.	Number of passengers: Weights of public service vehicles
86.	Touting
87.	Driver of public service vehicle to wear badge
90.	Private goods vehicles to have permits. (As read with section 93)
95.	Penalty for non-compliance with permits
101.	Traffic signs
102.	Transit permits
105.	General provisions relating to transit permits
117.	Offences under Part IX (as read with sections 106, 107 and 108) (No restriction on previous convictions)
118.	(Excluding subsection (2)) Careless driving. (No restriction on previous convictions)
120.	(Excluding subsection (4)) Being in charge of motor vehicle when under influence of drink or drugs (As read with section 124) (No restriction on previous convictions)
124.	Driving motor vehicle in dangerous condition. (No restriction on previous convictions)
125.	Loads to be secure
126.	Vehicles to give way at railway crossings
128.	Sound warnings
129.	Position of driver
130.	Traffic signs and signals to be obeyed
133.	Obstruction of roadway by vehicles
134.	Disabled vehicles
136.	Engine of vehicle not to be left running when vehicle un-attended
137.	Silencer
138.	Discharge of oil and smoke
139.	Filling petrol, etc.
140.	Prohibition of sale of vehicles in a condition not complying with regulations as to construction, etc.
141.	Prohibition of use of vehicles not complying with regulations as to construction, etc.
142.	Pillion riding on motor cycle
143.	Throwing articles at or from a vehicle
144.	Interference with vehicles. (Subsection (1) only as read with subsection (4))
146.	Taking hold of or getting on vehicle in motion
148.	Duty of pedestrians to comply with traffic directions given by police

<i>Section</i>	<i>Offence</i>
149.	Penalty for giving false information. (No restrictions on previous convictions)
152.	Penalty
154.	(Excluding subsection (1) (d) Application to pedal cyclists of provisions relating to certain driving offences
155.	Brakes, etc., on bicycles and tricycles
156.	Excessive loads on two-wheeled vehicles and trailers
157.	Provision of parking places, stands, etc.
158.	Protective helmets for motor cyclists
159.	Control of driving schools and the teaching of driving for gain
173.	Additional powers of police and others
176.	Police may require information from employers, owners and other persons
178.	Exemption of fire engines, etc., from speed limits
179.	Liability for animals on roads
Road Traffic (Certificate of Fitness) Regulations: (G.N.40/1964(M))	The whole
Road Traffic (Public Service Vehicles) (Operations) Regulations: (G.N.41/1964(M))	The whole
Road Traffic (Speed Limits) Regulations: (G.N.43/1964(M))	The whole
Road Traffic (Test Certificates) Regulations: (G.N.44/1964(M))	The whole
Road Traffic (Traffic Signs) Regulations: (G.N.51/1964(M))	The whole
Road -Traffic (Construction, Equipment and Use) Regulations: (G.N.56/1964(M))	The whole
Road Traffic (Driving Licence) Regulations: (G.N.57/1964(M))	The whole
Road Traffic (Insurance) Regulations: (G.N.76/1964(M))	The whole
Road Traffic (Road Service and Private Carriers' Permits) (Application and Issue) Regulations: (G.N.100/1964(M))	The whole
Road Traffic (Seating Capacity) Regulations: (G.N.101/1964(M))	The whole
Road Traffic (Registration and Licensing) Regulations: (G.N.164/1964(M))	The whole
Road Traffic (Bicycles) Regulations: (G.N.84/1968)	The whole

Section

Offence

Road Traffic (Driving Instructors and Schools) Regulations:
(G.N.52/1964(M))

The whole

Road Traffic (International Circulation) Regulations: (G.N.45/
1964(M))

The whole

Road Traffic (Miscellaneous) Regulations: (G.N.175/1964(M))

The whole

Road Traffic (Motor Cycles) (Protective Helmets) Regulations:
(G.N.264/1965)

The whole

Road Traffic (Carriage of Dangerous Cargo) Regulations:
(G.N.230/1966)

The whole

ss.282, 283
and 303

THIRD SCHEDULE

FORM 1

CHARGE BY DIRECTOR OF PUBLIC PROSECUTIONS FOR
FILING IN HIGH COURT

IN THE HIGH COURT OF MALAWI

The day of 19
At the Sessions holden at on the day of
19, it is stated to the Court by the
Director of Public Prosecutions on behalf of the Republic of Malawi
that "A.B." is charged with the following offence or offences:

FORM 2

FORM OF NOTICE OF TRIAL
IN THE HIGH COURT OF MALAWI

To: "A.B."

TAKE NOTICE that you will be tried on the charge whereof this is a
true copy at the Sessions of the High Court to be held at
on the day of 19

Registrar

[Subsidiary]

*Appointments of Public Prosecutors
Criminal Procedure (Pleas of Guilty in Writing) Rules*

SUBSIDIARY LEGISLATION

G.N. 85/1962

APPOINTMENTS OF PUBLIC PROSECUTORS

deemed to be made under s. 79

[made under s. 85 of the Criminal Procedure Code, 1929 (now repealed)]

All police officers of or above the rank of sub-inspector have been appointed to be public prosecutors in all criminal cases before subordinate courts in Malawi.

NOTE

A number of appointments of named persons have been made but are not published here.

G.N. 14/1959
242/1963

CRIMINAL PROCEDURE (PLEAS OF GUILTY IN WRITING) RULES

deemed to be made under s. 93

[made under s. 100 of the Criminal Procedure Code, 1929 (now repealed)]

Citation

1. These Rules may be cited as the Criminal Procedure (Pleas of Guilty in Writing) Rules.

Conditions
for acceptance of plea
of guilty in writing

2.—(1) A Subordinate Court shall not accept a plea of guilty in writing under section 93 of the Code unless the Court is satisfied that a document containing—

(a) a notification of the effect of section 93 of the Code and of these Rules; and

(b) a concise statement of such facts relating to the charge as will be placed before the Court by or on behalf of the Prosecutor if the accused pleads guilty without appearing before the Court,

has been served upon the accused with the summons.

(2) Such document shall be in the form set out in the Schedule with such variations as the circumstances of each case may require.

Notification
and statement to be
read in Court

3. Before accepting a plea of guilty and convicting the accused in his absence, the Court shall cause the notification and statement of facts aforesaid, including any submission received with the notification which the accused wishes to be brought to the attention of the Court with a view to mitigation of sentence to be read out before the Court.

Criminal Procedure (Pleas of Guilty in Writing) Rules

[Subsidiary]

4. If the Court proceeds under section 93 of the Code to hear and dispose of the case in the absence of the accused the Court shall not permit any statement to be made by or on behalf of the Prosecutor with respect to any facts relating to the offence charged other than the statement of facts aforesaid, except on a resumption of the trial after any adjournment for the purpose of procuring the personal attendance of the accused.

Statement of
other facts
on behalf of
Prosecutor
not
permitted

SCHEDULE

r. 2

STATEMENT TO BE SERVED WITH SUMMONS

In the Court at

Case No. 19 .

To (Insert name of accused person)

It will not be necessary for you to attend personally before the Court in answer to the attached summons if before the day appointed therein for your appearance—

(a) you state clearly in the space provided below that you wish to plead guilty to the charge, and that you agree that the facts hereinbelow stated are correct; and

(b) you sign your name at the end of this document (or if you cannot sign your name you thumbprint it in the presence of a witness); and

(c) you return this document either by post or otherwise to the Court above mentioned.

STATEMENT OF FACTS

1. Plea.....
2. Whether the facts above stated are correct
3. Any facts in mitigation of sentence which you wish to draw to the attention of the Court should be stated here.....
.....
.....

Signature of accused person:
(or thumbprint of accused person)

Witness:

**CRIMINAL PROCEDURE AND EVIDENCE
(DOCUMENTARY EVIDENCE) RULES****ARRANGEMENT OF RULES****RULE**

1. Citation
2. Interpretation
3. Proof of contents of documents; primary and secondary evidence defined
4. Notice to produce
5. Proof of signature and handwriting in certain circumstances
6. Comparison of signature, writing or seal with others
7. Public documents and private documents
8. Certified copies of public documents
9. Proof of public documents
10. Evidence of certain United Kingdom Acts and proclamations etc.
11. Presumption as to genuineness of certified copy
12. Presumption as to documents produced as record of evidence
13. Presumptions as to Gazettes, newspapers, private Acts etc.
14. Presumption as to maps or plans made by authority of Government
15. Presumption as to collections of laws and reports of decisions
16. Presumption as to due execution etc. of documents not produced
17. Presumption as to documents twenty years old
18. Presumption as to certain books
19. Presumption as to telegraphic messages
20. Presumption as to powers of attorney
21. Presumption as to certified copies of foreign judicial records
22. Private documents executed outside Malawi
23. Proof of execution of documents required by law to be attested
24. Evidence of terms of contracts, grants, etc. reduced to form of a document
25. Exclusion of evidence of oral agreement
26. Exclusion of evidence to explain etc.
27. Evidence as to document unmeaning in reference to existing facts etc.
28. Evidence as to meaning of illegible characters etc.
29. Who may give evidence of agreement varying terms
30. Saving of provisions relating to wills

G.N. 7/1968

**CRIMINAL PROCEDURE AND EVIDENCE
(DOCUMENTARY EVIDENCE) RULES***under s. 245*

Citation

1. These Rules may be cited as the Criminal Procedure and Evidence (Documentary Evidence) Rules and shall apply to documentary evidence in criminal proceedings in or before the High Court and all subordinate courts.

