I HEREBY CERTIFY that the attached document is a fair print of an Act entitled the Criminal Procedure Act, 1972 that has been made by Parliament and is now presented to the Speaker for his Certificate under Article 47 of the Constitution.

Clerk of Parliament

24/11/1972

Pursuant to Article 35 (3) and 47 of the Constitution, I, KENAS ARORI, Speaker of Parliament HEREBY CERTIFY that the Criminal Procedure Act, 1972 a copy of which is attached, has been passed by Parliament.

Speaker

24/11/1972

REPUBLIC OF NAURU

CRIMINAL PROCEDURE ACT 1972

ARRANGEMENT OF CLAUSES

PART V

MODE OF TAKING AND RECORDING EVIDENCE IN INQUIRIES AND TRIALS

PART VI

PROCEDURE IN TRIALS BEFORE THE DISTRICT COURT

PART VII

COMMITTAL OF ACCUSED PERSONS TO THE SUPREME COURT FOR TRIAL

REPUBLIC OF NAURU

(No. 21 of 1972)

AN ACT

To make provision for the procedure to be followed in criminal causes and matters in the Supreme Court and the District Court.

(Certified: 24 - 11 - 1972)

Be it enacted by the Parliament of Nauru as follows :

PART I - PRELIMINARY

SHORT TITLE AND COMMENCEMENT

1. This Act may be cited as the Criminal Procedure Act 1972 and shall come into force on a date to be notified by the Minister in the Gazette.

INTERPRETATION

2. (1) In this Act, unless the context otherwise requires -

"Clerk" means the Clerk of the District Court;

"cognisable offence" has the meaning assigned to it by section 10 of this Act;

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

"criminal proceedings" includes a preliminary inquiry;

"Director of Public Prosecutions" means the public officer appointed as such under the provisions of section 45 of this Act;

"imprisonment" includes night imprisonment;

"non-cognisable offence" means an offence which is not a cognisable offence;

"preliminary inquiry" means an inquiry into a criminal charge held by the District Court under Part VII of this Act with a view to the committal of the accused person for trial before the Supreme Court;

"private prosecution" means a prosecution instituted and conducted by any person other than a public prosecutor;

"public prosecutor" includes the Director of Public Prosecutions and every person who is for the time being a public prosecutor by virtue of the provisions of section 48 of this Act;

"Registrar" means the Registrar of the Supreme Court;

"sentence" includes an order following conviction for which provision is made in Part I of the Criminal Code or in Part IV of the Motor Traffic Act 1937-1972;

"summary trial" means a trial held by the District Court under Part VI of this Act.

TRIAL OF OFFENCES

3. Subject to the provisions of any written law relating to children or young persons, all offences under the Criminal Code or under any other law shall be inquired into, tried and otherwise dealt with in accordance with the provisions of this Act.

PART II - POWERS OF THE COURTS

POWER TO TRY OFFENCES UNDER THE CRIMINAL CODE

4. (1) Subject to the provisions of any written law relating to children or young persons, any offence under the Criminal Code may be tried by the Supreme Court.

(2) Subject to the provisions of any written law relating to children or young persons and to the other provisions of this Act, any offence under the Criminal Code may be tried by the District Court if it is punishable with imprisonment for not more than ten years.

POWER TO TRY OFFENCES UNDER OTHER LAWS

5. (1) Where an offence is created by any written law other than the Criminal Code and no provision is made for the Court by which that offence may be tried, it may, subject to the provisions of any written law relating to children or young persons, be tried -

(a) by the Supreme Court; and

(b) by the District Court if it is punishable with imprisonment for not more than ten years.

(2) Where in any applied statute it is provided

that an offence shall be tried by a court other than the Supreme Court or the District Court, the offence may, subject to the provisions of any written law relating to children or young persons, be tried -

(a) by the Supreme Court; and

(b) by the District Court if it is punishable with imprisonment for not more than ten years.

SENTENCES WHICH THE SUPREME COURT MAY PASS

6. The Supreme Court may pass any sentence, and make any order, authorised by law for which provision is made in the Criminal Code or in any other written law.

SENTENCES WHICH THE DISTRICT COURT MAY PASS

7. The District Court may pass any sentence, and make any order, authorised by law for which provision is made in the Criminal Code or in any other written law: Save that the District Court may not pass -

(a) sentence of death;

(b) sentence of imprisonment exceeding three years in respect of any one offence; or

(c) sentence of a fine exceeding three thousand dollars in respect of any one offence.

COMBINATION OF SENTENCES

8. (1) Subject to the provisions of the Criminal Code and of any other written law, the Supreme Court and the District Court may pass any lawful sentence combining any two or more of the sentences which such Court is authorised by law to pass.

(2) In determining the extent of the jurisdiction of the District Court under section 7 of this Act, any term of imprisonment which is, or may be, imposed in default of payment of a fine, costs or compensation shall be deemed not to be a sentence of imprisonment passed in respect of the offence for which the fine was imposed.

SEPARATE SENTENCE TO BE PASSED FOR EACH OFFENCE

9. (1) Where a person is convicted at one trial of two or more offences the Court shall pass sentence separately in respect of each offence.

(2) Where sentences of imprisonment are passed

on any person at one trial for two or more offences, the sentences shall run consecutively in such order as the Court which passes them may direct, unless that Court directs that they shall run concurrently.

(3) The maximum aggregate sentences of imprisonment and fine which may be imposed by the District Court on any one person at one trial are -

(a) imprisonment for six years; and

(b) fines totalling six thousand dollars.

(4) For the purpose of ascertaining whether or not there is a right of appeal, the aggregate of fines imposed on one person at one trial shall be deemed to be a single sentence.

PART III - ARREST OF OFFENDERS AND PREVENTION OF OFFENCES

ARREST WITHOUT WARRANT

10. (1) The powers of summary arrest conferred by this section shall apply to offences for which the sentence is fixed by law or for which a person may under or by virtue of any written law be sentenced to imprisonment for a term of five years or more and to any other offence specified as a cognisable offence, or as an offence in respect which the offender may be arrested without warrant, by this Act or any other written law, and to attempts to commit any such offences, and in this Act "cognisable offence" means any such offence or attempt.

(2) Any person may arrest without warrant anyone who is, or whom he, with reasonable cause, suspects to be, in the act of committing a cognisable offence.

(3) Where a cognisable offence has been committed, any person may arrest without warrant anyone who is, or whom he, with reasonable cause, suspects to be, guilty of the offence.

(4) Where a police officer, with reasonable cause, suspects that a cognisable offence has been committed, he may arrest without warrant anyone whom he, with reasonable cause, suspects to be guilty of the offence.

(5) A police officer may arrest without warrant any person who is, or whom he, with reasonable cause, suspects to be, about to commit a cognisable offence.

(6) For the purpose of arresting a person under any power conferred by this section a police officer may enter, if need be by force, and search any place where that person is or where the police officer, with reasonable cause, suspects him to be.

(7) This section shall not affect the operation of any enactment restricting the institution of proceedings for an offence nor prejudice any power of arrest conferred by law apart from this section.

MODE OF MAKING ARREST

11. (1) In making an arrest the person making it 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) A person may use such force as is reasonable in the circumstances in the prevention of crime or in effecting, or assisting in, the lawful arrest of offenders or suspected offenders or of persons unlawfully at large.

(3) The last preceding subsection shall replace the rules of the common law on the question when force used for a purpose mentioned in that subsection is justified by that purpose.

ENTRY TO ARREST PERSON UNDER WARRANT

12. For the purpose of arresting a person under a warrant of arrest, any person to whom such warrant is addressed may enter, if need be by force, and search any place where that person is or where he, with reasonable cause, suspects him to be.

POWER TO BREAK OUT OF HOUSE, ETC., FOR PURPOSE OF LIBERATION

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

NO UNNECESSARY RESTRAINT

14. No person arrested shall be subjected to more restraint than is reasonable to prevent his escape.

SEARCH OF ARRESTED PERSONS

15. (1) Where a person is arrested by a police

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

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

(a) stolen articles;

(b) instruments of violence;

(c) tools connected with the kind of offence which he is alleged to have committed; or

(d) other articles which may furnish evidence against him in regard to the offence which he is alleged to have committed.

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

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

(4) Whenever it is necessary to cause a woman or girl to be searched, the search shall be made only by another woman with strict regard to decency.

POWER OF POLICE OFFICER TO DETAIN AND SEARCH PERSONS, VEHICLES, VESSELS AND AIRCRAFT IN CERTAIN CIRCUMSTANCES

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

been stolen or unlawfully obtained or in respect of which he may reasonably suspect that a criminal offence has been, is being or is about to be, committed, together with the package, if any, containing it; and may also detain the person conveying, concealing or carrying such article:

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

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

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

Provided that no articles may be seized under the provisions of this subsection unless there is a possibility of such articles being removed or dealt with in such a way as to prevent their being available as evidence.

(4) Any person detained under this section shall be dealt with under the provisions of section 21 of this Act.

POWER TO SEIZE OFFENSIVE WEAPONS

17. Notwithstanding the provisions of section 15 of this Act, the police officer or other person making any arrest

may take from the person arrested any instruments of violence which he has about his person and shall deliver all articles so taken to the magistrate or police officer before whom the police officer or other person making the arrest is required by law to bring or send the person arrested.

REFUSAL TO GIVE NAME AND RESIDENCE

18. (1) Where 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 police officer to give his name and residence, or gives a name and residence which such police officer, with reasonable cause, suspects to be false, he may be arrested by that police officer, or any other police officer, in order that his name and residence may be ascertained or verified.

(2) When the true name and residence of a person arrested under the provisions of the last preceding sub-section have been ascertained he shall be released on his executing a recognizance, with or without sureties, for a reasonable amount to attend before the District Court at a time and place to be named in the recognizance: Provided that if such person is not normally resident in Nauru the recognizance shall be secured by a surety or sureties normally resident in Nauru or by the deposit of a sum of money sufficient to satisfy any penalty which may be payable upon forfeiture of the recognizance.

(3) Where the true name and residence of any person arrested under the provisions of this section have not been ascertained within twenty-four hours from the time of arrest, or if he fails to execute the recognizance or, if so required, to furnish sufficient sureties or to deposit the proper sum of money, he shall forthwith be brought before a magistrate.

DISPOSAL OF PERSON ARRESTED BY A POLICE OFFICER

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

DISPOSAL OF PERSON ARRESTED BY PRIVATE PERSON

20. (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, and in the absence of a police officer shall take such person to the police station.

(2) If there is reason to believe that such person has committed any cognisable offence, a police officer shall re-arrest him.

(3) If there is reason to believe that he has committed a non-cognisable 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 police officer, with reasonable cause, suspects to be false, he shall be dealt with under the provisions of section 18 of this Act. 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.

21. Where any person has been taken into custody without a warrant for an offence other than murder or treason, the magistrate or police officer of or above the rank of sergeant to whom such person shall have been brought may in any case, and shall if it does not appear practicable for such person to be brought before the District Court within twenty-four hours after he has been so taken into custody, inquire into the case and, unless the offence appears to the magistrate or police officer to be of a serious nature, release the person on his entering into a recognizance, with or without sureties, for a reasonable amount to attend before the District Court at a time and place to be named in the recognizance, but, where he has been taken before a police officer and not so released by that police officer, he shall be taken before a magistrate within twenty-four hours after his arrest and the magistrate shall inquire into the case and decide whether or not he should be so released and, where any person is detained in custody he shall be brought before the District Court as soon as practicable: Provided that a police officer of or above the rank of sergeant may release entirely a person arrested on suspicion that he has committed any offence where, after due police inquiry, insufficient evidence is, in his opinion, disclosed on which to proceed with the charge.

POLICE OFFICER TO REPORT CERTAIN ARRESTS

22. Where any person is released under the proviso to section 21, the police officer who authorised such release shall report the same to the Director of Police as soon as it is reasonably possible to do so.

OFFENCE COMMITTED IN MAGISTRATE'S PRESENCE

23. Where any cognisable offence is committed in the presence of a magistrate he may himself arrest, or authorise any person to arrest, the offender and may thereupon, subject to the provisions of this Act as to bail, commit the offender to custody.

ARREST BY MAGISIRATE

24. Any magistrate may at any time arrest, or authorise 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.

RECAPTURE OF PERSON ESCAPING

25. (1) Where 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.

(2) The provisions of sections 10, 11, 12 and 13 of this Act shall apply to arrests under this section.

ASSISTANCE TO MAGISTRATE OR POLICE OFFICER

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

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

(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 property of the Republic, the Council or the Nauru Phosphate Corporation.

SECURITY FOR KEEPING THE PEACE

27. Where a magistrate is informed on oath that any person is likely to commit a breach of the peace or to do any wrongful act that may probably occasion a breach of the peace, the magistrate may, in the manner

hereinafter provided, require such person to show cause to the District Court why he should not be ordered to enter into a recognizance, with or without sureties, for a reasonable amount for keeping the peace for such period, not exceeding one year, as the District Court thinks fit.

ORDER TO BE MADE

28. Where a magistrate acting under section 27 of this Act deems it necessary to require any person to show cause thereunder, he shall make an order in writing setting forth -

(a) the substance of the information received;

(b) the amount of the recognizance; and

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

PROCEDURE IN RESPECT OF PERSON PRESENT IN COURT

29. If the person in respect of whom any order is made under section 28 of this Act is present in court, the order shall be read over and explained to him.

SUMMONS OR WARRANT IN CASE OF PERSON NOT PRESENT IN COURT

30. If the person in respect of whom any order is made under section 28 of this Act is not present in court, the magistrate shall issue a summons requiring him to attend or, where such person is in custody, a warrant directing the officer in whose custody he is to bring him before the District Court:

Provided that, whenever it appears to the magistrate, upon the report of a police officer or upon other information, the substance of which report or information shall be recorded in writing 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 that person, the magistrate may at any time issue a warrant for his arrest.

COPY OF ORDER UNDER SECTION 28 TO ACCOMPANY SUMMONS OR WARRANT

31. Every summons or warrant issued under the last preceding section shall be accompanied by a copy of the order made under section 28 of this Act, and such copy shall be delivered by the officer serving or executing

such summons or warrant to the person served with or arrested under it.

POWER TO DISPENSE WITH PERSONAL ATTENDANCE

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

INQUIRY AS TO TRUTH OF INFORMATION

33. (1) Where an order under section 28 of this Act has been read or explained under section 29 of this Act to a person present in court, or where any person attends or is brought before the District Court in compliance with or in execution of a summons or warrant issued under section 30 of this Act, that Court 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) The inquiry shall be made, as nearly as may be practicable, in the manner prescribed by this Act for conducting trials and recording evidence in trials before the District Court.

(3) 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 Court thinks just.

ORDER TO GIVE SECURITY

34. (1) If upon an inquiry under section 33 of this Act it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should enter into a recognizance, with or without sureties, the District Court 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, that specified in the order made under section 28 of this Act; and

(b) the amount of every recognizance shall be fixed

with due regard to the circumstances of the case and shall not be excessive.

(2) Any person ordered to give security for good behaviour under this section may appeal to the Supreme Court, and the provisions of Part II of the Appeals -Act 1972 shall apply mutatis mutandis to every such appeal.

DISCHARGE OF PERSON INFORMED AGAINST

35. If on an inquiry under section 33 of this Act it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should enter into a recognizance, the District Court 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.

COMMENCEMENT OF PERIOD FOR WHICH SECURITY IS REQUIRED

36. (1) Where any person in respect of whom an order requiring security is made under section 28 or section 34 of this Act is, at the time such order is made, sentenced to or undergoing a sentence of imprisonment, the period for which such security is required shall commence on the expiration of such sentence.

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

(3) The recognizance to be entered into shall bind the person to keep the peace or to be of good behaviour, as the case may be, and in the latter case the commission or attempt to commit or the aiding, abetting, counselling or procuring the commission of any offence punishable with imprisonment, shall be a breach of the recognizance.

POWER TO REJECT SURETIES

37. The District Court may refuse to accept any surety offered under any of the preceding sections on the ground that, for reasons to be recorded by the Court, such surety is an unfit person.

PROCEDURE ON FAILURE OF PERSON TO GIVE SECURITY

38. (1) If any person ordered to give security under the provisions of section 34 of this Act does not give such security on or before the date on which the period for which such security is to be given commences, he shall, except in the case mentioned in the next following subsection, be committed to prison or, if he is already in prison, be detained in prison until such period expires or until within such period he gives the security to the District Court.

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

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

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

(5) If the security is tendered to the officer in charge of the prison, he shall forthwith refer the matter to the Court which made the order and shall await the order of that Court.

POWER TO RELEASE PERSONS IMPRISONED FOR FAILURE TO GIVE SECURITY

39. Where the resident magistrate is of opinion that any person imprisoned for failing to give security may be released without hazard to the community, he shall make an immediate report of the case for the order of a judge who may, if he thinks fit, order such person to be discharged.

POWER OF SUPREME COURT TO CANCEL RECOGNIZANCE

40. The Supreme Court or a judge may at any time, for sufficient reasons to be recorded in writing, cancel any recognizance for keeping the peace or for good behaviour executed under any of the preceding sections

by order of the District Court.

DISCHARGE OF SURETIES

41. (1) Any surety to any recognizance entered into under any of the preceding sections of this Act may at any time apply to the District Court to cancel the recognizance.

(2) On such application being made the District Court shall issue a summons or warrant, as it thinks fit, requiring the person for whom that surety is bound to attend or to be brought before it.

(3) Where that person attends or is brought before the District Court, the Court shall cancel the recognizance and shall order him to give, for the unexpired portion of the term of the recognizance, fresh security of the same description as the original security. Every such order shall for the purposes of sections 36, 37, 38 and 39 of this Act be deemed to be an order made under section 34 of this Act.

POWER TO ARREST AND PRODUCE BEFORE COURT PERSON ATTEMPTING TO KILL HIMSELF

42. Any police officer may, when he has reason to believe that any person has recently attempted, is attempting or is about to attempt to kill himself, arrest such person and produce him before the District Court, which may make an order in respect of such person requiring him to be under the supervision of a probation officer for such period as the Court may specify in the order: Provided that nothing in this section shall preclude any such person being dealt with under the provisions of the Mentally-disordered Persons Ordinance 1963-1967.

PART IV - PROVISIONS RELATING TO CRIMINAL PROCEEDINGS

GENERAL AUTHORITY OF DISTRICT COURT

43. The District Court has authority to cause to be brought before it any person who is in Nauru and is charged with an offence committed within, or which may be inquired into or tried within, Nauru and to deal with him according to its jurisdiction.

COURT TO BE OPEN

44. The place in which any Court is held for the

purpose of inquiring into or trying any offence shall be deemed an open court to which the public generally may have access, so far as it can conveniently contain them: Provided that the presiding judge or magistrate may, if he thinks fit, order before or at any stage of the inquiry into or trial of any particular case that the public generally or any particular person shall not have access to or be or remain in the room or building used by the Court.

APPOINTMENT OF DIRECTOR OF PUBLIC PROSECUTIONS

45. The President shall appoint a public officer to be the Director of Public Prosecutions and such Director of Public Prosecutions shall be responsible for the representation of the Republic in criminal proceedings before the Courts. He shall be ex officio a public prosecutor.

POWER OF DIRECTOR OF PUBLIC PROSECUTIONS TO ENTER NOLLE PROSEQUI

46. (1) In any criminal cause or matter and at any stage thereof before verdict or judgment, including the period between the committal of an accused person for trial by the Supreme Court and the filing of an information in that Court, the Director of Public Prosecutions may enter a nolle prosequi, 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 nolle prosequi is entered, and if he has been committed to prison shall be released, or if on bail his recognizances shall be discharged; but such discharge of an accused person shall not operate as a bar to any subsequent proceedings against him on account of the same facts.

(2) Where the accused is not before the Court when a nolle prosequi is entered -

(a) if he is detained in the prison, the Registrar or the Clerk, as the case may be, shall forthwith send to the Superintendent of the prison a notice in writing of its entry and the Superintendent shall, unless the accused is lawfully detained on another warrant, release him from custody forthwith; and

(b) if he is not detained in the prison, the Registrar

or the Clerk, as the case may be, shall send a notice in writing of its entry to him and to the sureties, if any, of any recognizance into which he may have been required to enter.

DELEGATION OF POWERS BY DIRECTOR OF PUBLIC PROSECUTIONS

47. The Director of Public Prosecutions may by an instrument in writing authorise that all or any of the powers and rights vested in, or duties imposed upon, him by sections 46, 180, 181, 182 and 185 of this Act may be exercised on his behalf by a public officer of the Department of Justice, and the exercise of those powers and rights and the performance of those duties by that officer in the name of the Director shall then operate as if they had been exercised or performed by the Director of Public Prosecutions:

Provided that the Director of Public Prosecutions may in writing revoke any authorisation made by him under this section;

And provided further that the Director of Public Prosecutions shall not cease to be able to exercise any of his powers by reason only of his having made an authorisation in respect of them under this section.

PUBLIC PROSECUTORS AND PROSECUTION BY POLICE OFFICERS

48. (1) The Director of Public Prosecutions may appoint in writing any public officer of the Department of Justice who is qualified to be admitted to practice as a barrister and solicitor to be a public prosecutor generally or for any specified case.

(2) The Director of Public Prosecutions may appoint in writing any barrister and solicitor or pleader to be a public prosecutor for any specified case.

(3) Any police officer may appear and conduct any prosecution in the District Court which has been instituted by himself or any other police officer or public officer.

(4) Every public prosecutor and every police officer conducting a prosecution shall be subject to the express directions of the Director of Public Prosecutions.

POWERS OF PUBLIC PROSECUTORS

49. A public prosecutor may appear and plead before

any Court in which any case of which he has charge is under inquiry, trial or appeal; and, if any private person instructs a barrister and solicitor or a pleader to prosecute in any such case, the public prosecutor may conduct the prosecution, and the barrister and solicitor or pleader so instructed shall act therein under his directions.

CONDUCT OF PROSECUTION

50. Any person, other than a public prosecutor, conducting the prosecution in any criminal proceedings may do so personally or by a barrister and solicitor or pleader.

COMPLAINT AND CHARGE

51. (1) Proceedings may be instituted either by the making of a complaint to a magistrate or by the bringing before the District Court of a person who has been arrested without warrant.

(2) Any person who believes from a reasonable and probable cause that an offence has been committed by any person may make a complaint thereof to a magistrate.

(3) A complaint may be made orally or in writing but, if made orally, shall be reduced to writing by the magistrate; and, in either case, it shall be signed by the complainant and the magistrate: Provided that, where proceedings are instituted by a police officer or any other public officer acting in the course of his duty, a formal charge duly signed by that officer may be presented to the magistrate and shall, for the purposes of this Act, be deemed to be a complaint.

(4) The magistrate, upon receiving any such complaint, shall, unless the complaint has been laid in the form of a formal charge under the last preceding subsection, draw up, or cause to be drawn up, and sign a formal charge containing a statement of the offence with which the accused is charged.

(5) Where an accused person who has been arrested without a warrant is brought before the District Court, a formal charge, containing a statement of the offence with which the accused is charged, shall be signed and presented by a police officer.

ISSUE OF SUMMONS OR WARRANT

52. (1) Where a magistrate has signed a charge

in accordance with the provisions of the section 51 and the accused person is not in lawful custody, the magistrate may in his discretion, but subject to the provisions of section 62 of this Act, issue either a summons or a warrant to compel the attendance of the accused person before the District Court for that Court to inquire into or try the offence alleged to have been committed:
Provided that a warrant shall not be issued in the first instance unless the complaint has been made, or the charge presented, upon oath either by the complainant or by a witness.

(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 under this section may be issued on a Sunday or public holiday.

NOTICE TO ATTEND COURT

53. (1) Notwithstanding the other requirements of this Act, it shall be lawful for any police officer to institute proceedings by, and to serve personally upon any person who is reasonably suspected of having committed any offence to which this section applies, a notice in the prescribed form requiring that person to attend court in answer to the charge stated therein at such place and on such date and time, not being less than two days from the date of such service, as shown on such notice or to attend by a barrister and solicitor or pleader or to enter a written plea of guilty:
Provided that such notice shall be served not later than fourteen days after the date upon which the offence is alleged to have been committed.

(2) A notice served in accordance with the provisions of the preceding subsection shall for all purposes be regarded as a summons issued under the provisions of this Act and, in the event of a person upon whom such a notice has been served failing to comply with the requirements of the notice, a warrant for the arrest of that person may, subject to the provisions of section 62 of this Act, be issued notwithstanding that no complaint has been made on oath.

(3) A copy of every notice issued under this section shall be signed by the police officer issuing it and shall be lodged with the Clerk of the District Court before the time stated therein for attendance and shall be deemed to be a charge presented by that police officer.

(4) The provisions of section 61 shall apply mutatis mutandis to any notice issued under this section.

(5) This section shall apply to all offences punishable only by a fine or by imprisonment, with or without a fine, for a term not exceeding three months.

(6) Nothing in this section shall be deemed to prevent the institution of proceedings in respect of such offences under the other provisions of this Act.

FORM AND CONTENTS OF SUMMONS

54. (1) Every summons issued by a magistrate under this Act shall be in writing, in duplicate, signed by the magistrate.

(2) Every summons shall be directed to the person summoned and shall require him to attend at a time and place to be therein appointed before the District Court. It shall state shortly the offence with which the person against whom it is issued is charged.

SERVICE OF SUMMONS

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

SERVICE WHEN PERSON SUMMONED CANNOT BE FOUND

56. Where the person summoned cannot by the exercise of due diligence be found, the summons may be served by leaving the duplicate of it for him with an adult person normally residing in the same dwelling-house as the person summoned or with his employer.

PROCEDURE WHERE SERVICE CANNOT BE EFFECTED AS BEFORE PROVIDED

57. Where service in the manner provided by sections 55 and 56 cannot by the exercise of due diligence be effected, the serving officer shall affix the duplicate 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 COMPANY OR CORPORATION

58. Service of a summons on an incorporated company or a corporation or other body corporate may be effected by serving the duplicate of it on the secretary, local manager or other principal officer of the company, corporation or body corporate or in such other manner as the resident magistrate may direct.

WHERE SUMMONS MAY BE SERVED

59. Subject to any written law relating to the privileges and immunities of Parliament and its members, a summons may be served at any place within Nauru.

PROOF OF SERVICE

60. An affidavit purporting to be made before a magistrate or Commissioner for Oaths that a summons has been served shall be admissible in evidence and the statements made therein shall be deemed to be correct unless and until the contrary is proved; the summons shall be annexed to the affidavit or the affidavit may be endorsed on the same paper as the summons.

POWER TO DISPENSE WITH PERSONAL ATTENDANCE OF ACCUSED

61. (1) Where a magistrate issues a summons in respect of any offence the maximum sentence for which is imprisonment for a term not exceeding three years, with or without a fine, and whether or not any disqualification may be ordered or may result from the accused being convicted, he may if he sees reason to do so, and shall where no sentence of imprisonment for a term exceeding three months may be imposed for the offence with which the accused is charged or, where he is charged with more offences than one, for any of those offences, whether or not any disqualification may be ordered, direct that the personal attendance of the accused will be dispensed with provided that he pleads guilty in writing or attends by a barrister and solicitor or pleader. Every such summons shall include a notice stating that any fine which may be imposed by the Court must be paid within eight days of the date appointed in the summons for attendance thereon and a warning that he will not receive notification from the Court as to any such fine but that it is his duty to make inquiry from the Court and that, if he fails to pay the fine within

that time or to apply within that time to the Court for an extension of that time, he will be liable to be committed to prison.

(2) Where a direction that the personal attendance of the accused will be dispensed with has been given in a summons under this section, the District Court may in its discretion, at any subsequent stage of the proceedings, direct the personal attendance of the accused and, if necessary but subject to the provisions of section 62 of this Act, enforce his attendance in the manner hereinafter in this Act provided; but no warrant shall be issued unless a complaint or charge has been made upon oath or sworn evidence has been given in proof of the offence charged.

(3) Where the District Court convicts an accused person and it is proved to the satisfaction of the Court that not less than seven days before that conviction a notice was served on him in the prescribed form and manner specifying any alleged previous conviction of him for an offence proposed to be brought to the notice of the Court in the event of his conviction of the offence charged, and the accused is by reason of the provisions of this section or section 53 not present in person before the Court, the Court may take account of any such previous conviction so specified as if the accused had appeared and admitted it.

(4) Where the District Court imposes a fine on an accused person who is not present in person before the Court by reason of the provisions of this section or section 53, the Court may forthwith impose a sentence of imprisonment, not exceeding the term authorised by section 19A of the Criminal Code, to be served by the accused person in default of payment of the fine within eight days or such further time as may be allowed by the Court; and, unless it has granted an extension of time for payment, the Court may, upon such default, forthwith issue a warrant for his arrest and committal to prison to serve that sentence.

(5) Where the District Court is of the opinion that it would be just to order disqualification under the provisions of the Motor Traffic Act 1937-1972 in respect of an accused person who is not present in person before the Court by reason of the provisions of this section or section 53,it shall order a summons to be served upon him calling upon him to show cause why such disqualification

should not be imposed and, if the accused person does not attend upon the return of the summons or fails to show good cause why the disqualification should not be imposed, the Court may order disqualification.

WARRANT AFTER ISSUE OF SUMMONS

62. (1) Notwithstanding the issue of a summons, a warrant for the arrest of the accused may, subject to the provisions of the next following subsection, be issued at any time before or after the time appointed in the summons for his appearance; but no such warrant shall be issued before the time appointed in the summons for his appearance unless the complaint has been made or the charge prosecuted upon oath, or sworn evidence has been given in proof of the offence.

(2) A warrant for the arrest of any person shall not be issued under this section, section 52, section 53 or section 61 of this Act unless the offence to which the warrant relates is punishable with imprisonment otherwise than only in default of payment of a fine.

SUMMONS DISOBEYED

63. If an accused person, after proper service of a summons, does not attend at the time and place appointed in and by the summons, and his personal attendance has not been dispensed with under section 61 of this Act, the District Court may issue a warrant to arrest him and cause him to be brought before it.

FORM, CONTENTS AND DURATION OF WARRANT OF ARREST

64. (1) Every warrant of arrest issued under this Part of this Act shall be signed by the magistrate issuing it and bear the seal of the District Court.