Criminal Procedure and Evidence (Documentary Evidence) Rules

[Subsidiary]

2. In these Rules, unless the context otherwise requires—
 “bank”, “banker” and “bankers’ books” bear the meanings ascribed respectively to those terms in section 2 of the Bankers’ Books Evidence Act.

Interpreta-
tion

Cap. 4:05

3.—(1) The contents of documents may be proved either by primary or secondary evidence.

Proof of
contents of
documents;
primary and
secondary
evidence
defined

(2) In these Rules “primary evidence” means the document itself produced for the inspection of the court. Where a document is executed in several parts, each part is primary evidence of the document. Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it; where a number of documents are all made by one uniform process, as in the case of printing, lithography or photography, each is primary evidence of the contents of the rest; but where they are all copies of a common original, they are not primary evidence of the contents of the original.

(3) In these Rules “secondary evidence” means—

- (a) certified copies given under these Rules;
- (b) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies;
- (c) copies made from or compared with the original;
- (d) counterparts of documents as against the parties who did not execute them; or
- (e) oral accounts of the contents of a document given by some person who has himself seen it.

(4) Documents must be proved by primary evidence except in the cases hereinafter mentioned.

(5) Secondary evidence may be given of the existence, condition or contents of a document in the following cases—

(a) when the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved, or any persons out of each of, or not subject to, the process of the court or of any person legally bound to produce it, and when, after the notice mentioned in rule 4 such person does not produce it;

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved in which case such written admission is admissible;

[Subsidiary]

Criminal Procedure and Evidence (Documentary Evidence) Rules

(3) When the language used in a document applies partly to one set of existing facts, and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply.

Evidence as to meaning of illegible characters etc.

28. Evidence may be given to show the meaning of illegible or not commonly intelligible characters, of foreign, obsolete, technical, local and provincial expressions, of abbreviations and of words used in a peculiar sense.

Who may give evidence of agreement varying terms

29. Persons who are not parties to a document, or their representatives in interest, may give evidence of facts tending to show a contemporaneous agreement varying the terms of a document.

Saving of provisions relating to wills

30. Nothing in rules 24 to 29 inclusive, shall be taken to affect any of the provisions of any law for the time being in force in Malawi as to the construction of wills.

LAWS OF MALAWI

Criminal Procedure and Evidence Code Chap. 9:01 151

L.R.O. 1/1969

G.N. 12/1936

**CRIMINAL PROCEDURE (POLICE SUPERVISION)
RULES**

deemed to be made under s. 343

[made under s. 325 of the Criminal Procedure Code, 1929 (now repealed)]

- | | |
|--|--|
| Citation | 1. These Rules may be cited as the Criminal Procedure (Police Supervision) Rules. |
| Notification of place of residence | 2. Every person subject to police supervision under section 342 of the Code (hereinafter referred to as "a released convict") shall, not less than fourteen days before the date on which he is entitled to be released, inform the officer in charge of the prison in which he may for the time being be confined, of the place at which he intends to reside after his release. |
| Identity card | 3. On his release from prison every such released convict shall be issued by the officer in charge of the police in the District with an identity card, in the form set out in the Schedule, in which shall be filled in the several particulars specified respecting such released convict. |
| Amendment of endorsement | 4. Subject to such directions as the Commissioner of Police may give, any police officer of or above the rank of Assistant Superintendent may, as circumstances require, amend any endorsement in respect of the place at which, or the person to whom such released convict is required to report. |
| Intended change of residence | 5. Whenever any such released convict intends to change his place of residence from the place specified at the time of his release to any other place he shall notify the officer in charge of the nearest police station not less than fourteen days before he so changes his residence, of the fact of such intention and the place at which he thereafter intends to reside. Such officer shall, if necessary and subject to the general directions of the Commissioner of Police, amend the endorsement in such released convict's identity card to accord with the change in residence. |
| Notification of intended change of residence | 6. Whenever any released convict intends to change his place of residence from any place at which he may at any time be residing under rule 5, he shall notify any intended change of residence in the manner, in that rule, provided. |
| Arrival at new residence | 7. Every such released convict shall, within forty-eight hours of his arrival at the place of changed residence notified under rule 5 or 6, notify the fact of his arrival at the place and to the person last endorsed on his card, and thereafter shall continue to report himself as required. |

8. Every notification or report required to be made by any released convict shall be made by him in person:

Notification of report to be made in person

Provided that if from illness any released convict is prevented from making in person any notification or report required by these Rules, he may do so in any one of the following ways—

(a) in person, to any senior officer of the Government residing nearest the place of his residence; or

(b) in person, to the Chief exercising jurisdiction in the area in which he resides; or

(c) by oral communication sent by a messenger, and production of the identity card to the person whose name or office is endorsed on his card.

9. In any case where a report has been made under paragraph (a) or (b) of the proviso to the last preceding rule, it shall be incumbent on the person receiving such report to inform the officer to whom such released convict should have reported, as soon as may be convenient, of the fact and date of such report.

Notification under rule 8 proviso (a) or (b)

10. On the occasion of every notification or report required to be made under these Rules, the identity card issued to the released convict making such notification or report shall be produced

Identity card to be produced

11. At the end of the term of police supervision ordered by the court the released convict shall surrender his card to the person to whom he last reported for transmission to the Commissioner of Police.

Surrender of card at end of term

12. A copy of these Rules shall be annexed to each identity card issued to a released convict.

Rules to be annexed to card

SCHEDULE	
Page 1	Page 2
Police Station	GENERAL DESCRIPTION
Prison number	
Name	
Aliases	
Court in which order made	Tribe or Nationality
	District of origin
	Chief
	Headman
	Village
	Sex
	Height
	Age
	Marks or scars
Criminal Court File No.	
Police Case File No.	
Offence convicted under with section of law	
Sentence last served	Signature of Police Officers issuing certificate

r. 3

[illegible]

CRIMINAL PROCEDURE (FORMS) NOTICE**Index of Forms**

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Form XXI	Caution to the accused before committal for trial, and the accused's statement, or evidence, if any
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Form XXXIV	Warrant to levy money by distress and sale

[Subsidiary]

Criminal Procedure (Forms) Notice

G.N. 4/1968
59/1968
107/1968
73/1969

CRIMINAL PROCEDURE (FORMS) NOTICE

under s. 367

Citation

1. This Notice may be cited as the Criminal Procedure (Forms) Notice.

Prescription
of forms

2. The following forms are hereby prescribed as the forms which may be used, with such variations as the circumstances of each case may require, for the respective purposes under the Criminal Procedure and Evidence Code mentioned therein—

FORM I

REPUBLIC OF MALAWI

In the Resident Magistrate's Court at
Grade Subordinate
Case No. of 19
The Republic versus

ORDER TO SHOW CAUSE WHY A BOND SHOULD NOT BE ENTERED INTO

(SECTION 46 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

Whereas it has been made to appear to me by credible information that it is necessary to require
of to show cause why he should not
keep the peace*
execute a bond to;
be of good behaviour*

And Whereas

- (a) the substance of the information received is that;
- (b) the amount of the bond to be executed is the sum of £.....;
- (c) the term for which the said bond is to be in force is
months
.....;
years
- (d) the sureties required are in number
and of a character and class to be approved by the officer in
charge of the Police Station.

LAWS OF MALAWI

Criminal Procedure and Evidence Code Cap 9:01

15A

Criminal Procedure (Forms) Notice

[Subsidiary]

NOW IT IS HEREBY ORDERED that the said of do appear before this Court on the day of 19....., at o'clock in the noon to show cause as aforesaid.

Dated this day of 19.....

(Seal)

(Resident) Magistrate

*Delete as appropriate.

FORM II

REPUBLIC OF MALAWI

Resident Magistrate's

In the Court at

Grade Subordinate

Case No. of 19.....