(2) Every such warrant shall state shortly the offence with which the person against whom it is issued is charged and shall name or otherwise describe him; and it shall order the person or persons to whom it is directed to arrest him and bring him before the District Court to answer to the charge therein mentioned and to be further dealt with according to law.

(3) Every such warrant shall remain in force until it is executed or until it is cancelled by the District Court.

COURT MAY DIRECT SECURITY TO BE TAKEN

65. (1) A magistrate, when issuing a warrant for the arrest of any person in respect of any offence other than murder or treason, may in his discretion direct by endorsement on the warrant that, if that 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 person to whom the warrant is directed shall take such security and shall release that person from custody.

(2) An endorsement under the preceding subsection 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 District Court.

(3) Wherever security is taken under this section, the person to whom the warrant is directed shall forward the bond to the District Court.

TO WHOM WARRANTS ARE TO BE DIRECTED

66. (1) A warrant of arrest shall normally be directed generally to all police officers; but the District Court 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 it.

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

NOTIFICATION OF SUBSTANCE OF WARRANT

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

PERSON ARRESTED TO BE BROUGHT BEFORE THE COURT WITHOUT DELAY

68. A person arrested under a warrant of arrest shall, subject to the provisions of section 65 of this Act, be brought without unnecessary delay before the District

Court.

WHERE WARRANT OF ARREST MAY BE EXECUTED

69. Subject to any written law relating to the privileges and immunities of Parliament and its members, a warrant of arrest may be executed at any place in Nauru.

IRREGULARITIES IN WARRANT

70. 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 preliminary 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, the Court may, at the request of the accused, adjourn the hearing of the case to some future date and in the meantime remand him to prison or admit him to bail.

POWER TO TAKE BOND FOR ATTENDANCE

71. Where any person for whose attendance a magistrate is empowered to issue a summons is present in the District Court, the Court may require that person to execute a bond, with or without sureties, for his attendance in that Court.

ARREST FOR BREACH OF BOND FOR ATTENDANCE

72. Where any person who is bound by any bond taken under this Act to attend before the District Court or who has made a deposit of money in lieu of executing such a bond does not so attend, the Court may issue a warrant directing that he be arrested and brought before it.

POWER OF COURT TO ORDER PRISONER TO BE BROUGHT BEFORE IT

73. (1) Where any person for whose attendance or arrest a magistrate is empowered to issue a summons or warrant is confined in the prison, a magistrate may issue an order to the Superintendent of the prison requiring him to bring that person in proper custody before the District Court at a time to be named in the order and, where that person is committed for trial to the Supreme Court, the Registrar may issue an order similarly for him to be brought before the Supreme Court.

(2) The Superintendent of the prison shall, on receipt of an order made under this section, act in accordance therewith and shall provide for the safe custody of the prisoner during his absence from the prison for that purpose.

PROVISIONS OF THIS PART GENERALLY APPLICABLE TO SUMMONSES AND WARRANTS

74. The provisions contained in this Part relating to the issue, service and execution of summonses and warrants shall, so far as they may be applicable, apply to the issue, service and execution of every summons and every warrant of arrest issued under this Act.

POWER TO ISSUE SEARCH WARRANT

75. Where it is proved on oath to a magistrate 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, vehicle, box, receptacle or place, the magistrate may issue a search warrant authorising a police officer or other person therein named to search the building, ship, aircraft, vehicle, box, receptacle or place, which shall be named or described in the warrant, for any such thing and, if anything searched for be found, or any other thing which there is reasonable cause to suspect to have been stolen or unlawfully obtained be found, to seize it and bring it before the District Court to be dealt with according to law.

EXECUTION OF SEARCH WARRANTS

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

(2) As soon as practicable after the execution of a search warrant, the warrant shall be returned to the District Court endorsed with details of its execution; the person upon whose application the warrant was issued shall be responsible for its proper return.

PERSONS IN CHARGE OF CLOSED PLACES TO ALLOW INGRESS THERETO AND EGRESS THEREFROM

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

(2) If ingress to or egress from any building or other place liable to search in execution of a search warrant is not allowed in accordance with the last preceding subsection, the police officer or other person executing the warrant may proceed in the manner authorised by sections 12 and 13 of this Act.

(3) Where any person in or about any building or place liable to search in execution of a search warrant is reasonably suspected of having any article for which search is authorised concealed about his person, that person may be searched; if that person is a woman or girl, the provisions of subsection (4) of section 15 of this Act shall be observed.

DETENTION OF PROPERTY SEIZED

78. (1) Where any thing is seized and brought before the District Court under the provisions of section 76 of this Act, it may be detained until the conclusion of the case or the inquiry, reasonable care being taken for its preservation.

(2) If any appeal is taken, or if any person is committed for trial, the District Court may order that anything seized and brought before it under the provisions of section 76 shall be further detained for the purpose of the appeal or the trial.

(3) If no appeal is taken, or if no person is committed for trial, the District Court shall direct that anything seized and brought before it under the provisions of section 76 shall be restored to the person from whom it was taken, unless the Court is authorised or required by law to dispose of it otherwise or that person consents to its being disposed of otherwise.

PROVISIONS APPLICABLE TO SEARCH WARRANTS

79. Where applicable the provisions of sections 64(1) and (3), 66 and 69 of this Act shall apply to all search warrants issued under section 75 of this Act.

BAIL IN CERTAIN CASES

80. (1) Subject to the provisions of section 21 of this Act, where any person, other than a person accused of murder or treason, is arrested or detained without warrant by a police officer or attends or is brought before the District Court and is prepared at any time while in the custody of the police officer or at any stage of the proceedings before the Court to give bail, he may in the discretion of the police officer or the Court be admitted to bail with or without a surety or sureties.

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

(3) Notwithstanding anything contained in subsection (1) of this section, a judge of the Supreme Court may in any case direct that any person be admitted to bail with or without sureties or that the bail required by the District Court or a police officer be reduced or any requirement as to sureties be varied.

RECOGNIZANCE OF BAIL

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

DISCHARGE FROM CUSTODY

82. (1) As soon as the recognizance, with or without sureties as the case may be, has been entered into, a person admitted to bail shall be released and where he is in prison the Court shall issue an order of release to the Superintendent of the prison and the Superintendent on receipt of the order shall release him.

(2) Nothing in this section shall be deemed

to require the release of any person liable to be detained for some matter other than that in respect of which the recognizance was entered into.

DEPOSIT INSTEAD OF RECOGNIZANCE

83. Where any person may be required by the District Court or any police officer to enter into a recognizance, such Court or officer may, except in the case of a recognizance for good behaviour, permit him to deposit as security for his attendance before a Court at a time and place specified by the Court or officer a sum of money to such amount as the Court or officer may fix in lieu of executing such a recognizance.

POWER TO ORDER SUFFICIENT BAIL WHEN THAT FIRST TAKEN IS INSUFFICIENT

84. If, through mistake, fraud or otherwise, insufficient or unfit sureties have been accepted, or if they afterwards become insufficient or unfit, the District Court may issue a summons or a warrant of arrest, as it thinks fit, directing that the person released on bail come or be brought before it and may order him to find sufficient and fit sureties, and if he fails to do so may commit him to prison.

DISCHARGE OF SURETIES

85. (1) All or any of the sureties for the attendance of a person released on bail may at any time apply to the District Court to discharge the recognizance either wholly or so far as it relates to the applicant or applicants.

(2) On such application being made the District Court shall issue a summons or a warrant of arrest, as it thinks fit, directing that the person so released attend or be brought before it.

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

DEATH OF SURETY

86. Where a surety to a recognizance dies before

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

ARREST OF PERSONS GRANTED BAIL

87. (1) A police officer may arrest without warrant any person who has been admitted to bail -

(a) if the officer has reasonable grounds for believing that that person is likely to break the condition that he will attend at the time and place required or any other condition on which he was admitted to bail, or has reasonable cause to suspect that that person is breaking or has broken any such other condition; or

(b) on being notified in writing by any surety for that person that the surety believes that that person is likely to break the first-mentioned condition and for that reason the surety wishes to be relieved of his obligations as a surety.

(2) A person arrested under the last preceding subsection -

(a) shall, except where he was so arrested within the period of twenty-four hours immediately preceding an occasion on which he is required by virtue of a condition of his bail to attend before the District Court, be brought before that Court as soon as practicable and in any event within twenty-four hours after his arrest; and

(b) in the said excepted case shall be brought before the Court as aforesaid.

(3) Where a person is brought before the District Court under the last preceding subsection, the Court may, if of the opinion that that person has broken or is likely to break any condition on which he was admitted to bail, commit him to prison or release him on his original recognizance or on a new recognizance, with or without sureties; and, if not of that opinion, it shall release him on his original recognizance.

FORFEITURE OF RECOGNIZANCE

88. (1) Where the District Court has taken a recognizance under this Act, or where a recognizance has

been taken for attendance before any Court, and it is proved to the satisfaction of that Court that the recognizance has been forfeited, the Court shall record the grounds of such proof and may call upon any person bound by the recognizance to pay the penalty thereof or to show cause why it should not be paid.

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

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

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

(5) Where a sum of money has been deposited in lieu of executing a recognizance conditional for the attendance of a person before a Court, that Court, if the sum of money appears to the Court to be forfeited, may make an order accordingly:

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

APPEAL FROM AND REVISION OF ORDERS

89. Any orders made under the last preceding section by the District Court shall be appealable to, and may be revised by, the Supreme Court under the Appeals Act 1972.

OFFENCE TO BE SPECIFIED IN CHARGE OR INFORMATION WITH NECESSARY PARTICULARS

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

JOINDER OF COUNTS IN A CHARGE OR INFORMATION

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

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

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

JOINDER OF TWO OR MORE ACCUSED IN ONE CHARGE OR INFORMATION

92. (1) The following persons may be joined in one charge or information and may be tried together, namely -

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

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

(c) persons accused of 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 Criminal Code or of any other written law, committed by them jointly within a period of twelve months;

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

(e) persons accused of any offence under Chapters XXXVI to XLIV, inclusive, of the Criminal 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 offences.

(2) Where, before trial or at any stage of a trial, the Court is of opinion that the interests of justice require that one or more of several accused who are included in the one charge or information be tried separately from the others, it may so order and separate trials shall thereupon be held as ordered.

RULES FOR THE FRAMING OF CHARGES AND INFORMATIONS

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

(a) Mode in which offences are to be charged -

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

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

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

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

(iv) the forms set out in the Schedule to this Act or forms conforming thereto as nearly as may be shall be used in the cases to which they are applicable;

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

(b) Provisions as to statutory offences -

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

(c) Description of property -

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

(ii) where the property is vested in more than one person and the owners of the property are referred to in a charge or information, it shall be sufficient to describe the property as owned by one of those persons by name with others, and if the persons owning the property are a body of persons with a collective name, such as a firm or "inhabitants", "trustees", "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 or department may be described as the property of the Republic;

(iv) coin and bank or currency notes of Nauru or of any foreign country 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 the amount of money, whether coin, bank note or currency note, even though the particular species of coin or note of which that amount was composed is not proved and, in cases of stealing, embezzling and obtaining by false pretences, by proof that the accused person dishonestly appropriated or obtained any coin, bank note or currency note, or any portion of the value thereof, even though that coin, bank note 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 it or to some other person and that part has been returned accordingly;

(d) Description of persons -

The description or designation in a charge or information 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, title 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, a description or designation shall be given such as is reasonably practicable in the circumstances, or the person may be described as "a person unknown";

(e) Description of documents -

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

(f) General rule as to description -

Subject to any other provisions of this section, it shall be sufficient to describe any place, time, thing, matter, act or omission whatsoever to which it is

necessary to refer in any charge or information in ordinary language in such a manner as to indicate with reasonable clarity the place, time, thing, matter, act or omission referred to;

(g) Statement of intent -

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 defining the offence does not make an intent to defraud, deceive or injure a particular person an essential ingredient of the offence;

(h) Mode of charging previous convictions -

Where a previous conviction of an offence is alleged in a charge or information, it shall be alleged at the end of the charge or information by means of a statement that the accused has been previously convicted of the offence at a certain time and place without stating the particulars of the offence;

(i) Use of figures and abbreviations -

Figures and abbreviations may be used for expressing anything which is commonly expressed thereby;

(j) Gross sum may be specified in certain cases of stealing -

Where a person is charged with stealing, it shall be sufficient to specify the gross amount of property alleged to have been stolen and the dates between which the stealing is alleged to have been committed without specifying particular times or exact dates.

PERSON CONVICTED OR ACQUITTED NOT TO BE TRIED AGAIN FOR SAME OFFENCE

94. A person who has been once tried by a Court of competent jurisdiction for an offence and convicted or acquitted of that offence shall, while such conviction or acquittal has not been reversed or set aside, not be liable to be tried again on the same facts for the same offence or any offence in respect of which he could have been convicted on the charge, or any count of the charge, of which he was acquitted and, if required by any Court to plead to an information or charge in respect of such an offence, may, instead of pleading to the information or charge, plead that he has already been convicted or acquitted of that offence, and the Court shall thereupon try whether that plea is true and only if it finds the plea to be untrue shall the Court require him to plead

to the information or charge or to the count relating to that offence.

PERSON MAY BE TRIED AGAIN FOR SEPARATE OFFENCE

95. A person convicted or acquitted of an offence may afterwards be tried for any other offence with which he might have been charged on the former trial under subsection (1) of section 91 of this Act, except an offence of which he could have been convicted on any charge, or any count of the charge, in respect of which he was acquitted.

CONSEQUENCES SUPERVENING OR NOT KNOWN AT TIME OF FORMER TRIAL

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

WHERE ORIGINAL COURT WAS NOT COMPETENT TO TRY SUBSEQUENT CHARGE

97. Subject to the provisions of section 16 of the Criminal Code, a person convicted or acquitted of any offence constituted by any acts or omissions may, notwithstanding such conviction or acquittal, be subsequently charged with and tried for that or any other offence constituted wholly or in part by the same acts or omissions, if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

HOW A PREVIOUS CONVICTION MAY BE PROVED

98. (1) In any trial or other proceeding under this Act, a previous conviction in Nauru may be proved by a copy of the sentence or order certified as such under the hand of the Registrar or Clerk, as the case may be, of the Court in which the conviction was had together with evidence as to the identity of the accused person with the person so convicted, or by any other mode provided by any law for the time being in force.

(2) A certificate in the form prescribed by the Minister given under the hand of a person appointed by the Minister in that behalf who shall have compared the

fingerprints of an accused person with the fingerprints of a person previously convicted shall be prima facie evidence of all facts therein set forth, provided that it is produced by the person who took the fingerprints of the accused.

(3) A previous conviction in any place outside Nauru may be proved by the production of a certificate purporting to be given under the hand of a police officer in the country where the conviction was had containing a copy of the sentence or order and the fingerprints or photographs of the fingerprints of the person so convicted, together with evidence that the fingerprints of the person so convicted are those of the accused person. Such a certificate shall be prima facie evidence of all facts therein set forth without proof that the officer purporting to sign it did in fact sign it, was a police officer and was empowered so to do.