The Republic *versus*

SUMMONS TO APPEAR TO SHOW CAUSE

(SECTIONS 48 AND 49 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To of

Whereas your presence is necessary to show cause why you should not be ordered to execute a bond in pursuance of the Order of this Court made on the day of (a copy of which Order accompanies this summons) you are hereby required to appear before this Court on the day of at o'clock in the noon.

Herein Fail Not.

Dated this day of 19.....

(Seal)

(Resident) Magistrate

(N.B.—This summons must be accompanied by a copy of the Order made under section 46).

FORM III

REPUBLIC OF MALAWI

Resident Magistrate's

In the Court at

Grade Subordinate

Case No. of 19.....

The Republic *versus*

BOND TO KEEP THE PEACE

(SECTIONS 42 AND 56 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

Whereas I, have been called upon to execute a bond in the sum of £..... to keep the peace for the period of from the execution of these presents upon the conditions hereinafter appearing;

L.R.O. 1/1969

[Subsidiary]

*Criminal Procedure (Forms) Notice*And Whereas it is a condition of this bond that ⁽¹⁾

I hereby bind myself as aforesaid and in the event of making default agree to forfeit to the Government the said sum.

This day of 19.....

Signature⁽²⁾ [We hereby bind ourselves jointly and severally in the sum of £..... to answer that the above-named will keep the peace during the said term.]*First Surety:**Second Surety:*

Name.....

Address

Occupation]

Entered into before me this day of 19.....,
at*(Resident) Magistrate*⁽¹⁾ Here insert any conditions which have been imposed under section 53.⁽²⁾ Where sureties are not required the part of the form contained in square brackets should be deleted.

FORM IV

REPUBLIC OF MALAWI

Resident Magistrate's

In the Court at

Grade Subordinate

Case No. of 19.....

The Republic versus

BOND TO BE OF GOOD BEHAVIOUR

(SECTIONS 42, 43, OR 44 AND 56 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

Whereas I, have been called upon to execute a bond in the sum of £..... *to be of good behaviour/
*to keep the peace for the period of from the execution of these presents upon the conditions hereinafter appearing;And Whereas it is a condition of this bond that ⁽¹⁾

I hereby bind myself as aforesaid and in the event of making default agree to forfeit to the Government the said sum.

This day of 19.....

Signature⁽²⁾ [We hereby bind ourselves jointly and severally in the sum of £.....to answer that the above-named will *be of good behaviour/*keep the peace during the said term.]

LAWS OF MALAWI

Criminal Procedure and Evidence Code Cap. 9:01

15A.

Criminal Procedure (Forms) Notice

[Subsidiary]

<i>First Surety:</i>	<i>Second Surety:</i>
Name
Address
Occupation]
Entered into before me this day of 19.....,	
at (Resident) Magistrate	

*Delete as appropriate.

(¹) Here insert any conditions which have been imposed under section 53.

(²) Sureties are necessary under sections 44 and 45 and may be required under section 43. Where sureties are not required the part of this form contained in square brackets should be deleted.

FORM V

REPUBLIC OF MALAWI

In the Resident Magistrate's Court at
 Grade Subordinate
 Case No. of 19.....
 The Republic *versus*

WARRANT OF COMMITMENT ON FAILURE TO FIND
 SECURITY TO KEEP THE PEACE OR TO BE OF
 GOOD BEHAVIOUR

(SECTION 58 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To the Officer in Charge of the Prison at

Whereas of appeared before
 me on the day of in obedience to a
 summons calling upon him to show cause why he should not execute a
 bond for £.....

*keep the peace
 to

*be of good behaviour

And Whereas an Order was then made requiring the said

*with
 to execute such bond sureties for a period of
 *without

and he has failed to comply with the said Order.

This is to empower and require you the said Officer in Charge to
 receive the said together with this warrant, and
 him safely to keep in custody for the said period of
 unless and until he tender the said security, in which event you shall
 forthwith make report of the matter to this Court; and return this your
 warrant with an endorsement certifying the manner of its execution.

L.R.O. 1/1969

LAWS OF MALAWI

154f

Cap. 8:01 Criminal Procedure and Evidence Code

[Subsidiary]

Criminal Procedure (Forms) Notice

Given under my hand and the seal of the Court, thisday
of 19.....

(Seal)

(Resident) Magistrate

*Delete as appropriate.

FORM VI

REPUBLIC OF MALAWI

Resident Magistrate's

In the Court at

Grade Subordinate

Case No. of 19.....

SUMMONS/CHARGE SHEET

(SECTIONS 83 AND 84 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

Accused

Name..... Tribe
Sex Village.....
Age..... Chief and District.....
To:..... above-named.

Whereas your presence is necessary to answer the charge(s) hereunder
set out you are hereby required to appear in person before this
Court on the day of 19..... at
o'clock in the noon.

And Herein Fail Not.

Dated this day of 19.....

(Seal)

(Resident) Magistrate

OFFENCE (SECTION AND LAW)

.....
.....
.....

PARTICULARS OF OFFENCE

.....
.....
.....

OFFENCE (SECTION AND LAW)

.....
.....
.....

PARTICULARS OF OFFENCE

.....
.....
.....

Police Station Public Prosecutor

Date (Resident) Magistrate

LAWS OF MALAWI

Criminal Procedure and Evidence Code Cap. 9:01

15A

Criminal Procedure (Forms) Notice

[Subsidiary]

FORM VII

REPUBLIC OF MALAWI

In the _____ Resident Magistrate's Court at _____
Grade Subordinate
Case No. of 19.....
The Republic *versus* _____

SUMMONS TO ENFORCE PAYMENT OF A FINE

(SECTION 93 (3) OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To

Whereas on the day of 19..... you were convicted of the offence of and were ordered to pay a fine of £..... by and whereas the whole amount of £..... remains unpaid.

You are hereby required to pay the said amount of £..... or to appear before this Court on the day of 19 at o'clock in the noon to show cause why you should not be committed to prison for such term as the Court may then prescribe.

Given under my hand and the seal of the Court on this day of 19.....

(Seal)

(Resident) Magistrate

FORM VIII

REPUBLIC OF MALAWI

In the _____ Resident Magistrate's Court at _____
Grade Subordinate
Case No. of 19.....
The Republic *versus* _____

WARRANT OF ARREST FOR FAILURE TO APPEAR AFTER
NON-PAYMENT OF FINE

(SECTION 93 (3) OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To all Police Officers of the

Whereas of was on the day of 19..... convicted of the offence of and was ordered to pay a fine of £.....

And Whereas the whole amount of £..... remains unpaid, And Whereas the said failed to answer a summons to appear in this Court to show cause why he should not be committed to prison for failing to pay the said fine.

L.R.O. 1/1969

LAWS OF MALAWI

154h Cap. 8:01 Criminal Procedure and Evidence Code

[Subsidiary]

Criminal Procedure (Forms) Notice

You are hereby directed to arrest the said
and to produce him before this Court in execution of this warrant,
unless the said shall sooner pay you the said
sum of £..... which you shall pay forthwith to this Court.
And Herein Fail Not.

(Seal)

(Resident) Magistrate

FORM IX

REPUBLIC OF MALAWI

Resident Magistrate's

In the Court at
Grade Subordinate

Case No. of 19.....

The Republic *versus*

WARRANT OF ARREST OF PERSON CHARGED

(SECTIONS 96, 98 AND 99 OF THE CRIMINAL PROCEDURE AND EVIDENCE
CODE)

To all Police Officers

Whereas of
is charged as follows—

OFFENCE (SECTION AND LAW)

.....
.....

PARTICULARS OF OFFENCE

.....
.....
.....

you are hereby directed to arrest the said and
to produce him before this Court in execution of this your warrant.
And Herein Fail Not.

Dated this day of 19.....

(Resident) Magistrate

(SECTION 97 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

This warrant may be endorsed as follows:

If the said (insert name of person arrested)
shall give bail in the sum of £..... without sureties or shall
give bail with one sufficient surety in the sum of £....., or
shall give bail with two sufficient sureties each in the sum of £.....,
to attend before this Court on the day of.....
and to continue so to attend until otherwise directed, he shall be
released.

Dated this day of 19.....

(Seal)

(Resident) Magistrate

LAWS OF MALAWI

Criminal Procedure and Evidence Code

Cap. 8:01

1546

Criminal Procedure (Forms) Notice

[Subsidiary]

FORM X

REPUBLIC OF MALAWI

In the Resident Magistrate's Court at
Grade Subordinate
Case No. of 19.....
The Republic *versus*

PROCLAMATION REQUIRING THE APPEARANCE OF AN
ACCUSED PERSON AND ORDER ATTACHING HIS
PROPERTY

(SECTIONS 106 AND 107 OF THE CRIMINAL PROCEDURE AND EVIDENCE
CODE)

To

Whereas this Court has reason to believe that
of, against whom a warrant of arrest for
..... has been issued, has absconded
or is concealing himself so that such warrant cannot be executed.

Proclamation is hereby made that the said
is required to appear before this Court at..... o'clock in the
.....noon on the day of next
to answer the said charge.

*And it is hereby ordered that the property belonging to the said
..... be attached and all persons concerned are
hereby authorized to attach the following property belonging to the
said.....

LIST OF PROPERTY

.....
.....
.....
.....
.....

Dated this day of, 19..... at
.....

(Seal)

(Resident) Magistrate

*When attachment is not ordered, strike out this part.

L.R.O. 1/1969

[Subsidiary]

Criminal Procedure (Forms) Notice

FORM XI

REPUBLIC OF MALAWI

In the Resident Magistrate's Court at
Grade Subordinate
Case No. of 19.....
The Republic *versus*

SEARCH WARRANT

(SECTION 113 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To

Whereas it has been proved on oath to this Court that the following article(s) being article(s) by or in respect of which the offence of has been committed or which are necessary to the investigation into such offence, are in fact, or according to reasonable suspicion in the *

This is to authorize and require you to enter upon and search the said premises and, if discovered, to take possession of the said article(s) and produce the same forthwith before this Court; returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand this day of, 19...

(Seal)

(Resident) Magistrate

*Here set out the building, ship, aircraft, carriage, box, receptacle or place.

FORM XII

REPUBLIC OF MALAWI

In the Resident Magistrate's Court at
Grade Subordinate
Case No. of 19.....
The Republic *versus*

BAIL-BOND AFTER ARREST TAKEN BY A COURT OR BY A POLICE OFFICER

(SECTIONS 118 AND 119 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

I, of being charged with the offence of and being required to appear before the above-named Court on the day of next do hereby bind myself to attend the said Court on the date named and to continue so to attend until my trial shall be concluded, and, should I fail to do so, I bind myself to forfeit to the Government the sum of £.....

Signature and address

..... day of, 19.....

LAWS OF MALAWI

Criminal Procedure and Evidence Code

Cap. 8:01

1576

Criminal Procedure (Forms) Notice

[Subsidiary]

SURETIES

We jointly and severally declare ourselves and each of us sureties for the appearance of the said as above set out, and in case of his making default therein we hereby bind ourselves severally to forfeit to the Government the sum of £.....

First Surety:

Second Surety:

Name.....
Address
Occupation

Entered into before me this day of, 19.....
(Seal) (Resident) Magistrate

FORM XIII

REPUBLIC OF MALAWI

Resident Magistrate's

In the Court at
Grade Subordinate

Case No. of 19.....

The Republic *versus*

DEPOSIT OF PROPERTY IN LIEU OF, OR ADDITIONAL TO,
BAIL BOND

(SECTION 121 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To of

The receipt is hereby acknowledged of
..... deposited in lieu of, or
additional to, a bail bond.

You are hereby warned that if you fail to attend at the above-named Court on the day of next and thereafter until your trial is concluded, the above property will be liable to forfeiture.

Dated this day of 19..... at

.....
*Signature of Police Officer or officer
of the Court receiving the deposit*

FORM XIV

REPUBLIC OF MALAWI

Resident Magistrate's

In the Court at
Grade Subordinate

Case No. of 19.....

The Republic *versus*

SUMMONS TO FORFEIT DEPOSIT IN LIEU OF, OR
ADDITIONAL TO, BOND

(SECTION 121 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To

L.R.O. 1/1969

[Subsidiary]

Criminal Procedure (Forms) Notice

Whereas it has been proved to the satisfaction of the Court that the conditions upon which you on the day of deposited (1) at have not been complied with in that you (2)

You are hereby required to appear before this Court on the day of next at in the noon to show cause why the said property should not be forfeited.

Given under my hand and the seal of the Court on this day of 19.....

(Seal)

(Resident) Magistrate

- (1) State here the money or property deposited.
- (2) Here insert the manner in which the conditions of the deposit have not been complied with.

FORM XV

REPUBLIC OF MALAWI

In the Resident Magistrate's Court at
Grade Subordinate
Case No of 19.....
The Republic *versus*

SUMMONS TO PAY PENALTY OF BOND

(SECTION 125 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To
Whereas it has been proved to the satisfaction of the Court that the conditions of the bond entered into by you in the amount of £..... on the day of have not been complied with in that you *.....

You are hereby required to pay the said amount of £..... or to appear before this Court on the day of next at o'clock in the noon to show cause why the sum of £..... should not be paid.

Given under my hand and the seal of the Court on this day of 19.....

(Seal)

(Resident) Magistrate

*Here insert the manner in which the conditions of the bond have not been complied with.

FORM XVI

REPUBLIC OF MALAWI

In the _____ Resident Magistrate's Court at _____
 Grade Subordinate
 Case No. _____ of 19.....
 The Republic *versus*

WARRANT OF ATTACHMENT AND SALE TO ENFORCE A BOND

(SECTION 125 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To all Police Officers of the _____ District.

Whereas _____ has failed to comply with the conditions of his bond in that behalf and has by such default forfeited to the Government the sum of £..... secured by the said bond.

This is to authorize and require you to attach any movable or immovable property of the said _____ that you may find within the District of _____ by seizure and detention, and, if the said amount be not paid within _____ days hereof to sell the property so attached or so much thereof as may be sufficient to realize the amount aforesaid by public auction, and forthwith to return this warrant with an indorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this _____ day of _____ 19.....

(Seal)

(Resident) Magistrate

FORM XVII

REPUBLIC OF MALAWI

In the _____ Resident Magistrate's Court at _____
 Grade Subordinate
 Case No. _____ of 19
 The Republic *versus*

SUMMONS TO A WITNESS

(SECTION 195 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To _____

Whereas complaint has been made that _____ of _____ has committed the offence of _____ *

You are hereby summoned to appear before this Court on the _____ day of _____ next at _____ o'clock in the _____ noon to testify what you know concerning the matter of the said complaint, and so on from day to day until the trial be concluded.

[Subsidiary]

Criminal Procedure (Forms) Notice

Given under my hand and the seal of the Court, this
day of 19.....

(Seal)

(Resident) Magistrate
Police Officer*

*Only police officers of the rank of Assistant Superintendent or above
may issue a summons to a witness.

FORM XVIII

REPUBLIC OF MALAWI

Resident Magistrate's

In the Court at

Grade Subordinate

Case No. of 19.....

The Republic *versus*

WARRANT TO COMPEL ATTENDANCE OF A WITNESS

(SECTION 196 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To all Police Officers of the District.

Whereas of was duly
summoned to appear before this Court on the day of
19..... to give evidence at the trial of the above-mentioned case, but
has failed, without sufficient excuse shown to the Court, to appear in
obedience to the summons.

This is to authorize you to arrest the said and
bring him/her before this Court on the day of
next to be examined regarding the said case.

Given under my hand and the seal of the Court, this
day of 19.....

(Seal)

(Resident) Magistrate

FORM XIX

REPUBLIC OF MALAWI

Resident Magistrate's

In the Court at

Grade Subordinate

Case No. of 19.....

The Republic *versus*

WARRANT TO COMPEL ATTENDANCE OF A WITNESS

(SECTION 197 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To all Police Officers of the District.

Whereas complaint has been made that
of has committed the offence of
and it has been made to appear that
of can give evidence concerning the said offence;
And Whereas the Court is satisfied by evidence on oath that the
said will not of

LAWS OF MALAWI

Criminal Procedure and Evidence Code

Cap. 8:01

1540

Criminal Procedure (Forms) Notice

[Subsidiary]

his
her own accord attend as witness on the hearing of the said
complaint.

This is to authorize and require you to arrest the said
him
and bring before this Court on the day of
her
next to be examined regarding the offence complained of.

Given under my hand and the seal of the Court, this
day of 19.....

(Seal)

(Resident) Magistrate

FORM XX

REPUBLIC OF MALAWI

In the Resident Magistrate's Court at
Grade Subordinate

Case No. of 19.....

The Republic *versus*

COMMITMENT ON ADJOURNMENT OR REMAND

(SECTIONS 250 AND 267 OF THE CRIMINAL PROCEDURE AND EVIDENCE
CODE)

To the Officer in Charge of the Prison at

Whereas stands charged with the offence
of these are to command you to lodge the said
..... in the prison at
and him safely there to keep until the day of
next when you shall bring the said before
this Court at o'clock in the noon.

Given under my hand this day of, 19.....