WHEN LEAVE OF CABINET NECESSARY BEFORE PROSECUTION MAY BE INSTITUTED

99. Proceedings for the trial of any person who is not normally resident in Nauru for an offence committed on the open sea within the territorial waters of Nauru shall not be instituted in any Court except with the leave of the Cabinet and upon a certificate purporting to be signed by the Secretary to the Cabinet that the Cabinet considers it expedient that such proceedings should be instituted:

Provided that for the purposes of the requirement of consent and a certificate under this section proceedings before the District Court under Part VII of this Act are not proceedings for the trial of a person;

And provided further that it shall not be necessary to aver in any charge or information that the consent or certificate of the Cabinet required by this section has been given and the fact of it having been given shall be presumed unless disputed by the accused person at the trial.

POWER TO SUMMON MATERIAL WITNESSES AND EXAMINE PERSONS PRESENT

100. (1) Any Court may at any stage of any proceeding under this Act, of its own motion or on the application of any party, summon any person as a witness, or examine

any person in attendance though not summoned as a witness, or recall and re-examine any person already examined, and the Court shall, unless the circumstances make it impossible to do so, summon and examine or recall and re-examine any such person if his evidence, or further evidence, appears to it essential to the just decision of the case: Provided that the prosecutor, or the barrister and solicitor or pleader, if any, for the prosecution, and the accused, or his barrister and solicitor or pleader, if any, shall have the right to cross-examine any such person, and the Court shall adjourn the case for such time, if any, as it thinks necessary to enable such cross-examination to be adequately prepared if, in its opinion, either party may be prejudiced by the calling of any such person as a witness.

(2) The provisions of section 49 of the Courts Act 1972 shall apply mutatis mutandis in respect of any person who fails to attend before any Court in obedience to a summons issued under the preceding subsection as though that summons had been issued under section 48 of the said Courts Act.

EVIDENCE TO BE GIVEN ON OATH OR AFFIRMATION

101. Every witness in a criminal cause or matter shall be examined upon oath or affirmation, and the Court before which any witness attends shall have full power and authority to administer the usual oath or affirmation: Provided that the Court may at any time, if it thinks it just and expedient for reasons to be recorded in the proceedings, take without oath or affirmation the evidence of any person who by reason of immature age ought not, in the opinion of the Court, to be admitted to give evidence on oath or affirmation; the fact of the evidence having been so taken shall be recorded in the proceedings.

REFRACTORY WITNESSES

102. Any person who, attending 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 affirmed,

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

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

without in any such case offering any sufficient excuse for such refusal or neglect, is guilty of an offence and is liable to imprisonment for six months and a fine of two hundred dollars.

COMPULSORY DISCLOSURES NOT TO AFFORD EVIDENCE

103. In any proceedings in respect of any offence against any written law, a statement or admission made by any person in any compulsory examination or deposition before any Court on the hearing of any matter in bankruptcy or insolvency is not admissible in evidence against that person.

NEGATIVE AVERMENTS

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

CASES WHERE WIFE OR HUSBAND MAY BE CALLED WITHOUT THE CONSENT OF THE ACCUSED

105. (1) In any inquiry or trial the wife or husband of the accused shall be a competent witness for the prosecution or defence without the consent of the accused -

(a) in any case where the wife or husband of the accused may, under any law in force for the time being, be called as a witness without the consent of the accused;

(b) in any case where the accused is charged with an offence under Chapter XXII or section 360 of the Criminal Code; and

(c) in any case where the accused is charged in respect of an act or omission affecting the person or property of the wife or husband of the accused or the children of either of them.

(2) For the purposes of this part of this Act no person shall be deemed to be the wife or husband of any other person unless they are lawfully married to one another.

COMPETENCY OF ACCUSED AND HUSBAND OR WIFE AS WITNESS IN CRIMINAL CASES

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

Provided that -

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

(b) the wife or husband of the accused shall not, save as provided in section 105, be called as a witness except upon the application of that accused;

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

(d) an accused who is a witness in pursuance of this section may be asked any question in cross-examination, notwithstanding that it would tend to incriminate him as to the offence charged;

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

(i) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged;

(ii) he has personally or by his barrister and solicitor or pleader asked questions of any witness with a view to establishing his own good character or has given evidence of his own good character, or the nature or conduct of the defence is such as to involve imputations on the character of the complainant or the witnesses for the prosecution; or

(iii) he has given evidence against any other person charged with the same offence;

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

(g) nothing in this section shall affect the provisions of section 202 of this Act or any right of the accused to make a statement without being sworn.

PROCEDURE WHERE ACCUSED IS CALLED AS WITNESS

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

RIGHT OF REPLY

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

INQUIRY BY COURT AS TO UNSOUNDNESS OF MIND OF ACCUSED

109. (1) Where in the course of a trial or inquiry or at any time after a formal charge has been presented or drawn up, the Court which has charge of the proceedings has reason to believe that the accused may be of unsound mind so as to be incapable of making his defence, it shall inquire into the fact of such unsoundness and, if the accused is not present in court and it appears to the Court that it would be unreasonable to bring him before the Court, he shall be interviewed by a magistrate, in whatever place is most appropriate, for the purpose of endeavouring to explain to him the nature of the charge and of hearing whatever he has to say which is relevant to the issue of insanity and the magistrate shall cause a note of the interview to be placed on the record of the proceedings.

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

(3) If the case is one in which bail may be

taken, the Court may release the accused person on sufficient security being given that he will be properly taken care of and prevented from doing injury to himself or to any other person, and for his attendance before the Court or such officer as the Court may appoint in that behalf.

(4) Upon consideration of the court record or a copy thereof, the President may order that the accused be confined in a hospital or a suitable place of custody and the Court shall issue a warrant in accordance with that order. Any such order of the President shall be sufficient authority for the detention of the accused person until the President shall make a further order in the matter or until the Court which has found him incapable of making his defence orders him to be brought before it again in the manner provided by section 112 of this Act and, while so confined, the accused shall be deemed to be in lawful custody.

DEFENCE OF UNSOUNDNESS OF MIND AT PRELIMINARY INQUIRY

110. Where the accused appears to be of sound mind at the time of a preliminary inquiry, the District 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 virtue of the provisions of section 27 of the Criminal Code not criminally responsible for the act, shall proceed with the inquiry and, if the accused ought, in the opinion of the Court, to be committed for trial on information, the Court shall so commit him.

DEFENCE OF UNSOUNDNESS OF MIND ON TRIAL

111. 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 by virtue of the provisions of section 27 of the Criminal Code he was not criminally responsible for his act or omission at the time when the act was done or the omission made, then, if it appears to the Court before which that person is tried that he did the act or made the omission charged but was not criminally responsible as aforesaid at the time when he did or made it, the Court shall make a special finding to the effect that the accused was not guilty by reason of insanity. Where such a special finding is made,

the Court shall report the case for the order of the President and shall meanwhile order the accused to be kept in custody in such place and in such manner as the Court shall direct. The President may order the accused to be confined in a hospital or in a prison or other suitable place of safe custody and, while so confined, the accused shall be deemed to be in lawful custody.

RESUMPTION OF TRIAL OR INQUIRY

112. Where any preliminary inquiry or trial is postponed under the provisions of section 109 of this Act, the Court may at any time resume the inquiry or trial and require the accused to attend or be brought before it and, if the Court then 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.

CERTIFICATE OF MEDICAL OFFICER OF HOSPITAL AS TO SANITY TO BE EVIDENCE

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

PROCEDURE WHERE ACCUSED DOES NOT UNDERSTAND PROCEEDINGS

114. (1) Where the accused, though not of unsound mind, cannot be made to understand the proceedings -

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

by a judge of the Supreme Court;

(b) in cases which are the subject of a preliminary inquiry by the District Court and of trial by the Supreme Court -

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

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

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

(2) A person ordered under the provisions of this section to be detained during the President's pleasure shall be liable to be detained in such place and under such conditions as the President may, from time to time, by order in writing, direct and, while so detained, shall be deemed to be in lawful custody.

(3) The President may at any time, of his own motion or after receiving a report from any person or persons thereunto empowered by him, order that a person detained as provided in the last preceding subsection be discharged or otherwise dealt with subject to such conditions as to the person remaining under supervision

in any place or by any person, and such other conditions for ensuring the welfare of the said person and the public, as the President shall think fit.

(4) Where a person has been ordered to be detained during the President's pleasure under the provisions of subsection (1) of this section, the confirming or presiding judge shall forward to the President a copy of the notes of evidence taken at the trial, together with a report in writing signed by him containing any recommendation or observations on the case he may think fit to make.

MODE OF DELIVERING JUDGMENT

115. (1) The judgment in every trial of a criminal cause in any Court in the exercise of its original jurisdiction shall be delivered, or the substance of such judgment shall be explained, in open court either immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties and their barristers and solicitors or pleaders, if any:

Provided that the whole judgment shall be read out by the presiding judge or magistrate, or the magistrate having charge of the proceedings, as the case may be, if he is requested to do so either by the prosecution or the defence.

(2) The accused shall, if in custody, be brought before the Court and, if not in custody, be required by the Court to attend, to hear judgment delivered, except where the Court has proceeded to the determination of the case in the absence of the accused under section 151 of this Act or his personal attendance during the trial has been dispensed with and the sentence is one of a fine only or where he is acquitted.

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

CONTENTS OF JUDGMENT

116. (1) Every judgment in the trial of a criminal

cause shall, except as otherwise expressly provided by any written law, be written by the presiding judge or magistrate, or the magistrate having charge of the proceedings, as the case may be, in the language of the Court, 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 judge or magistrate, or the magistrate having charge of the proceedings, in open court at the time of pronouncing it:
Provided that where the accused has admitted the truth of the charge and has been convicted, it shall be a sufficient compliance with the provisions of this subsection if the judgment contains only the finding and sentence or other final order and is signed and dated by the presiding judge or magistrate, or the magistrate having charge of the proceedings, as the case may be, at the time of pronouncing it.

(2) In the case of a conviction the judgment shall specify the offence of which, and in the case of an offence defined by the Criminal Code or any other written law the section of the Criminal Code or other written law under which, the accused is convicted and the sentence imposed.

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

COPY OF JUDGMENT, ETC., TO BE GIVEN TO ACCUSED ON APPLICATION

117. On the application of the accused a copy of the judgment or, if he so desires and it is reasonably practicable, a translation in his own language, shall be given to him free of cost without unnecessary delay.

COSTS

118. (1) The Supreme Court or the District Court may order any person convicted before it of an offence, or discharged by it under the provisions of any written law following a finding that he is guilty of an offence, to pay to a public or private prosecutor such reasonable costs as to that Court may seem fit, in addition to any other penalty imposed.

(2) Where the Supreme Court or the District

Court acquits or discharges a person accused of an offence, it may order the prosecutor, whether public or private, to pay to the accused such reasonable costs as to that Court may seem fit:

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

(3) The costs awarded under this section may be awarded in addition to any compensation awarded under section 120 of this Act. Payment of costs by the accused or by a private prosecutor shall be enforceable in the same manner as a fine.

(4) Costs ordered to be paid by a public prosecutor shall be paid from, and be a charge upon, the Treasury Fund.

(5) In this section "private prosecutor" means any prosecutor other than a public prosecutor or a police officer appearing and conducting a prosecution in pursuance of subsection (3) of section 48 of this Act.

ORDER TO PAY COSTS APPEALABLE

119. An appeal shall lie to the Supreme Court under the Appeals Act 1972 from any order made by the District Court awarding costs.

COMPENSATION IN CASE OF FRIVOLOUS OR VEXATIOUS CHARGES

120. If on the acquittal of an accused or the dismissal of any charge the District Court is of opinion that the charge was frivolous or vexatious, the Court may order the complainant to pay to the accused in addition to his costs a reasonable sum as compensation for the trouble and expense to which he has been put by reason of the charge.

POWER OF COURTS TO AWARD EXPENSES OR COMPENSATION OUT OF FINE

121. (1) Any Court may, in its discretion, order the whole or any part of any fine imposed or money found on or in the possession of a person who has been, or is subsequently, convicted, or who has been, or is subsequently, discharged without conviction under the provisions of any written law following a finding that he is guilty of an offence, to be applied in or towards -

(a) the defraying of the costs or expenses properly incurred in the prosecution;

(b) the payment to any person of compensation for any loss or injury caused by the offence of which the accused has been convicted or found guilty or by any other offence which is taken into consideration by the Court in determining his sentence;

(c) the defraying of any compensation awarded under the provisions of the last preceding section;

(d) the payment to any person of compensation for any loss sustained by him in consequence of any order made under the provisions of this Part of this Act for the restitution or disposal of any property or thing.

(2) In determining whether or not to impose a fine and in deciding the quantum of a fine, a Court may take into account the fact that an order under the preceding subsection would be appropriate but shall at all times have regard to the means of the accused as they appear or are known to the Court.

(3) If an order is made under subsection (1) in a case which is subject to appeal no payment ordered shall be made before the period allowed for presenting the appeal has elapsed or, if an appeal is presented, before the determination of the appeal.

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

(5) At any time before compensation has been paid in pursuance of an order made under subsection (1) if it appears to the Court that -

(a) the loss or injury in respect of which the order was made has been held in civil proceedings to be less than it was taken to be for the purposes of the order; or

(b) where the order related to the loss of any property, the property has been recovered by the person in whose favour the order was made,

the Court may, upon the application of the accused, cancel or amend the order and by such amendment may, if it thinks fit, order that any part of the fine, if paid, be refunded to the accused.

(6) Where the Supreme Court in the exercise of its appellate or revisional jurisdiction imposes or increases

any fine or quashes an order of acquittal and imposes a conviction, it shall have the same powers to make an order under subsection (1) as though it were the court of first instance.

PAYMENT TO INNOCENT PERSON OF MONEY FOUND ON ACCUSED

122. Where any person is found guilty of any offence of, or which includes, stealing or receiving stolen property and the Court which has found him guilty is satisfied that any other person has bought the stolen property from him without knowing or having reason to suspect that it was stolen, then, if any money has been found on or in the possession of the person found guilty, the Court may, whether or not it proceeds to conviction, on the application of the purchaser and on the restitution of the stolen property to the person entitled to the possession thereof, order that out of that money a sum not exceeding the price paid by the purchaser shall be delivered to him.

PROMOTION OF RECONCILIATION

123. A Court may on terms of payment of compensation or other terms approved by it promote reconciliation and encourage and facilitate the settlement in an amicable way of all proceedings before it for common assault or for any other offence of a personal or private nature for which, upon conviction, a fine or sentence of imprisonment for a term not exceeding one year may be imposed, and may thereupon order the proceedings to be stayed or terminated.

PRESERVATION OR DISPOSAL OF PROPERTY

124. (1) It shall be lawful for any Court in any criminal proceedings to make orders for -

(a) the preservation, or interim custody or detention, of any property produced in evidence or as to which any question may arise in the proceedings;

(b) the sale, destruction or other disposal of any such property as may be of a perishable nature or liable to deteriorate, or as may be dangerous;

(c) the restoration or awarding of possession of any such property to the person appearing to the Court to be entitled to possession thereof, without prejudice however to any civil proceedings which may be taken with respect thereto;

(d) the payment by any person of the expense incurred in or about the preservation, custody, detention, sale, destruction or other disposal of any such property or the proceeds thereof;

(e) the application of any such property or the proceeds thereof, in or towards satisfaction or payment of any such costs or compensation as may be ordered by the Court to be paid by any person.

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

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

PROPERTY STOLEN TO BE RESTORED TO OWNER

125. (1) If any person guilty of any such offence as is mentioned in Chapters XXXVI to XLIV, inclusive, of the Criminal Code, by stealing, taking, obtaining, extorting, converting or disposing of, or by knowingly receiving, any property, is prosecuted to conviction by a public prosecutor or by or on behalf of the owner of that property, or is found guilty on any such prosecution but is discharged under the provisions of any written law without conviction, the property shall be restored to the owner or his representative.

(2) In every case referred to in the preceding subsection, the Court before which any such offender is convicted, or discharged without conviction, shall have power to award from time to time writs of restitution for the property or to order the restitution thereof in a summary manner:

Provided that -

(a) where goods as defined in the Sale of Goods Act 1893 of England in its application to Nauru have been obtained by fraud or other wrongful means not amounting to stealing, the property in those goods shall not revest in the person who was the owner of the goods, or his personal representative, by reason only of

the conviction of the offender; and

(b) nothing in this section shall apply to the case of any valuable security which has been in good faith paid or discharged by some person liable for 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 had been stolen.

(3) The operation of any order under this section shall, unless the Court before which the conviction or discharge takes place directs to the contrary in any case in which the title to the property is not in dispute, be suspended -

(a) in any case until the time allowed for presenting an appeal has passed, and

(b) in a case where an appeal is presented, 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, unless the Supreme Court so directs. The Chief Justice may make provision by rules for securing the safe custody of any property pending the suspension of the operation of any such order.

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

STAY OF ORDER

126. Upon the application of any person affected by any order or interested in the property the subject of any order made under the provisions of the last preceding two sections, the Supreme Court may direct any such order made by the District Court to be stayed pending consideration by the Supreme Court and may modify, alter or annul any such order.

RESTORATION OF POSSESSION OF REAL PROPERTY

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

(2) Any order under this section may be enforced by warrant addressed to a police officer.

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

PROCEDURE BY POLICE ON SEIZURE OF PROPERTY

128. (1) A report of any property or thing which has come into the possession of any police officer in connection with any charge or offence or suspected offence, the ownership of which property or thing is in doubt, shall be made forthwith to the resident magistrate who shall make such order as he thinks fit respecting the delivery of the property to the person entitled to the possession thereof or, if such person cannot be ascertained, respecting the custody and protection of the property.

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

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

(4) If the person entitled to possession of the property is unknown or cannot be found, the resident magistrate shall direct that the property be detained in police custody and it shall thereafter be dealt with in accordance with the provisions of section 28 of the Nauru Police Force Act 1972 as though it were property which

has come into the custody of the police other than in connection with a criminal charge and the provisions of section 31 of that Act shall apply to such property where appropriate.

CONVICTION OF MINOR OFFENCE INCLUDED IN OFFENCE CHARGED

129. (1) Where a person is charged with an offence consisting of several particulars, one or a combination of some only of which constitutes another complete offence, and that one particular, or such combination, is proved but the remaining particulars are not proved, he may be convicted of that other offence although he is not charged with it.

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

(3) In this subsection, a minor offence is one for which, upon conviction, a lesser maximum sentence is provided by law.

CONVICTION OF ATTEMPT

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

CONVICTION OF KILLING UNBORN CHILD ON CHARGE OF MURDER, ETC.

131. Where a person is charged with the murder or manslaughter of any child, or with an offence under section 224 or section 225 of the Criminal Code relating to the procuring of abortion, and the Court by which he is tried is of opinion that he is not guilty of murder, manslaughter or of an offence under section 224 or section 225 of the Criminal Code, but is satisfied that he is guilty of the offence of killing an unborn child, he may be convicted of that offence although he is not charged with it.

CONVICTION OF PROCURING ABORTION ON CHARGE OF KILLING UNBORN CHILD

132. Where a person is charged with killing an unborn child and the Court by which he is tried is of opinion that he is not guilty of that offence but is satisfied that he is guilty of an offence under section 224 or section 225 of the Criminal Code, he may be convicted

of that offence although he is not charged with it.

CONVICTION OF CONCEALMENT OF BIRTH ON CHARGE OF MURDER, ETC.

133. Where a person is charged with the murder or infanticide of any child or with killing an unborn child and the Court by which he is tried is of opinion that he is not guilty of any of those offences but is satisfied that he is guilty of an offence under section 314 of the Criminal Code, he may be convicted of that offence although he is not charged with it.

CONVICTION OF CARELESS OR DANGEROUS DRIVING ON CHARGE OF MANSLAUGHTER

134. Where a person is charged with manslaughter in connexion with the driving of a motor vehicle by him and the Court by which he is tried is of the opinion that he is not guilty of the offence charged, but is satisfied that he is guilty of an offence under section 19 of the Motor Traffic Act 1937-1972, he may be convicted of that offence although he is not charged with it.

CONVICTION OF COGNATE OFFENCE ON CHARGE OF RAPE

135. Where a person is charged with rape and the Court is of opinion that he is not guilty of that offence but is satisfied that he is guilty of an offence under one of the sections 212, 214, 215, 218, 222 and 350 of the Criminal Code, he may be convicted of that offence although he is not charged with it.

CONVICTION OF UNLAWFUL CARNAL KNOWLEDGE ON CHARGE OF INCEST

136. Where a person is charged with an offence under section 222 of the Criminal Code and the Court by which he is tried is of opinion that he is not guilty of that offence but is satisfied that he is guilty of an offence under section 212 or section 215 of the Criminal Code, he may be convicted of that offence although he is not charged with it.

CONVICTION OF COGNATE OFFENCE ON CHARGE OF DEFILEMENT OF GIRL UNDER SEVENTEEN YEARS OF AGE

137. Where a person is charged with the defilement of a girl under the age of seventeen years and the Court by which he is tried is of opinion that he is not guilty of that offence but is satisfied that he is guilty of an

offence under one of the sections 212, 218 and 350 of the Criminal Code, he may be convicted of that offence although he is not charged with it.

CONVICTION OF COGNATE OFFENCE ON CHARGE OF DEFILEMENT OF GIRL UNDER THIRTEEN YEARS OF AGE

138. Where a person is charged with the defilement of a girl under the age of thirteen years and the Court by which he is tried is of opinion that he is not guilty of that offence but is satisfied that he is guilty of an offence under one of the sections 215, 218 and 350 of the Criminal Code, he may be convicted of that offence although he is not charged with it.

CONVICTION OF COGNATE OFFENCE ON CHARGE OF BURGLARY, ETC.

139. Where a person is charged with any offence mentioned in Chapter XXXIX of the Criminal Code and the Court by which he is tried is of opinion that he is not guilty of that offence but is satisfied that he is guilty of any other offence mentioned in that Chapter, he may be convicted of that other offence although he is not charged with it.

CONVICTION OF RECEIVING, RETAINING OR OBTAINING BY FALSE PRETENCES ON CHARGE OF STEALING

140. Where a person is charged with stealing any thing and -

(a) it is proved that he received or retained the thing knowing, or having reason to believe, it to have been stolen, he may be convicted of the offence of receiving or retaining although he is not charged with it;

(b) it is proved that he obtained the thing in any such manner as would amount, under the provisions of the Criminal Code or of any other written law for the time being in force, to obtaining it by a false pretence or a wilfully false promise with intent to defraud, he may be convicted of the offence of obtaining it by a false pretence or a wilfully false promise although he is not charged with it.

CONVICTION OF STEALING ON CHARGE OF OBTAINING BY A FALSE PRETENCE

141. Where a person is charged with obtaining anything capable of being stolen by a false pretence or a wilfully

false promise with intent to defraud and it is proved that he stole the thing, he may be convicted of the offence of stealing although he is not charged with it.

CONVICTION OF ASSAULT WITH INTENT TO ROB ON CHARGE OF ROBBERY

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

CONSTRUCTION OF SECTIONS 129 TO 142 INCLUSIVE

143. The provisions of sections 129 to 142, inclusive, of this Act shall be construed as in addition to, and not in derogation of, the provisions of any other written law and the other provisions of this Act, and the provisions of sections 130 to 142, inclusive, shall be construed as being without prejudice to the generality of the provisions of section 129.

PERSONS CHARGED WITH JOINTLY RECEIVING PROPERTY MAY BE CONVICTED ON PROOF THAT PROPERTY WAS RECEIVED SEPARATELY

144. Where any two or more persons are charged with jointly receiving or retaining any property knowing, or having reason to believe, the same to have been stolen or unlawfully obtained, and it is proved that one or more of such persons separately received or retained any part of such property, such of the persons may be convicted as are proved to have received any part of such property.

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

EVIDENCE TO BE TAKEN IN PRESENCE OF ACCUSED

145. Except as otherwise expressly provided, all evidence taken in any inquiry or trial under this Act shall be taken in the presence of the accused or, where his personal attendance has been dispensed with, in the presence of his barrister and solicitor or pleader if any: Provided that nothing in this section shall render it unlawful for any Court to take evidence in an inquiry or trial in the absence of the accused, if he has by his misconduct in court prevented the taking of such evidence

in his presence.

PROOF BY WRITTEN STATEMENT

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

(2) The conditions referred to in the last preceding subsection are -

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

(b) the person who made it cannot conveniently attend before the Court at the time when the Court will take evidence in those proceedings;

(c) 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;

(d) before the trial 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

(e) none of the other parties, or their barristers and solicitors or pleaders if any, within seven days from the service of the copy of the statement, serves on the party so proposing a notice objecting to the statement being tendered in evidence under this section:

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

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

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

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

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

(d) if it is in any language other than the language of the Court, it shall have annexed to it a translation into that language made and certified by an officer of either of the Courts or by some other person authorised in writing in that behalf by the Chief Justice; and

(e) if it is in a language which is not the mother tongue of the accused and that person does not understand the English language and is not represented by a barrister and solicitor or pleader, there shall be annexed to the copy served on that accused a translation into the language which is his mother tongue, or another language which he understands, made and certified by an officer of either of the Courts or by some other person authorised in writing in that behalf by the Chief Justice.

(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 and where the Court so directs an account shall be given orally of so much of any statement as is not read aloud.

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

(6) A document required by this section to be served on any person may be served -

(a) by delivering it to him or to his barrister and solicitor or pleader;

(b) by addressing it to him and leaving it at his usual or last known place of residence or place of business;

(c) in the case of an incorporated company, corporation or other body corporate, by serving it on the secretary, local manager or other principal officer of the company, corporation or body or in such other manner as the Court may direct.

PROOF BY FORMAL ADMISSION

147. (1) Subject to the provisions of 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 prosecutor or accused and the admission by any party of any such fact under this section shall as against that party be conclusive evidence in those proceedings of the fact admitted.

(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 accused who is a natural person, shall purport to be signed by the person making it and, if so made by or on behalf of an accused which is a body corporate, shall purport to be signed by a director, manager, secretary or other officer of the body corporate;

(d) if made on behalf of an accused who is a natural person, shall be made by his barrister and solicitor or pleader, if he is represented, and by himself if he is unrepresented;

(e) if made at any stage before the trial by an accused who is a natural person, must be approved and countersigned by a barrister and solicitor or pleader representing him, whether at the time it was made or subsequently, before or at the proceedings in question.

(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 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 was made or any subsequent criminal proceedings relating to the same matter.

NOTICE OF ALIBI

148. (1) On a trial in the Supreme Court the accused shall not without the leave of the Court adduce evidence in support of an alibi unless, before the end of the prescribed period, he gives notice of particulars of the alibi.

(2) Without prejudice to the last preceding subsection, on any such trial the accused shall not without the leave of the Court call any other person to give such evidence unless -

(a) the notice under that subsection includes the name and address of the witness or, if the name or address is not known to the accused at the time he gives the notice, any information in his possession which might be of material assistance in finding the witness;

(b) if the name or the address is not included in that notice, the Court is satisfied that the accused, before giving the notice, took and thereafter continued to take all reasonable steps to secure that the name or address would be ascertained;

(c) if the name or the address is not included in that notice but the accused subsequently discovers the name or address or receives other information which might be of material assistance in finding the witness, he forthwith gives notice of the name, address or other information, as the case may be; and

(d) if the accused is notified by or on behalf of the prosecutor that the witness has not been traced by the name or at the address given, he forthwith gives notice of any such information which is then in his possession or, on subsequently receiving any such information, forthwith gives notice of it.

(3) The Court shall not refuse leave under this section if it appears to the Court that the accused was not informed by the District Court of the requirements of this section.

(4) Any evidence tendered to disprove an alibi may, subject to any directions by the Court as to the time it is to be given, be given before or after evidence is given in support of the alibi.

(5) Any notice purporting to be given under this section on behalf of the accused by his barrister and solicitor or pleader shall, unless the contrary is

proved, be deemed to be given with the authority of the accused.

(6) A notice under subsection (1) of this section shall either be given in court in the District Court during, or at the end of, the preliminary inquiry or be given in writing to the prosecutor, or his barrister and solicitor or pleader, if any, and a notice under paragraph (c) or paragraph (d) of subsection (2) of this section shall be given in writing to the prosecutor or his barrister and solicitor or pleader, if any.

(7) A notice required by this section to be given to the prosecutor or his barrister and solicitor or pleader may be given by delivering it to him, or by leaving it at his office.

(8) In this section -

"evidence in support of an alibi" means evidence tending to show that by reason of the presence of the accused at a particular place or in a particular area at a particular time he was not, or was unlikely to have been, at the place where the offence is alleged to have been committed at the time of its alleged commission;

"the prescribed period" means the period of seven days from the end of the preliminary inquiry in the District Court;

"the prosecutor", where the information has been filed by a public prosecutor, means the Director of Public Prosecutions.

INTERPRETATION OF EVIDENCE TO ACCUSED

149. (1) Where any evidence is given in a language not understood by the accused and he is present in person, it shall be interpreted to him in open court in a language which he understands.

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

PART VI - PROCEDURE IN TRIALS BEFORE THE DISTRICT COURT

NON-ATTENDANCE OF COMPLAINANT AT HEARING

150. (1) Where in any case which the District Court

has jurisdiction to hear and determine the accused attends in obedience to the summons served upon him at the time and place appointed in the summons for the hearing of the case, or is brought before the Court under arrest, then, if the complainant, having had notice of the time and place appointed for the hearing of the charge, does not attend, himself or by his barrister and solicitor or pleader, the Court shall dismiss the charge, unless for some reason it shall think it proper to adjourn the hearing of the case until some other date upon such terms as it shall think fit, in which event it may, pending that adjourned hearing, either admit the accused to bail or remand him to prison, or take such security for his attendance as the Court shall think fit, or order him to attend without taking security.

(2) The expression "barrister and solicitor or pleader" in this section and in sections 153 and 155 of this Act shall in relation to a complainant be taken to include a public prosecutor and a police officer appearing and conducting a prosecution in pursuance of subsection (3) of section 48 of this Act.