(Seal)

(Resident) Magistrate

FURTHER REMANDS

Date	Remanded to	Signature of (Resident) Magistrate

[Subsidiary]

Criminal Procedure (Forms) Notice

FORM XXI

REPUBLIC OF MALAWI

Resident Magistrate's

In the Court at

Grade Subordinate

Case No. of 19.....

The Republic versus

CAUTION TO THE ACCUSED BEFORE COMMITTAL FOR TRIAL, AND THE ACCUSED'S STATEMENT, OR EVIDENCE, IF ANY

(SECTION 268 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

The charge against you is (a)
and I inform you that this is not your trial. You will be tried later in another court and before another judge, where all the witnesses you have heard here will be produced and you will be allowed to question them. You will then be able to address the court and to give evidence on oath and to call any witnesses on your own behalf. Unless you wish to reserve your defence, which you are at liberty to do, you may now either make a statement not on oath or give evidence on oath, and may call witnesses on your own behalf. If you give evidence on oath you will be liable to cross-examination. Anything you may say whether on oath or not will be taken down and may be used in evidence at your trial. And I give you clearly to understand, that you have nothing to hope from any promise of favour, and nothing to fear from any threat which may have been held out to you to induce you to make any confession of your guilt. But whatsoever you shall now say may be given in evidence on your trial, notwithstanding any such promise or threat.

The accused in reply states (or electing to be sworn is duly sworn and states):—

.....
.....
.....

I read over the above to the accused who agrees that it is correct and that he has nothing to add to it and I certify that the above statement or evidence was taken in my presence and hearing and contains accurately the whole statement made, or evidence given, by the accused.

Signature or mark of accused

Witness to mark

.....
*Signature of (Resident) Magistrate
and date*

I ask the accused whether he desires to call any witnesses

He replies:—(b)

.....
(Resident) Magistrate

- (a) The Magistrate reads and explains the charge in simple language.
- (b) The depositions of the accused's witnesses are not to be taken on this sheet, only his answer to the question.

FORM XXII

REPUBLIC OF MALAWI

In the Resident Magistrate's Court at
 Grade Subordinate
 Case No. of 19.....
 The Republic *versus*

WARRANT OF COMMITMENT ON COMMITTAL FOR TRIAL

(SECTION 271 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To the Officer in Charge of the Prison at
 These are to command you to lodge
 who is accused of the offence of in the
 prison at and him there safely keep until his
 trial at the next Sessions at when you shall bring
 him before the High Court.

Given under my hand on the day of 19.....

(Seal)

(Resident) Magistrate

FORM XXIII

REPUBLIC OF MALAWI

In the Resident Magistrate's Court at
 Grade Subordinate
 Case No. of 19.....
 The Republic *versus*

BOND TO GIVE EVIDENCE

(SECTION 275 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

I, of
 do hereby bind myself to attend at the next Sessions of the High Court
 and then and there to give evidence in the matter of a charge of
 against and, in case of making
 default herein, I bind myself to forfeit to the Government the sum of
 £.....

This day of 19.....

Signature

Entered into before me this day of 19.....

(Resident) Magistrate

LAWS OF MALAWI

154r

Cap. 8:01 Criminal Procedure and Evidence Code

[Subsidiary]

Criminal Procedure (Forms) Notice

FORM XXIV

REPUBLIC OF MALAWI

In the High Court of Malawi

Criminal Case No. of 19.....

The Republic *versus*

SUMMONS TO A JUROR

(SECTION 298 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To:

You are hereby summoned to attend and act as a juror in the High Court at on the day of next at o'clock in the forenoon.

Given under my hand this day of, 19.....
Registrar of the High Court

FORM XXV

REPUBLIC OF MALAWI

In the High Court of Malawi

Case No. of 19.....

The Republic *versus*

AUTHORITY FOR DETENTION OF PERSON SENTENCED TO DEATH

(SECTION 325 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To: The Officer in Charge of the Central Prison at Zomba.

I,, Registrar of the High Court of Malawi, hereby certify that of District, was on the day of 19..... convicted before the High Court of the offence of murder contrary to section 209 of the Penal Code and was sentenced to suffer death in the manner authorized by law.

This certificate shall be your authority to detain the said in the Central Prison, Zomba, until you shall receive the further order of the President.

Given under my hand this day of 19.....
Registrar of the High Court

FORM XXVI

REPUBLIC OF MALAWI

Resident Magistrate's

In the Court at

Grade Subordinate

Case No. of 19.....

The Republic *versus*

WARRANT OF COMMITMENT

(SECTION 329 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To the Officer in Charge of the Prison at

Criminal Procedure (Forms) Notice

[Subsidiary]

Whereas of was
 [*this day] [*on the day of 19.....] convicted before
 this Court of the offence of under section of the
 and was sentenced to *(a) imprisonment
 *with/*without hard labour
 *(b) a fine of £..... or in default of payment to imprisonment
 *with/*without hard labour
 *And Whereas of the said fine *the whole/*the sum of £.....
 remains unpaid.

You are hereby required to receive the said into
 your custody in the said prison together with this warrant and there
 carry the aforesaid sentence into effect according to law subject as
 hereafter specified.

Unless confirmation of the said sentence shall sooner be com-
 municated to you by you are required to release the
 prisoner at the expiration of the period appropriate in the case of a
 sentence of months imprisonment.

Given under my hand and the seal of the Court on this
 day of 19.....

(Seal)

(Resident) Magistrate

*Delete as appropriate

FORM XXVII

REPUBLIC OF MALAWI

Resident Magistrate's

In the Court at

Grade Subordinate

Case No. of 19.....

The Republic *versus*WARRANT OF COMMITMENT ON FAILURE TO PAY COSTS
AND COMPENSATION

(SECTION 332 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To the Officer in Charge of the Prison at

Whereas on the day of 19.....,
 lodged a complaint against
 acquitted

And Whereas the Court the said accused and made an
 order that the discharged
 should pay to the *..... the sum of
 £..... by way of costs (and compensation) or in default be
 imprisoned for a period of

And Whereas of the said sum the whole (or the sum of £.....)
 remains unpaid, you are hereby required to receive the said
 into your custody in the said prison together with this warrant and
 there carry the aforesaid sentence into execution according to law.

Given under my hand and the seal of the Court on this
 day of 19.....

(Seal)

(Resident) Magistrate

*Insert "complainant" or "accused" as the case requires.

LAWS OF MALAWI

154t Cap. 8:01 Criminal Procedure and Evidence Code

[Subsidiary]

Criminal Procedure (Forms) Notice

FORM XXVIII

REPUBLIC OF MALAWI

In the Resident Magistrate's Court at
Grade Subordinate
Case No. of 19.....
The Republic versus

SUMMONS TO ENFORCE PAYMENT OF A FINE

(SECTION 331 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To
Whereas on the day of 19.....,
you were convicted of the offence of
and were ordered to pay a fine of and were
allowed until the day of 19...
to pay

*(a) an instalment of £.....

*(b) the whole amount of the fine.

And Whereas the said amount of £..... has not been paid.

You are hereby required to appear before this Court on the
day of 19..... at o'clock
in the forenoon to be present at an inquiry as to your means.

Given under my hand and the seal of the Court on the
day of 19.....

(Seal)

(Resident) Magistrate

*Delete where inappropriate.

FORM XXIX

REPUBLIC OF MALAWI

In the Resident Magistrate's Court at
Grade Subordinate
Case No. of 19.....
The Republic versus

WARRANT OF ARREST FOR FAILURE TO ANSWER
SUMMONS TO INQUIRY AS TO MEANS

(SECTION 332 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To all Police Officers of the

Whereas of was
on the day of 19..... convicted of
the offence and was ordered to pay a fine of £.....

Criminal Procedure (Forms) Notice

[Subsidiary]

And Whereas the whole amount of £..... remains unpaid
And Whereas the said failed to answer a summons
to appear in this Court to be present at an inquiry as to his means.

You are hereby directed to arrest the said and
to produce him before this Court in execution of this your warrant,
unless the said..... shall sooner pay you the
said sum of £..... which you shall pay forthwith to
this Court.

And Herein Fail Not.

(Seal)

(Resident) Magistrate

FORM XXX

REPUBLIC OF MALAWI

Resident Magistrate's

In the Court at

Grade Subordinate

Case No. of 19.....

The Republic *versus*

**BOND TO KEEP THE PEACE AND TO BE OF GOOD
BEHAVIOUR**

(SECTION 338 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

Whereas I, have been called upon to enter
into a bond in the sum of £..... to keep the peace and to be
of good behaviour for the period of from the
execution of these presents upon the conditions hereinafter appearing;

And Whereas it is a condition of this bond that (1)

I hereby bind myself as aforesaid and in the event of making default
agree to forfeit to the Government the said sum.

This day of 19.....

Signature

(2) [We hereby bind ourselves jointly and severally in the sum of
£..... to answer that the above-named will keep the peace
and be of good behaviour during the said term.

First Surety:

Second Surety:

Name
Address
Occupation]

Entered into before me this day of..... 19.....
at

(Resident) Magistrate

- (1) Here insert any conditions which have been imposed under section 338.
- (2) Where sureties are not required the part of the form contained in square brackets should be deleted.

LAWS OF MALAWI

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[Subsidiary]

Criminal Procedure (Forms) Notice

FORM XXXI

REPUBLIC OF MALAWI

In the Resident Magistrate's Court at
Grade Subordinate
Case No. of 19.....
The Republic versus

BOND TO APPEAR AND RECEIVE SENTENCE

(SECTION 337 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

Whereas I, have been called upon to enter into a bond in the sum of £..... to appear and receive sentence when called upon and in the meantime to keep the peace and to be of good behaviour for the period of from the execution of these presents upon the conditions hereinafter appearing;

And Whereas it is a condition of this bond that (1)

I hereby bind myself as aforesaid and in the event of making default agree to forfeit to the Government the said sum.

This day of, 19.....

Signature.....

(2) [We hereby bind ourselves jointly and severally in the sum of £..... to answer that the above-named will keep the peace and be of good behaviour during the said term.

First Surety:

Second Surety:

Name
Address
.....
Occupation]

Entered into before me this day of, 19.....
at

(Resident) Magistrate

- (1) Here insert any conditions which have been imposed under section 337.
- (2) Where sureties are not required the part of the form contained in square brackets should be deleted.

FORM XXXII

REPUBLIC OF MALAWI

In the Resident Magistrate's Court at
Grade Subordinate
 Case No. of 19.....
 The Republic *versus*

BOND TO APPEAR AND RECEIVE SENTENCE

(SECTION 339 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

Whereas I, have been called upon to enter into
 a bond in the sum of £..... to appear and receive

sentence *on the day of 19.....
*when called upon

And Whereas it is a condition of this bond that (1)

I hereby bind myself as aforesaid and in the event of making default
 agree to forfeit to the Government the said sum.

This day of, 19.....

Signature.....

(2) [We hereby bind ourselves jointly and severally in the sum of
 £.....to answer that the above-named will keep the peace and
 be of good behaviour during the said term.

*First Surety:**Second Surety:*

Name
Address
.....
Occupation]

Entered into before me this day of, 19.....,
 at

(Resident) Magistrate

(1) Here insert any conditions which have been imposed under section
 339.

(2) Where sureties are not required the part of the form contained in
 square brackets should be deleted.

*Delete where inappropriate.

LAWS OF MALAWI

154x

Cap. 8:01 Criminal Procedure and Evidence Code

[Subsidiary]

Criminal Procedure (Forms) Notice

FORM XXXIII

REPUBLIC OF MALAWI

Resident Magistrate's

In the _____ Court at

Grade Subordinate

Case No. of 19.....

The Republic *versus*

ORDER FOR RELEASE OF PERSON IN CUSTODY

To the Officer in Charge of the Prison at

Whereas on the day of 19.....
..... of, in the District of
..... was ordered by the Court to be acquitted and set at
liberty, this is to require you, forthwith to release the said
from custody.

Given under my hand on the day of 19.....

(Resident) Magistrate

FORM XXXIV

REPUBLIC OF MALAWI

Resident Magistrate's

In the _____ Court at.....

Grade Subordinate

Case No. of 19.....

The Republic *versus*

WARRANT TO LEVY MONEY BY DISTRESS AND SALE

(SECTION 330 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE)

To: All Police Officers of the District.

Whereas was on the
day of ordered by this Court to pay the sum of
£..... as*

And Whereas the said has not paid the said
sum or any part thereof:

This is to authorize and require you to make distress by seizure of
any movable or immovable property belonging to the said
which may be found within the District; and, if
within days of such distress the said sum be not
paid, to sell by public auction the property distrained, or so much
thereof as shall be sufficient to satisfy the said sum and thereupon
return this warrant with an indorsement certifying the manner of its
execution.

Given under my hand and the seal of the Court this day
of 19.....

(Seal)

(Resident) Magistrate

*Here insert whether fine, penalty, compensation, costs, expenses or
otherwise.

**CRIMINAL PROCEDURE AND EVIDENCE (JURORS
AND WITNESSES ALLOWANCES) RULES**G.N. 72/1969
29/1996

under s. 368

1. These Rules may be cited as the Criminal Procedure and Evidence Code (Jurors and Witnesses Allowances) Rules. Citation

2. In these Rules unless the context otherwise requires— Interpretation
 “claimant” means a juror, complainant or witness who claims to be entitled to an allowance under these Rules;

“juror” means a person who attends the High Court in response to a summons to a juror issued in pursuance of the Code;

“Registrar” means the Registrar of the High Court;

“witness” means a person who attends a court to give evidence in any criminal proceedings.

3.—(1) A juror, complainant or witness who attends court for the purpose of any criminal proceedings shall be entitled to an attendance allowance in accordance with the scale contained in the Schedule hereto for each day of such attendance: Attendance allowances
Schedule

Provided that if, in the opinion of the Registrar or Magistrate, hardship would be caused, in any special case, the scale may be increased at his discretion.

(2) An attendance allowance shall be paid in respect of the time a claimant is necessarily detained and for the time reasonably occupied in travelling.

(3) No additional attendance allowance shall be paid merely because the claimant attends more than one case on the same day.

4.—(1) Claimants shall, in addition to an attendance allowance, be entitled to travelling allowances as follows— Travelling allowances
G.N. 29/1996

(a) claimants travelling by air, rail or public conveyance shall receive a refund of the actual fare paid, and those travelling by hired transport, if the journey would not, in the opinion of the Registrar or Magistrate, have been more reasonably performed by air, rail or public conveyance, a refund of the actual cost of such hired transport, but not exceeding the equivalent charge per kilometre in accordance with current rates used by the Plant and Vehicle Hire Organization, in relation to the type of the motor vehicle used, provided that such cost is, in the opinion of the Registrar or Magistrate, fair and reasonable;

(b) witnesses using their own transport, provided that the journey could not, in the opinion of the Registrar or

Magistrate, have been more reasonably performed by air, rail or public conveyance, shall receive payment for each mile travelled each way between the court and their place of residence at the equivalent rate of travel allowances for motor vehicle, motorcycle, and pedal cycle prescribed from time to time for civil servants.

(2) When two or more modes or routes of travel are reasonably available, the one entailing the least expense shall be allowed for, and when a journey is performed by air, rail or public conveyance a refund will only be made of the fare of the class by which the claimant might ordinarily be expected to travel.

(3) No travelling allowance shall be paid to any claimant residing within two miles of the court, unless, owing to physical disability, a conveyance for such claimant is necessary.

5. [Revoked by G.N. 29/1996]

Night
allowance
G.N. 29/1996

6. Where a claimant is necessarily detained overnight from his place of residence, he shall, in addition to any other sums payable under these Rules, be paid expenses necessarily incurred by him for lodging for that night upon production of such evidence of the expenditure as the Registrar or Magistrate may require.

Object of
expenses and
allowances

7.—(1) The allowances payable under rules 4, 5 and 6 are intended to cover the bare necessary out-of-pocket expenses incurred—

(a) in travelling to and from the court; and

(b) on food and lodging during the time a claimant is travelling or is necessarily detained in connexion with criminal proceedings.

(2) The Registrar or Magistrate may require a claimant to verify his claim by receipted vouchers or other evidence relating to any such expenses.

Method of
payment

8. Claims for allowances relating to attendance at the High Court shall be made to the Registrar. Such claims relating to attendance at the court of a Magistrate shall be made to that Magistrate. All such claims shall be made immediately after the close of the hearing of the criminal proceedings:

Provided that payment may be made at any time if, in the opinion of the Registrar or Magistrate, hardship would be caused to any claimant if payment were deferred until after the criminal proceedings.

Civil servants

9. Civil servants who attend a court to give evidence or to act as jurors in any criminal proceedings shall be paid travelling and

*Criminal Procedure and Evidence (Jurors and Witnesses Allowances) Rules/Notice
Applying Certain Provisions of the Code to Criminal Proceedings in all
Traditional Courts*

[Subsidiary]

subsistence allowances equivalent to the allowances to which they, when travelling on duty, are entitled under the Malawi Public Service Regulations but shall not be entitled to any attendance allowance.