COURT MAY PROCEED WITH HEARING IN ABSENCE OF ACCUSED IN CERTAIN CASES

151. (1) Notwithstanding the provisions of section 145 of this Act, if an accused who has sent to the Court a plea of guilty in writing or is charged with any offence for which upon conviction the maximum sentence which can be imposed is a fine not exceeding two hundred dollars or imprisonment, otherwise than in default of payment of a fine, for a period not exceeding six months or both such fine and imprisonment does not attend in the District Court at the time and place appointed in and by the summons or by any bond for his attendance that he may have entered into, and his personal attendance has not been dispensed with under section 61 of this Act, the Court may, on being satisfied that the plea of guilty in writing is unequivocal or on proof of the proper service of the summons a reasonable time before, or on production of the bond, as the case may be, proceed to hear and determine the case in the absence of the accused or may adjourn the case and issue a warrant for the arrest of the accused in accordance with the provisions of section 63 of this Act.

(2) Notwithstanding the provisions of the preceding

subsection, no person shall be tried in his absence unless he has consented thereto:

Provided that, where any person has been served with a summons containing a direction made under section 61 for his personal attendance to be dispensed with and the summons is endorsed with a notice that, if he does not attend, he will be deemed to have consented to the trial taking place in his absence, he shall be deemed to have so consented.

ATTENDANCE OF BOTH PARTIES

152. Where at the time appointed for the hearing of the case both the complainant, by himself or by his barrister and solicitor or pleader if any, and the accused person attend before the District Court, or if the complainant attends in the manner aforesaid and the personal attendance of the accused has been dispensed with under section 61 of this Act, the Court shall, subject to the provisions of section 154 of this Act, proceed to hear the case.

WITHDRAWAL OF CHARGE

153. (1) The prosecutor in any case which is before the District Court for trial may with the consent of the Court at any time before a final order is passed in any case under this Part withdraw the charge.

(2) On any withdrawal as aforesaid -

(a) where the withdrawal is made after the accused person is called upon to make his defence, the Court shall acquit the accused;

(b) where the withdrawal is made before the accused person is called upon to make his defence, the Court shall subject to the provisions of sections 158 and 201 of this Act, in its discretion make one or other of the following orders -

(i) an order acquitting the accused;

(ii) an order discharging the accused.

(3) An order discharging the accused under sub-paragraph (ii) of paragraph (b) of the last preceding subsection shall not operate as a bar to subsequent proceedings against the accused on account of the same facts.

ADJOURNMENT

154. Before or during the trial of any charge by

the District Court, it shall be lawful for the Court in its discretion to adjourn the trial to a certain time and place to be then appointed and stated in the presence and hearing of the party or parties or their respective barristers and solicitors or pleaders, if any, then present, and in the meantime the Court may permit the accused to go at large, or may commit him to prison, or may release him upon his entering into a recognizance, with or without sureties at the discretion of the Court, conditioned for his attendance at the time and place to which such hearing or further hearing is adjourned:
Provided that no such adjournment shall be for more than thirty days or, if the accused has been committed to prison, for more than fifteen days.

NON-ATTENDANCE OF PARTIES AFTER ADJOURNMENT

155. (1) If at the time and place to which the trial or further trial of any criminal proceeding is adjourned by the District Court, the accused does not attend before the Court, and he has consented, personally or by his barrister and solicitor or pleader if any, to the trial taking place in his absence, the Court may, in its discretion, proceed with the trial or further trial as if the accused were present, and if the complainant does not attend, himself or by his barrister and solicitor or pleader, the Court may dismiss the charge with or without costs as the Court shall think fit.

(2) Where an accused who has not attended before the District Court at the time and place to which the trial, or further trial, of any criminal proceeding has been adjourned, has not consented to the trial taking place in his absence or the Court has in its discretion not proceeded with the trial or further trial, the Court may issue a warrant for his arrest and for him to be brought before the Court and shall further adjourn the trial or further trial accordingly.

CONVICTION IN ABSENCE OF ACCUSED MAY BE SET ASIDE

156. If the District Court convicts any accused in his absence, it shall set aside such conviction upon being satisfied that his absence was from causes over which he had no control and that he had a probable defence on the merits.

COMMENCEMENT OF SENTENCE PASSED IN ABSENCE OF ACCUSED

157. Any sentence passed on any person under section 151 or section 155 of this Act shall be deemed to commence from the date of his arrest in execution of the committal warrant, and the person making the arrest shall endorse the date thereof on the back of the warrant.

CERTAIN PROVISIONS RELATING TO SUPREME COURT TO APPLY TO DISTRICT COURT

158. The provisions of sections 187, 190, 191 (except subsection (1)), 192, 193, 194, 195, 198, 201, 202, 203, 204, 205, 206, 207, 210, 211 and 212 of this Act shall apply mutatis mutandis to trials in the District Court as they do to trials in the Supreme Court.

LIMITATION OF TIME FOR SUMMARY TRIALS IN CERTAIN CASES

159. Except where a longer time is specially allowed by law, no offence for which upon conviction the maximum sentence which may be imposed is one of imprisonment for a period not exceeding six months or a fine not exceeding two hundred dollars or both, whether or not such sentence may be accompanied by any order of disqualification, shall be triable by any Court, unless the charge or complaint relating to it is laid within six months from the time when the subject-matter of such charge or complaint arises.

POWER TO STOP SUMMARY TRIAL AND HOLD PRELIMINARY INQUIRY IN LIEU

160. (1) If before or at any stage of a trial by the District Court before the accused is required to make a defence it appears to the Court that the case is one which ought to be tried by the Supreme Court or if before the commencement of the trial an application in that behalf is made by the prosecutor or the accused that it shall be so tried, the District Court may, if it thinks fit, not proceed with the trial but in lieu thereof hold a preliminary inquiry in accordance with the provisions of Part VII of this Act.

(2) No appeal shall lie from the decision of the District Court upon any application made under this section.

(3) Where, under subsection (1) of this section, the District Court holds a preliminary inquiry into any offence after it has received evidence on the trial of that offence, that evidence shall be deemed to have been

received in the course of the preliminary inquiry and that part of it which is the evidence of any witness given in court or the written statement of any witness tendered under section 146 of this Act shall be deemed to be a deposition taken or a statement received under section 164 or section 166 of this Act.

COMMITTAL TO SUPREME COURT FOR SENTENCE

161. (1) Notwithstanding the provisions of sections 158, 190, 194 and 207 of this Act but subject to the provisions of this section, where an accused is tried by the District Court and convicted of any offence and, on obtaining information as to his character and antecedents, the District Court is of opinion that they are such that a greater sentence should be imposed in respect of the offence than it has power to impose, it may, in lieu of dealing with him in any manner in which it has power to deal with him, commit him in custody or on bail to the Supreme Court for sentence in accordance with the following provisions of this section.

(2) Where the accused is committed for sentence under this section the following provisions shall have effect, that is to say :

(a) the Supreme Court shall examine a copy of the record of the proceedings in the District Court and may itself inquire further into the circumstances of the case other than the finding of guilt and it shall have power to deal with the accused in any manner in which he could have been dealt with if he had been convicted by the Supreme Court;

(b) if dealt with by the Supreme Court, the accused shall have the same right of appeal against his conviction, if any, as if he had been convicted and sentenced by the District Court and shall have the same, but no greater right of appeal, if any, against his sentence as he would have had if he had been convicted and sentenced by the Supreme Court; and

(c) the Supreme Court, after hearing a public prosecutor representing the Republic if he desires to be heard, may, instead of dealing with the accused under paragraph (a) of this subsection, remit him, in custody or on bail, to the District Court for sentence and thereafter the accused shall be dealt with by that Court and

shall have the same right of appeal, if any, as he would have had if no such committal to the Supreme Court had been made.

PART VII - COMMITTAL OF ACCUSED PERSONS TO THE SUPREME COURT FOR TRIAL

DISTRICT COURT TO HOLD PRELIMINARY INQUIRY

162. (1) Where any charge has been brought against any person of an offence not triable by the District Court or as to which the District Court is of opinion that it ought to be tried by the Supreme Court, a preliminary inquiry shall be held by the District Court according to the provisions hereinafter contained.

(2) The language of the Court in any preliminary inquiry shall be English.

CHARGE TO BE READ OVER TO ACCUSED

163. At the commencement of a preliminary inquiry the Court shall read over and explain to the accused the charge in respect of which the inquiry is being held, and shall explain to him that he will have an opportunity later on in the inquiry of making a statement if he so desires, and shall further explain to him the purpose of the proceedings, namely to determine whether there is sufficient evidence to put him on his trial by the Supreme Court.

DEPOSITIONS

164. (1) The District Court, when holding a preliminary inquiry, shall, subject to the provisions of section 166 of this Act, in the presence of the accused take down in writing in English, or cause to be so taken down, the statements on oath of those who are competent to be sworn and the statements of any other witnesses whose evidence may lawfully be received and shall sign every such statement at the end thereof. Statements of witnesses so taken down in writing are termed depositions.

(2) The accused may put questions to every witness and the answer of the witness thereto shall form part of the deposition of that witness.

(3) If the accused is not represented by a barrister and solicitor or pleader, the Court shall, at

the close of the examination-in-chief of each witness for the prosecution, ask the accused whether he wishes to put any questions to that witness.

VARIANCE BETWEEN EVIDENCE AND CHARGE

165. At a preliminary inquiry no objection to a charge, summons or warrant for defect in substance or in form, or for variance between it and the evidence of the prosecution, shall be allowed; but if any variance appears to the Court to be such that the accused person has been thereby misled, the Court may, on the application of the accused, adjourn the inquiry and allow any witness to be recalled and such questions to be put to him as by reason of the terms of the charge may have been omitted and, if any witness is recalled, the prosecutor shall have the right to re-examine him on matters arising out of any such questions.

WRITTEN STATEMENTS BEFORE THE DISTRICT COURT

166. (1) Notwithstanding the provisions of sections 164 and 165 of this Act, in a preliminary inquiry under this Part of this Act a written statement by any person shall, if the conditions mentioned in the next following subsection 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 statement is tendered in evidence, a copy of the statement is given by or on behalf of the party proposing to tender it to each of the other parties to the proceedings; and

(d) none of the other parties, before the statement is tendered in evidence at the preliminary inquiry, objects to the statement being so tendered under this section.

(3) The following provisions shall also have effect in relation to any written statement tendered in

evidence under this section, that is to say -

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

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

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

(d) if it is in any language other than English, it shall have annexed to it a translation into English made and certified by an officer of either of the Courts or by some other person authorised in writing in that behalf by the Chief Justice; and

(e) if it is in a language which is not the mother tongue of the accused and that person does not understand the English language and is not represented by a barrister and solicitor or pleader, there shall be annexed to the copy given to him a translation into the language which is his mother tongue or another language which he understands made and certified by an officer of either of the Courts or by some other person authorised in writing in that behalf by the Chief Justice.

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

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

(6) Any document or object referred to as an exhibit and identified in a written statement tendered in evidence under this section shall be treated as if it

had been produced as an exhibit and identified in court by the maker of the statement.

(7) Any written statement admitted as evidence in any preliminary inquiry under the provisions of this section shall be deemed to be a deposition.

ADJOURNMENT

167. Where, from the absence of witnesses or any other reasonable cause to be recorded in the proceedings, the District Court considers it necessary or advisable, it may adjourn any preliminary inquiry from time to time for not more than thirty days and may either commit the accused to prison or release him on bail:
Provided that, where the accused is committed to prison, the period of any adjournment shall not exceed fifteen days.

PROVISIONS AS TO TAKING STATEMENT OR EVIDENCE OF ACCUSED PERSON

168. (1) If, after the prosecutor has adduced his evidence and closed his case, the Court considers that on the evidence as it stands there are sufficient grounds for committing the accused for trial, it shall satisfy itself that the accused understands the charge and shall ask the accused whether he wishes to give evidence on oath, to make an unsworn oral statement, to tender a written statement in accordance with section 166 or to refrain from doing any of these things. The Court shall also explain to the accused that he is not bound to give evidence or to make or tender any statement and that, if he does so, his evidence or statement may be made part of the evidence at the trial, if he is committed for trial.

(2) Everything which the accused says, either by way of sworn evidence or unsworn oral statement, shall be recorded in full in English and shall be shown or read over to him, and he shall be at liberty to explain or add to anything contained in the record thereof. When the whole is made conformable to what he declares is the truth, the record thereof shall be attested by the magistrate having charge of the proceedings who shall certify that the sworn evidence or the unsworn oral statement was given, or made, in his presence and hearing and contains accurately the whole evidence given or unsworn oral statement made, as the case may be, by the accused. The accused shall be

required by the Court to sign, or attest by his mark, such record. If he refuses, the Court shall add a note of his refusal and the record may be used as if he had signed or attested it.

(3) Where the accused tenders a statement made by him in writing in accordance with section 166 of this Act the provisions of that section shall apply mutatis mutandis, with the exception of those contained in paragraphs (c) and (d) of subsection (2) and in subsection (4).

EVIDENCE AND ADDRESS IN DEFENCE

169. (1) Immediately after complying with the requirements of section 168 relating to the evidence or unsworn oral statement of the accused, and whether the accused has or has not made or tendered a statement or given evidence, the Court shall ask him whether he desires to call any witness on his own behalf or to tender any written statement by any person other than himself in accordance with section 166 of this Act.

(2) The Court shall take the evidence of any witnesses called by the accused, or receive any written statement tendered in accordance with section 166 of this Act, in like manner as in the case of the evidence adduced by the prosecutor and that evidence and statement shall be deemed to be depositions.

(3) If the accused states that he has any witness to call but that he is not present in court, and the Court is satisfied that the absence of that witness is not due to any fault or neglect of the accused and that there is a likelihood that he could, if present, give material evidence on behalf of the accused, the Court may adjourn the inquiry in order to enable the evidence of that witness to be taken or his statement to be tendered under section 166 of this Act and may issue process, or take other steps, to compel the attendance of that witness.

(4) In any preliminary inquiry under this Part, the accused, or his barrister and solicitor or pleader if any, shall be at liberty to address the Court -

(a) if no witnesses for the defence are to be called and the accused does not give evidence or make or tender any statement, at the close of the prosecutor's case;

(b) if no witnesses for the defence are to be called

but the accused gives evidence or makes or tenders a statement, immediately after the evidence or statement of the accused person has been taken or received; or

(c) if the accused calls any witnesses for the defence or tenders the written statements of any witnesses, immediately after the evidence of those witnesses has been taken or their statements received.

(5) If the accused, or his barrister and solicitor or pleader if any, addresses the Court in accordance with the provisions of subsection (4) of this section, the prosecutor shall have a right to reply.

COMMITTAL FOR TRIAL

170. (1) If at the conclusion of a preliminary inquiry the District Court considers the evidence sufficient to put the accused on his trial, it shall commit him for trial to the Supreme Court and shall, until the trial, either admit him to bail, with or without sureties, or send him to prison for safe custody. The warrant of the District Court shall be sufficient authority to the Superintendent of the prison for his custody until his trial is completed.

(2) Where a company, corporation or body corporate is charged with an offence, the Court may, if at the conclusion of a preliminary inquiry it considers the evidence sufficient to put the company, corporation or body corporate on trial, make an order authorising the Director of Public Prosecutions to file an information against it, and for the purposes of this Act any such order shall be deemed to be a committal for trial.

(3) Where the Court commits an accused to the Supreme Court for trial it shall at the time of doing so ask him whether he intends to call as witnesses at his trial any persons other than those whose evidence has been taken, or whose written statements have been received, in the course of the preliminary inquiry and, if so, whether he wishes to give their names and addresses so that they may be summoned to attend at the trial, and, if he wishes to do so, the Court shall write their names and addresses on the record of the preliminary inquiry.

DISCHARGE OF ACCUSED

171. Where, at the close of the case for the prosecution or after receiving any evidence in defence, the Court

considers that the evidence against the accused is not sufficient to put him on his trial, it shall forthwith order him to be discharged as to the charge under inquiry; but such discharge shall not be a bar to any subsequent charge in respect of the same facts:

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

POWER TO APPLY TO SUPREME COURT FOR COMMITTAL IN CERTAIN CASES WHERE ACCUSED PERSON DISCHARGED

172. (1) In any case where the District Court has discharged an accused on a preliminary inquiry, the Court shall, if required to do so by the Director of Public Prosecutions, transmit forthwith to him a copy of the record of the proceedings and, if the Director of Public Prosecutions on considering the evidence is of opinion that the accused ought not to have been discharged, it shall be lawful for him to apply to a judge of the Supreme Court for an order that the accused be tried by the Supreme Court; and, if the judge considers that the evidence, as given before the District Court, was sufficient to put the accused on his trial, it shall be lawful for him to order that the accused be tried by the Supreme Court and, if he thinks fit, to issue a warrant for his arrest and committal to prison until his trial or his release on bail; and, where an order for trial by the Supreme Court is made, the accused shall be further prosecuted in the same manner as if he had been committed for trial by the District Court and for the purposes of the other provisions of this Act the District Court shall be deemed to have committed him for trial.

(2) No order for trial by the Supreme Court shall be made upon an application under the last preceding subsection made after the expiry of six months from the date of discharge.

(3) The Superintendent of the prison shall inform any person committed to the prison under the provisions of this section of his rights under section 174 of this

Act and, notwithstanding the other provisions of this Act, the District Court shall not be required so to inform him.

SUMMARY ADJUDICATION

173. (1) Where, at the close of or during a preliminary inquiry, it appears to the District Court that the offence charged or, where the evidence does not support the charge but discloses some offence other than that charged, any such offence disclosed is of such a nature that it may lawfully and suitably be dealt with under the powers vested in the District Court, it may, subject to the provisions of section 4 and Part VI of this Act, hear and finally determine the case.

(2) The power to hear and finally determine the case conferred on the District Court by the last preceding subsection shall, in the event of an offence having been disclosed other than the offence charged, include the power to draw up and sign a formal charge as if a complaint had been made under section 51 of this Act.

(3) The District Court dealing with a case under the provisions of this section may act on the evidence which has already been recorded before it or may recall all or any of the witnesses for further examination:
Provided that in every case the accused shall be entitled to have recalled for cross-examination, or further cross-examination, or for further examination all witnesses whom he may require to be recalled;
And provided that the provisions of this section shall not apply to any evidence received under the provisions of section 166 of this Act, unless such evidence could also have been lawfully received under the provisions of section 146 and the accused, or his barrister and solicitor or pleader if any, does not object to the Court acting on it.

ACCUSED ENTITLED TO COPY OF DEPOSITIONS

174. A person who has been committed for trial to the Supreme Court shall be entitled at any time before the trial to have a copy of the depositions on payment of a fee not exceeding thirty cents for every foolscap page, or part of a page, of that copy or, if the District Court thinks fit, without payment. The District Court shall at the time of committing him for trial inform him of the effect of this provision.

TAKING THE DEPOSITIONS OF PERSONS DANGEROUSLY ILL

175. Where it appears to any magistrate that any person dangerously ill or injured is not likely to recover and is able and willing to give material evidence relating to any offence for which, upon conviction by the Supreme Court a sentence of imprisonment for a term of five years or more may be imposed, the magistrate may, whether or not any person has been charged with any offence, take in writing the statement on oath or affirmation of that person, and shall sign it and certify that it contains accurately the whole of the statement made by that person, and shall add a statement of his reason for taking it and of the date and place when and where it was taken, and shall preserve it and file it for record.

NOTICE TO BE GIVEN

176. If any statement taken under section 175 relates, or is expected to relate, to an offence with which any known person has been, or may be, charged or committed for trial, reasonable notice of the intention to take the statement shall be given to that person, or to his barrister and solicitor or pleader if any, and to the Director of Public Prosecutions and if that person is in custody he shall be brought by the person in whose charge he is, or by another public officer on his behalf, under an order in writing of the magistrate, to the place where the statement is to be taken and shall be notified that, if he wishes, he may have a barrister and solicitor or pleader present and may cross-examine the person making the statement.

TRANSMISSION OF STATEMENTS

177. Where any statement taken under section 175 of this Act relates to an offence for which any person is then or subsequently committed for trial, it shall be transmitted by the Clerk to the Registrar, and a copy of it shall be transmitted by the Clerk to the Director of Public Prosecutions.

USE OF STATEMENT IN EVIDENCE

178. Any statement taken under section 175 of this Act may afterwards be used in evidence on the trial of any person accused of an offence to which it relates, if the person who made the statement is dead or the Court is

satisfied that for any sufficient cause his attendance cannot be procured and if reasonable notice of the intention to take the statement was served upon the person, whether prosecutor or accused, against whom it is proposed to be read in evidence, and he had or might have had, if he had chosen to be present, full opportunity of cross-examining the person making it.

TRANSMISSION OF RECORDS TO SUPREME COURT AND DIRECTOR OF PUBLIC PROSECUTIONS

179. In the event of a committal for trial the charge, the depositions, the evidence or statement of the accused person, the recognizances of bail, if any, and any documents or things which have been put in evidence, shall be transmitted without delay by the Clerk to the Registrar, and a copy of the depositions and statements certified by the Registrar shall be supplied to the Director of Public Prosecutions by the Registrar.

FILING OF AN INFORMATION

180. (1) After the receipt of the certified copy of the depositions and statements, the Director of Public Prosecutions shall, unless he enters a nolle prosequi, draw up and sign an information in accordance with the provisions of this Act and file it in the registry of the Supreme Court.

(2) In any information under this section the Director of Public Prosecutions may charge the accused with any offence which, in his opinion, is disclosed by the depositions either in addition to, or in substitution for, the offence upon which the accused has been committed for trial.

RETURN OF DEPOSITIONS FOR TRIAL IN THE DISTRICT COURT

181. (1) Where, after an information has been filed and prior to the trial, a judge is of the opinion, upon perusing the depositions, statements and exhibits, that the case is one which is within the jurisdiction of, and may suitably be tried in, the District Court, he may, of his own motion or upon the application of any party, cause the depositions, statements and exhibits to be returned to that Court and the information to the Director of Public Prosecutions and order that the accused be tried in the District Court:

Provided that no order may be made under the provisions of this subsection until the Director of Public Prosecutions and the accused or his barrister and solicitor or pleader, if any, have been afforded an opportunity by the judge to state to him orally or in writing any reasons why such an order should not be made.

(2) Where an order is made under the last preceding subsection, the District Court shall forthwith take such steps as may be necessary in accordance with the provisions of this Act to compel the accused to attend before it and shall try him as directed:
Provided that, where the District Court is constituted for the trial by the same magistrate or magistrates as presided at the preliminary inquiry, the provisions of subsection (3) of section 173 of this Act shall apply;
And provided further that, where an accused has been admitted to bail to await his trial, he shall be deemed to have been bound thereby to attend before the District Court.

NOTICE OF TRIAL

182. (1) Where an information has been filed in the registry of the Supreme Court, the Registrar shall, unless a judge makes an order under subsection (1) of section 181 for the depositions, statements and exhibits to be returned to the District Court -

(a) endorse on, or annex to, every information filed as aforesaid, and every copy thereof delivered to the police officer for its service, a notice of trial, which notice shall specify the particular sitting of the Supreme Court at which the accused is to be tried on that information and shall be in the following form:

"A.B.

Take notice that you will be tried on the information whereof this is a true copy at the sitting of the Supreme Court to be held at on the day of 19 ."; and

(b) deliver or cause to be delivered to the police officer serving the information a copy thereof with the notice of trial endorsed thereon or annexed thereto and, if there are more accused committed for trial than one, then as many copies as there are such accused;

and the police officer to whom a copy of the information is so delivered shall, as soon as possible after having received it and not less than three days before the day specified in the notice of trial as the date of the trial, by himself or some other officer, deliver to every accused named in the information a copy of the information and notice and explain to him the nature thereof; and where any accused has been admitted to bail and cannot readily be found, he shall leave a copy of the information and notice of trial with an adult person normally residing in the same dwelling-house as the accused for him and, if none such can be found, shall affix the copy and notice to the outer or principal door of the dwelling-house of the accused:

Provided always that nothing herein contained shall prevent any person committed for trial and present in court at the opening of or during any sitting of the Supreme Court from being tried thereat, if he shall consent to be so tried and no objection is made thereto on the part of the Director of Public Prosecutions.

RETURN OF SERVICE

183. An officer serving a copy of an information and the notice of trial shall forthwith make to the Registrar a return of the mode of service thereof and the provisions of section 60 of this Act shall apply mutatis mutandis to proof of the service.

POSTPONEMENT OF TRIAL

184. It shall be lawful for the Supreme Court or a judge upon the application of the prosecutor or the accused, if the Court considers that there is sufficient cause for the delay, to postpone the trial of any accused person to any subsequent sitting of the Court.

INFORMATION BY DIRECTOR OF PUBLIC PROSECUTIONS

185. All informations drawn up in pursuance of section 180 of this Act shall be in the name of and, subject to the provisions of section 47 of this Act, signed by the Director of Public Prosecutions.

FORM OF INFORMATION

186. Every information shall bear the date of the day when it is signed and, with such modifications as shall be

necessary to adapt it to the circumstances of each case, shall be in the form prescribed in the Schedule to this Act.

PART VIII - PROCEDURE IN TRIALS BEFORE THE SUPREME COURT

PRACTICE OF SUPREME COURT IN ITS CRIMINAL JURISDICTION

187. Subject to the express provisions of this Act, the practice of the Supreme Court in its criminal jurisdiction shall be such as the Court directs.

TRIALS BEFORE SUPREME COURT TO BE BY A JUDGE ALONE

188. Trials before the Supreme Court shall be by a judge alone.

ACCUSED ABSENT

189. Where on the day and at the time set for the trial of any information the accused is not present in court, the Court shall adjourn the trial and may, unless the accused is in lawful custody, issue a warrant for him to be arrested and brought before the Court:
Provided that where the information charges more than one person and one or more of those persons is present in court, the Court may, in its discretion, either adjourn the trial of all the accused or proceed with the trial of those of them who are present and order that the accused who is absent be tried separately.

ACCUSED TO BE CALLED UPON TO PLEAD

190. (1) Where the accused is present in court, the substance of the information shall be stated to him by the Court and he shall be asked whether he admits or denies the truth of the information.

(2) If the accused admits the truth of the information, his admission shall be recorded as nearly as possible in the words used by him or in an English translation of those words and the prosecutor shall then state the details of the offence alleged.

(3) If the accused admits the truth of the details of the offence stated by the prosecutor and they constitute the offence charged, the Court shall record a finding that he is guilty of that offence; if he denies the truth of any of those details, the Court shall record that he has pleaded "not guilty".

(4) Where the Court has recorded a finding under this section that an accused is guilty of the offence charged, it shall, after hearing him, or his barrister and solicitor or pleader if any, as to any mitigating circumstances and any evidence thereof which may be advanced, either convict him and pass sentence on, or make an order against, him in accordance with the law or, if authorised by any written law to do so, discharge him without proceeding to conviction.

(5) If the accused does not admit the truth of the information, the Court shall record a plea of "not guilty" and proceed to hear the case as hereinafter provided in this Part of this Act.

(6) If the accused refuses to plead, the Court shall record that fact and he shall be deemed not to admit the truth of the information and to have pleaded "not guilty".

(7) Where a company, corporation or body corporate is charged upon an information with any offence it may enter a plea by its representative; and if either the company, corporation or body corporate does not attend by representative or, though it does so attend, fails to enter any plea, the Court shall record this fact and the company, corporation or body corporate shall be deemed to have entered a plea of "not guilty".

(8) A representative for the purposes of this section need not be appointed under the seal of the company, corporation or body corporate and a statement in writing purporting to be signed by a director, manager, secretary or other principal officer of the company, corporation or body corporate, or by any person, by whatsoever name called, having, or being one of the persons having, the management of its affairs, to the effect that the person named in the statement has been appointed as the representative of the company, corporation or body corporate for the purposes of this section shall be admissible without further proof as prima facie evidence that that person has been so appointed.

ORDERS FOR AMENDMENT OF INFORMATION, SEPARATE TRIAL, AND ADJOURNMENT OF TRIAL

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

(2) Where, before a trial by the Supreme Court or at any stage thereof before judgment, it appears to the Court that the information is defective, either in substance or in form, or inappropriate to the facts disclosed by the depositions or the evidence received during the trial, the Court may make such order for the alteration of the information, either by amending the particulars of the offence or by substituting a new offence for the offence charged or by deleting any count or by adding a new count, as the Court thinks necessary to meet the circumstances of the case:

Provided that where the information is altered under the provisions of this section -

(a) the Court shall inform the accused of the substance of the alteration and call upon him to plead to the altered information;

(b) the accused may demand that the witnesses, or any of them, be recalled and give their evidence afresh or be further examined, cross-examined or re-examined by the accused, or his barrister and solicitor or pleader if any, and, if any witness is recalled, the prosecutor shall have the right to cross-examine any such witness or, as the case may be, to re-examine him on matters arising out of any such further examination or cross-examination.

(3) Variance between the information and the evidence adduced in support of it with respect to the date and time at which the alleged offence was committed or with respect to the description, value or ownership of any property the subject of the information is not material and the information need not be amended for any such variation, save where the variation is with respect to the date or time at which the alleged offence was committed and the proceedings have in fact not been instituted within any time limited by law for the institution thereof.

(4) Where the information is altered under this section or there is such a variance between the information and the evidence as is referred to in the last preceding subsection, the Court shall, if it is of the opinion that the accused may have been thereby misled and that the interests of justice require that the trial be adjourned so that he may prepare his defence afresh, adjourn the trial for such period as it considers necessary for that purpose.

(5) Where an information is altered under this section, a note of the order for alteration shall be endorsed on the information, and the information shall be treated for the purposes of all proceedings in connection therewith as having been filed in the amended form.

(6) Where an order of the Court is made for a separate trial under subsection (3) of section 91 -

(a) the procedure on the separate trial of a count shall be the same in all respects as if the count had been in a separate information and the procedure on its separate trial shall be the same in all respects as if in respect of that count the trial had not commenced; and

(b) the Court may make such order as to the custody of the accused or his admission to bail and as to the enlargement of recognizances and otherwise as it thinks fit.

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

QUASHING OF INFORMATION

192. Where any information does not state, and cannot by any alteration authorised by the last preceding section be made to state, any offence, it shall be quashed and the accused shall be discharged.

PROCEDURE IN CASE OF PREVIOUS CONVICTIONS

193. Where an information contains a count charging an accused person with having been previously convicted of any offence, the procedure shall, subject to the provisions of sub-paragraphs (ii) and (iii) of paragraph (e) of the proviso to section 106 of this Act, be as follows :

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

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

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

Provided, however, that, if upon the trial for the subsequent offence evidence of the previous offence is given pursuant to the provisions of sub-paragraph (ii) or sub-paragraph (iii) of paragraph (e) of the proviso to section 106 before a finding is made in respect of the subsequent offence, the Court shall decide the issue concerning the previous conviction at the same time that it decides the issues concerning the subsequent offence.