SCHEDULE

(r. 3)

ATTENDANCE ALLOWANCE

G.N. 29/1996

1. Allowances to Witnesses

- | | |
|--|--|
| (a) Professional persons, owners, directors and managers of a business, and persons in receipt of a salary or income exceeding K30,000 per annum . . | In the discretion of the Court, not exceeding K100 per day |
| (b) Persons whose salary or income exceeds K20,000 but does not exceed K30,000 per annum . . | In the discretion of the Court, not exceeding K75 per day |
| (c) Other persons | In the discretion of the Court, not exceeding K50 per day |

2. Allowances to Jurors K100 per day

**NOTICE APPLYING CERTAIN PROVISIONS OF
THE CODE TO CRIMINAL PROCEEDINGS IN ALL
TRADITIONAL COURTS**

G.N. 161/1970

under s. 371

The Minister has applied to all Traditional Courts the provisions of the Code set out hereunder—

Section 77 relating to Discontinuance by Director of Public

		Prosecutions
" 81	"	Withdrawal of prosecutions
" 152	"	Conviction of attempt
" 153	"	Alternative verdicts
" 158	"	Construction of sections 152 and 153
" 176	"	Confessions
" 179	"	Admissibility of photographs and plans
" 180	"	Admissibility of medical reports
" 181	"	Admissibility of scientific reports

L.R.O. 1/2000

[Subsidiary]

Notice Applying Certain Provisions of the Code to Criminal Proceedings in all Traditional Courts/Notice Applying Provisions of Section 322 of the Code to Criminal Proceedings in Certain Traditional Courts only/Criminal Procedure (Selection of Jurors) Order

Section 77 relating to Discontinuance by Director of Public Prosecutions		
"	194	" Evidence of husband or wife of accused
"	337	" Conditional or absolute discharge, probation of offenders, etc.
"	339	" Suspended sentences
"	340	" Imprisonment of first offenders
"	341	" Consequence of breach of conditions.

G.N.

241/1971

NOTICE APPLYING PROVISIONS OF SECTION 322 OF THE CODE TO CRIMINAL PROCEEDINGS IN CERTAIN TRADITIONAL COURTS ONLY

under s. 371

The Minister has applied to the Traditional Courts specified hereunder the provisions of section 322 of the Code—

- (a) the Southern Regional Traditional Court;
- (b) the Central Regional Traditional Court;
- (c) the Northern Regional Traditional Court;
- (d) any Urban Traditional Court; and
- (e) any Grade A. 1 Traditional Court.

**CRIMINAL PROCEDURE AND EVIDENCE CODE
CRIMINAL PROCEDURE (SELECTION OF JURORS)
ORDER**

G.N. 43/1995
7/1996

under s. 297

Citation

1. This Order may be cited as the Criminal Procedure (Selection of Jurors) Order.

Division of
Malawi into
areas for
selection of
jurors

2. The areas into which Malawi is divided for the selection of jurors for the purpose of section 297 of the Code shall be the areas specified in the Schedule to this Order.

G.N. 43/1995
7/1996

SCHEDULE

(para. 2)

AREAS FOR SELECTION OF JURORS

1. Each area of a Traditional Authority as designated under the Chiefs Act.

2. The areas of jurisdiction of a City Council, a Municipal Council and a Town Council.

*Criminal Procedure (Trial Without Jury) Order/Community Service (General) Rules***[Subsidiary]****CRIMINAL PROCEDURE (TRIAL WITHOUT JURY)
ORDER**G.N. 8/1996
8/1997*under s. 294 (2)*

1. This Order may be cited as the Criminal Procedure (Trials Without Jury) Order. Citation

2. The cases or class of cases specified in the Schedule hereto shall be triable in High Court without a Jury, and in any such case or class or cases instead of the procedure set out in part X of the Criminal Procedure and Evidence Code, the High Court shall, with any necessary modifications follow the procedure set out in Part VII of the Criminal Procedure and Evidence Code for trials before subordinate courts. Trials without jury

SCHEDULE (para. 2)

1. All offences under the Customs and Excise Act.
2. All offences under the Exchange Control Act.
3. All offences under Taxation Act.

COMMUNITY SERVICE (GENERAL) RULES

G.N. 34/2000

*under s. 364A***PART I****PRELIMINARY**

1. These Rules may be cited as the Community Service (General) Rules. Citation

2. In these Rules, unless the context otherwise requires— Interpretation

“Community Service Officer” means a Community Service Officer appointed under rule 9;

“form” means a form prescribed under these rules;

“National Committee” means the Malawi National Committee on Community Service established under rule 3;

“National Coordinator” means the National Coordinator for Community Service appointed under rule 8;

“Supervisor” means the person referred to in rule 11.

PART II

ORGANIZATION AND STRUCTURE

Establishment
of National
Committee

3.—(1) There is hereby established the Malaŵi National Committee on Community Service.

(2) The National Committee shall consist of—

(a) a chairperson who shall be a judge appointed by the Chief Justice;

(b) a deputy chairperson who shall be the Principal Secretary to the Ministry of Justice or his representative;

(c) the Attorney-General or his representative;

(d) the Inspector General of Police or his representative;

(e) the Principal Secretary for Social Welfare, Children and Women Affairs or his representative;

(f) the Principal Secretary for Local Government or his representative;

(g) the National Coordinator;

(h) the Chief Commissioner of Prisons or his representative;

(i) the Chief Resident Magistrates or their representatives;

(j) such other persons as may be appointed by the Chief Justice or co-opted by the National Committee from time to time—

(i) to represent organizations which have an interest in the well-being or reformation of prisoners; or

(ii) on account of their special skills or interest which may assist the National Committee.

Functions of
National
Committee

4. The functions of the National Committee shall be—

(a) to advise the Chief Justice on community service;

(b) to issue guidelines on community service to those concerned with the administration of justice and those concerned with supervising offenders placed on community service;

(c) to conduct workshops and seminars for those concerned with implementation of community service; and

(d) generally, to supervise, coordinate, promote and develop community service throughout Malaŵi.

Meetings of
National
Committee

5.—(1) The National Committee shall meet at such times and places as may be determined by the Chairperson.

(2) The procedure at any meeting of the National Committee shall be as directed by the Chairperson.

(3) In the absence of the Chairperson, the Deputy Chairperson or any other member elected by the persons present, shall preside at meetings.

(4) A quorum at a meeting of the National Committee shall be constituted by any five members.

6. For the better exercise of its functions, the National Committee may appoint—

Appointment
of
Committees

(a) an executive committee in accordance with rule 7; and

(b) such other committees as it deems fit and which shall exercise such functions as the National Committee may direct.

7.—(1) The executive committee appointed by the National Committee shall consist of—

Executive
Committee

(a) a chairperson, who shall be the Chairperson of the National Committee or, in his absence, the Deputy Chairperson of the National Committee;

(b) the National Coordinator;

(c) Regional Coordinators;

(d) such other members as the National Committee; and

(e) any person whom the Executive Committee may from time to time co-opt.

(2) Subject to the control of the National Committee, the functions of the Executive Committee shall be—

(a) to carry out the regular and ordinary functions as may be directed by the National Committee;

(b) to carry out such other functions as may be directed by the National Committee; and

(c) to report on its activities at every meeting of the National Committee.

(3) Notwithstanding the appointment of the Executive Committee or the vesting of any functions in the Executive Committee, the National Committee may amend or rescind any of the decisions of the Executive Committee.

8.—(1) The Chief Justice shall, in consultation with the Chairperson of the National Committee, appoint a person to be the National Coordinator for Community Service.

National
Coordinator

(2) The National Coordinator shall—

(a) subject to the directions of the National Committee, co-ordinate, promote and develop community service throughout Malawi;

[Subsidiary]

Community Service (General) Rules

(b) liaise with the magistrates courts and all those concerned with the operation and promotion of community service in order to achieve an effective and efficient system of community service throughout Malawi;

(c) attend meetings of the National Committee;

(d) supervise the day to day work of the Regional Coordinators and Community Service Officers; and

(e) generally, co-ordinate community service throughout Malawi.

Community
Service
Officers

9.—(1) The Chief Justice shall, on the recommendation of the National Executive Committee, appoint a suitable number of persons in the Judiciary to be Community Service Officers who shall nevertheless remain subject to the general administration and discipline of the Judiciary.

(2) A Community Service Officer shall, subject to the directions and guidance of the National Coordinator, promote, organize and foster community service within the area or district for which he is appointed.

(3) A Community Service Officer shall assist the magistrate courts in his area or district in the implementation of community service and shall act on the directions and advice of the Chief Resident Magistrate within whose region he has responsibilities.

District
Committee

10.—(1) Every magistrate in a district shall appoint as many district committees as may be possible and convenient to implement community service in that district.

(2) The district committee shall consist of—

(a) the Community Service Officer;

(b) the Public Prosecutor;

(c) the Officer-in-Charge of Police or his representative;

(d) the District Administrator for the District;

(e) the officer-in-charge of the Prison within the District concerned or his representative;

(f) the Social Welfare Officer for the District concerned;

(g) members of the Court Users Committee not reflected in (a) to (f) above.

(3) A District Committee shall identify local institutions or other places which are suitable and willing to receive and supervise persons placed on community service and shall generally endeavour to promote and develop community services within its District.

Supervisor

11.—(1) The person in charge of an institution or place where an offender has been directed to perform community service shall supervise the performance of the community service concerned.

(2) A supervisor shall—

(a) allocate work to the offender concerned as specified in the court order or, where no details have been specified, shall allocate such work as he considers suitable at the institution or place concerned;

(b) generally, monitor the performance of the work concerned and, where practicable and possible, shall offer instruction and guidance to the offender concerned in the performance of the work;

(c) keep records and submit returns relating to the community service performed as may be directed by the clerk of court or Community Service Officer;

(d) exercise a discretion in regard to requests by the offender for leave of absence and generally as to the administration of community service in accordance with such guidelines as may be issued by the National Committee and such advice as may be given by the local Community Service Officer or the National Coordinator;

(e) advise the Community Service Officer or clerk of the court of any unresolved problems encountered in connexion with the community service rendered at his institution so that they may be resolved.

(3) Where practical or possible a supervisor shall arrange for counselling of the offender where a request in this regard has been made:

Provided that any such counselling shall not count as part of the time requires to be spent by the offender on performing community service.

PART III

ADMINISTRATION

12. Before making a Community Service Order the court shall—

(a) undertake an inquiry as to the general suitability of the offender for community service;

(b) explain the aims and objects of a community service order to the offender, the duties of the offender expected thereunder, his rights to the court for any variation or revocation of the order and the consequences of any breach or non-compliance therewith;

(c) ascertain whether or not the offender is willing to render community service and shall have regard to his attitude in finally determining whether to make the order;

Preliminary
requirements
to making an
Order

(d) ascertain whether a suitable institution or place is available for reception and supervision of the offender in respect of the proposed community service.

Distribution
of the order

13. Upon making a Community Service Order, the court shall cause a copy to be—

- (a) given to the offender concerned;
- (b) submitted to the person in charge of the institution or place where the community service is to be performed; and
- (c) given to Community Service Officer for the area.

Contents of
an order

14. A Community Service Order shall specify—

- (a) the number of hours required to be worked;
- (b) the days on which work is to be performed;
- (c) the starting and finishing times of the work;
- (d) the place where the work is to be performed; and
- (e) any other special terms or conditions of the community service order.

Application
for amendment
or revocation

15.—(1) An application for the amendment or revocation of a Community Service Order shall be made in writing and lodged with the court which made the order.

(2) Where an offender making an application for an amendment or revocation requires assistance in making a written application the clerk of court shall assist the offender.

(3) An application shall—

- (a) specify the name of the offender and shall refer to the criminal record book number of his conviction;
- (b) specify the grounds upon which the amendment or revocation is based and in the case of an amendment, the nature of the amendment being sought;
- (c) be accompanied by any observations or recommendations which may have been made by the Community Service Officer or the supervisor of the community service concerned.

(4) The clerk of the court shall fix a date, time and place for the hearing of the application and shall serve—

- (a) a notice of the hearing on the Director of Public Prosecutions or his representative, Community Service Officer and the offender or, if he is a minor, his parent or lawful guardian;
- (b) a copy of the application on the public prosecutor and the offender, if he is a minor, his parent or lawful guardian where either such person has not himself made the application.

Community Service (General) Rules [Subsidiary]

Named offender has defaulted his/her community service details, e.g. failed to report for work, persistently late for properly)——

It is as follows (give details, e.g. I have warned him/her that to the court, I have continued to give him/her work, I have advised the community service officer——

Brought before the court with the community service being

Signature

Full name

Controller of Institution

FORM CS/4

**COMMUNITY SERVICE (GENERAL) RULES
VARIATION REPORT FOR VARIATION
OF CONDITIONS**

Community service institution.

at

Conditions of the community service order imposed on the (give details, e.g. "Offender presently directed to work y, but I request this be varied to Thursday, Friday, nt work hours are 6 p.m. to 8 p.m., but I request this be

(5) At the l
Public Prosec
Service Office
addition, the
place of com
and to assist t

(6) Notwith
subsequent to
offender is a
criminal proc
tion of the Co
court by or or

16.—(1) V
information o
comply with
magistrate ma
CS/7 require
which made th

(2) Where a
an order refer

(a) should
in Form CS

(b) shoul
form set ou
offender for

(3) A copy
be served upo

(4) Any Or
authority to
applicable in t

17. Unless
returns to be
community se
National Com
require.

18. A cour
failure to com
direct such v
Service Orde
invalid on the

[illegible]

FORM CS/3

Y SERVICE (GENERAL) RULES

REPORT OF DEFAULT BY OFFENDER

community service institution

[illegible]

{Subsidiary}

In the meantime the action
informally authorized the offe

I request that the matter be brought to the attention of the Board of Directors.

Date

COMMUN.

REPORT OF COMPL

Filled by: Controller at comm

Copies: 1. To Clerk of Cour

2. To community se

Copies: To the Clerk of Court

Offender's Surname

First name

Middle initials

Offender's address

Case number

Name of institution

Address

Results of community service

Offence for which communit

Commencement date of com

Total number of hours offence

Total number of hours actual

Date community service con

Reasons why community sei

Offender satisfactorily completed
stipulated by the court

Offender committed further
by the police

Offender referred back to the
of a breach of the commur
down by the court

Community Service (General) Rules

[Subsidiary]

Offender fell ill and was admitted to a clinic or hospital	
Offender was injured at the institution and was admitted to a clinic or hospital	
Community service was terminated for reasons other than those listed above (<i>state reasons overleaf</i>)	

If the job was being done by a paid worker, what would be the rate of pay per hour?

Date Signature

Full name

.....
Controller of Institution

FORM CS/6

COMMUNITY SERVICE (GENERAL) RULES

GRID OF HOURS

<i>Duration</i>	<i>Hours</i>
1 month	40 hours
2 months	80 hours
3 months	120 hours
4 months	160 hours
5 months	200 hours
6 months	240 hours
7 months	280 hours
8 months	320 hours
9 months	360 hours
10 months	400 hours
11 months	440 hours
12 months	480 hours

FORM CS/7

COMMUNITY SERVICE (GENERAL) RULES

ORDER IN TERMS OF SECTION 364A OF THE CRIMINAL PROCEDURE
AND EVIDENCE CODE

(CAP. 8:01)

To:

Name of Offender

of:

Address of Offender

L.R.O. 1/2003

[Subsidiary]

Community Service (General) Rules

WHEREAS a Community Service Order was made against you by the High Court/Magistrates Court, (.....) on the day of20 which requires you to perform Community Service at AND WHEREAS from information received it appears that you have failed to comply with the Order in the following respects—

Set out particulars of the alleged breach

YOU ARE REQUIRED to appear before the Magistrate Court on the day of at to show cause why you should not be dealt with according to law.

Date Signature

Magistrate at

.....
Magistrate Court

FORM CS/8

COMMUNITY SERVICE (GENERAL) RULES

ORDER FOR ARREST IN TERMS OF SECTION 364A CRIMINAL
PROCEDURE AND EVIDENCE CODE
(CAP. 8:01)

To the Officer-in-Charge—Malawi Police

This is to direct you to arrest the offender (name) of (address) and to bring him/her before a magistrate of this court as soon as possible and in any case not later than 48 hours after his/her arrest so that the arrest of his/her further detention may be determined.

Date Signature

Magistrate at

.....
Magistrate Court

FORM CS/9

COMMUNITY SERVICE (GENERAL) RULES

(CAP. 8:01)

ORDER FOR DETENTION IN TERMS OF SECTION 364A OF THE
CRIMINAL PROCEDURE AND EVIDENCE CODE

(CAP. 8:01)

To the Officer-in-Charge—Prison

This is to direct you to detain the offender (name) of
(address)
unless he is admitted to bail or otherwise lawfully released, until—

(a) he is brought before the court on the date and time fixed for the inquiry referred
to in Part I of this order, or

(b) the expiry of a period of 14 days from the date specified below; whichever is
the sooner.

Date Signature

Magistrate at

.....
Magistrate Court

Extended to Signature

Magistrate at

.....
Magistrate Court