PLEA OF GUILTY TO OTHER OFFENCE

194. Where an accused is tried upon an information for any offence and can lawfully be convicted on the trial of that information of some other offence not charged in that information, be may plead not guilty of the offence charged in the information but guilty of any such other offence and the provisions of subsections (2), (3) and (4) of section 190 of this Act shall apply mutatis mutandis; and, if the prosecutor consents, the Court may find the accused guilty of that offence and, if it does so, it shall acquit him of the offence charged.

PROCEEDINGS AFTER PLEA OF "NOT GUILTY".

195. If the accused pleads "not guilty", or if a plea of "not guilty" is recorded in accordance with the provisions of section 190 of this Act, the Court shall proceed to try the case. The prosecutor, or the barrister and solicitor or pleader conducting the prosecution, shall present the case against the accused and shall call witnesses and adduce evidence in support of the information:

Provided that, if both the prosecutor and the accused, or their respective barristers and solicitors or pleaders on their behalf, consent thereto, the Court may proceed to try the case in respect of some only of the offences charged in the information and defer trying the case in respect of the other offences until after the completion of the trial of the first-mentioned offences.

POWER TO POSTPONE OR ADJOURN TRIAL

196. If, from the absence of witnesses, from the exercise of any power of the Court or from any other reasonable cause to be recorded in the proceedings, the Court or a judge considers it necessary or advisable to postpone the commencement of, or to adjourn, any trial, it or he may from time to time postpone or adjourn it, on such terms as it or he thinks fit, for such time as it or he considers reasonable, and may by warrant remand the accused to prison. During a remand the Court may at any time order the accused to be brought before it. The Court may on a remand admit the accused to bail.

ADDITIONAL WITNESSES FOR PROSECUTION

197. (1) No witness whose evidence or written statement has not been received at the preliminary inquiry shall be called by the prosecution at any trial, unless the accused or, if he is represented, his barrister and solicitor or pleader has received reasonable notice in writing of the intention to call that witness or the prosecutor has sought to tender in evidence under section 146 of this Act his written statement and the accused, or his barrister and solicitor or pleader if any, has served on him a notice objecting to the statement being tendered in evidence under that section.

(2) A notice under this section of the intention to call a witness must state his name and address and the substance of the evidence which it is believed that he will give. The Court shall determine whether the length of notice given was reasonable, regard being had to the time when and the circumstances under which the prosecution became acquainted with the nature of the evidence which the witness could give and determined to call him as a witness.

(3) Nothing in this section shall affect the admission of evidence lawfully tendered at the trial under the provisions of section 146 of this Act.

CROSS-EXAMINATION OF WITNESSES FOR THE PROSECUTION

198. The witnesses called for the prosecution shall be subject to cross-examination by the accused, or his barrister and solicitor or pleader if any, and to re-examination by the prosecutor, or the barrister and solicitor or pleader conducting the prosecution. If the accused is not represented

by a barrister and solicitor or pleader, the Court shall, at the close of the examination-in-chief of every such witness, ask the accused whether he wishes to put any questions to that witness and shall record his answer.

DEPOSITIONS MAY BE READ AS EVIDENCE IN CERTAIN CASES

199. The deposition of any person who attended and whose deposition was recorded by the District Court at the preliminary inquiry into any offence may, if the conditions hereinafter set out are satisfied, without further proof be read as evidence at the trial of the person who was charged with that offence, whether at the trial he is charged with that offence or with any other offence disclosed by the depositions. The conditions hereinbefore referred to are the following:

(a) the deposition must be either -

(i) the deposition of a witness who is proved at the trial to the satisfaction of the judge to be absent from Nauru or dead or insane, or so ill as not to be able to give evidence at the trial, or to be kept out of the way by means of the procurement of the accused or on his behalf, or to be unable to attend for any other sufficient cause; or

(ii) a deposition which both the prosecutor, or the barrister and solicitor or pleader, if any, conducting the prosecution, and the accused, or his barrister and solicitor or pleader if any, consent to being read as evidence; and

(b) the deposition must purport to be signed by the magistrate by whom it purports to have been taken:

Provided that the provisions of this section shall not have effect in any case in which it is proved that the deposition was not in fact signed by the magistrate by whom it purports to have been signed.

EVIDENCE OR STATEMENT OF ACCUSED AT PRELIMINARY INQUIRY

200. The evidence or statement, if any, given or made by the accused and duly recorded in the preliminary inquiry, and whether signed by the accused or not, and any written statement tendered by or on behalf of the accused at the inquiry may be tendered in evidence by the prosecutor without further proof thereof, unless it is proved that the magistrate who is purported to have signed the statement or evidence did not in fact sign it.

CLOSE OF CASE FOR PROSECUTION

201. Where the evidence of the witnesses for the prosecution has been concluded and any written statements and depositions properly tendered in support of the prosecution case have been admitted, and the evidence or statement, if any, of the accused taken in the preliminary inquiry has, if the prosecutor wishes to tender it, been tendered in evidence, the Court -

(a) if it considers that, after hearing, if necessary, any arguments which the prosecutor or the barrister and solicitor or pleader conducting the prosecution and the accused, or his barrister and solicitor or pleader if any, may wish to submit, that a case is not made out against the accused, or any one of several accused, sufficiently to require him to make a defence in respect of the whole information or any count thereof, shall dismiss the case in respect of, and acquit that accused as to, the whole of the information or that count, as the case may be; but

(b) if it considers that a case is made out against the accused or any one or more of several accused in respect of any offence charged or any other offence of which he may lawfully be convicted on the trial of that offence, shall inform every such accused of his right to address the Court, either personally or by his barrister and solicitor or pleader, if any, and to give evidence on his own behalf or to make an unsworn statement or to refrain from doing either of these things and to call witnesses, or tender statements under the provisions of section 146, in his defence; and in all cases the Court shall require him, or his barrister and solicitor or pleader if any, to state whether he intends to call any witnesses as to fact other than the accused himself. If the accused says that he does not intend to give evidence or make an unsworn statement or to adduce evidence, then the prosecutor, or the barrister and solicitor or pleader conducting the prosecution, may sum up the case against him. If the accused says that he intends to give evidence or make an unsworn statement, or to adduce evidence, the Court shall call upon him to enter upon his defence.

THE DEFENCE

202. The accused, or his barrister and solicitor or

pleader if any, may 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 may then give evidence or make an unsworn statement on his own behalf and he, or his barrister and solicitor or pleader if any, may examine his witnesses, if any, and after their cross-examination, re-examine them, and may tender written statements in accordance with the provisions of section 146 of this Act. At the close of the accused's case, he or his barrister and solicitor or pleader if any, may sum up his case.

ADDITIONAL WITNESSES FOR THE DEFENCE

203. The accused shall, subject to the provisions of section 148 of this Act, be allowed to call any witness in attendance who can give relevant evidence, whether or not that witness gave evidence at the preliminary inquiry. If he apprehends that any person whom he wishes to call as a witness will not attend the trial voluntarily, he shall be entitled to apply for the issue of process to compel his attendance:

Provided that no accused shall be entitled to any adjournment to secure the attendance of any witness unless he shows that he could not have taken earlier steps to obtain, or by reasonable diligence have obtained, the presence of the witness.

EVIDENCE IN REPLY

204. If evidence is adduced by the accused, or by his barrister and solicitor or pleader, in his defence introducing new matter which the prosecutor, or the barrister and solicitor or pleader conducting the prosecution, could not reasonably have foreseen, the Court may allow the prosecutor, or the barrister and solicitor or pleader conducting the prosecution, to adduce evidence in reply to rebut that evidence.

CLOSING ADDRESSES WHERE ACCUSED ADDUCES NO EVIDENCE

205. Where no evidence is adduced by or on behalf of any accused and the Court considers that there is evidence that he committed any offence charged in the information or any other offence of which he can lawfully be convicted on the trial of that offence, the prosecutor, or the barrister

and solicitor or pleader conducting the prosecution, shall be entitled to sum up the case against that accused immediately all the evidence in the case has been given and the accused, personally or by his barrister and solicitor or pleader if any, shall then be entitled to address the Court on his own behalf.

CLOSING ADDRESSES WHERE ACCUSED ADDUCES EVIDENCE

206. Where any accused, or his barrister and solicitor or pleader if any, adduces any evidence, other than evidence given by the accused person himself, he, or his barrister and solicitor or pleader if any, shall be entitled to sum up the case for the defence immediately after all the evidence in the case has been given and the prosecutor, or the barrister and solicitor or pleader conducting the prosecution, shall be entitled to reply and to sum up the case against that accused.

THE JUDGMENT

207. The Court, having received all the evidence adduced by the parties and any other evidence properly admitted and having heard the addresses, if any, of the parties or their barristers and solicitors or pleaders, shall, in respect of every offence charged in the information, either -

(a) find the accused guilty of that offence, or of any other offence of which he can lawfully be convicted on the information, and, after making such inquiry as it thinks fit as to the accused's character and after hearing the accused or his barrister and solicitor or pleader, if any, as to any mitigating circumstances, and any evidence thereof which may be adduced, either convict him and pass sentence on, or make an order against him in accordance with the law or, if authorised to do so under any written law, discharge him without proceeding to conviction; or

(b) find him not guilty and acquit him:

Provided that, where, with the consent of the prosecutor and the accused or of their respective barristers and solicitors or pleaders on their behalf, only some of the offences charged in an information have been tried, the provisions of this section shall apply in respect of those offences only.

POWER TO RESERVE DECISION ON QUESTION RAISED AT TRIAL

208. The Supreme Court may reserve the giving of its final decision on any question raised at the trial of any person for any offence and its decision whenever given shall be deemed to have been given during the sittings in which the trial was held.

POWER TO RESERVE DECISION ON QUESTION ARISING IN THE COURSE OF TRIAL

209. (1) Where any person has, in a trial before the Supreme Court, been convicted of an offence, the judge may reserve for further consideration any question which has arisen in the course of the trial and the determination of which would affect the event of the trial.

(2) If the judge reserves any such question, the person convicted shall, pending the decision thereon, be remanded to prison or, if the judge thinks fit, be admitted to bail; and upon such further consideration of the question so reserved the judge may affirm or quash the conviction and shall be deemed to have done so during the sittings in which the trial was held.

OBJECTIONS CURED BY VERDICT

210. No judgment shall be stayed or reserved on the ground of any objection which if made after the information was read over to the accused, or during the trial, might have been cured by the Court, nor for any informality in swearing the witnesses or any of them.

EVIDENCE, ETC., ADMISSIBLE AFTER FINDING OF GUILT

211. (1) Where the Court has found any accused guilty, it may, before or after conviction, receive such evidence as it thinks fit, in order to inform itself as to the sentence or order most appropriate to the case.

(2) Where the Court has found any accused guilty of any offence, it may, if it thinks fit, with his consent and the consent of the prosecutor take into consideration in deciding what sentence or order is most appropriate in the case any other untried offence of a like character which the accused admits having committed; and, where the accused is convicted of several offences, the Court shall note on the record of the proceedings the count in respect of which any such untried offence is taken into account.

(3) Where under the provisions of the last preceding subsection any untried offence has been taken into account by the Court -

(a) the accused shall not be liable to be tried or punished thereafter in any proceedings for that offence or for any other offence constituted entirely by all or any of the facts constituting that offence: Provided that, where on appeal the accused's conviction for the offence in respect of which the untried offence has been taken into account is quashed, he shall be liable to be tried for that untried offence but evidence of his admission of that offence to the Court, or to any person with a view to his admitting it in order that it might be taken into account in those proceedings, shall not be admissible except at the request, or with the consent, of the accused; and

(b) for the purpose of sections 125 and 127 of this Act the accused shall be deemed to have been convicted of that untried offence.

DRAWING UP OF CONVICTION, SENTENCE OR ORDER

212. (1) A conviction, sentence or order under section 190, section 194 or section 207 of this Act shall, if required, be afterwards drawn up and shall be certified by the Registrar.

(2) A copy of a conviction, sentence or order under section 190, section 194 or section 207 of this Act purporting to be certified by the Registrar may be tendered as evidence in any proceedings in which it is relevant and shall prima facie be proof of that conviction, sentence or order.

PART IX - SUPPLEMENTARY PROVISIONS

POWER TO ISSUE DIRECTIONS OF THE NATURE OF HABEAS CORPUS

213. (1) The Supreme Court may, where it thinks fit, direct -

(a) that any person within Nauru be brought before the Court to be dealt with according to law;

(b) that any person illegally or improperly detained in public or private custody within Nauru be set at liberty; and

(c) that any prisoner detained in any prison be brought before any Court to be there examined as a witness in any matter pending or to be inquired into in that Court.

(2) The Chief Justice may from time to time make rules to regulate the procedure in cases under this section.

POWER OF THE SUPREME COURT TO ISSUE WRITS

214. (1) The Supreme Court may in the exercise of its criminal jurisdiction issue any writ which may in similar circumstances for the time being be issued by the Crown Court in England.

(2) The Chief Justice may from time to time make rules to regulate the procedure in cases under this section.

PERSONS BEFORE WHOM AFFIDAVITS MAY BE SWORN

215. Affidavits and affirmations to be used before the Supreme Court in proceedings under this Act may be sworn and affirmed before a judge, a magistrate, the Registrar or any of his deputies or any Commissioner for Oaths.

COPIES OF PROCEEDINGS

216. If any person affected by any judgment or order passed or made in any proceedings under this Act desires to have a copy of the judgment or order or of any deposition or other part of the record, he shall on applying for the copy be furnished therewith provided he pays the prescribed fee, unless a judge, a magistrate or the Registrar for some special reason thinks fit to direct that it be furnished free of cost.

FORMS

217. Such forms as the Chief Justice may from time to time prescribe by rules, with such variation as the circumstances of each case may require, may be used for the respective purposes therein mentioned and, if used, shall be sufficient. In the absence of such rules or of provisions for any form in such rules as are made, the forms in use at the commencement of this Act may continue to be used until other provision is made by such rules.

EXPENSES OF WITNESSES, ETC.

218. Subject to any rules which may be made by the Chief Justice, any Court may order payment by the Government of the reasonable expenses of any complainant or witness attending before that Court for the purposes of any inquiry, trial or other proceeding under this Act, and any such payment shall be made from, and be a charge upon, the Treasury Fund.

PART X - REPEAL, INTERIM PROVISIONS AND SAVINGS

REPEAL

219. The Judiciary Ordinance 1957-1967 and the Criminal Procedure Ordinance 1957-1966 are hereby repealed.

CESSATION OF APPLICATION OF CERTAIN ADOPTED LAWS

220. (1) The Criminal Procedure Ordinance of 1889 of the Territory of Papua and those provisions of the Criminal Code which relate to the jurisdiction, practice or procedure of the Courts shall, from the commencement of this Act, cease to apply to or have effect in Nauru.

(2) The Third Schedule of the Laws Repeal and Adopting Ordinance 1922-1967 is amended by deleting therefrom the Criminal Procedure Ordinance of 1889.

INTERIM PROVISIONS

221. Where before the commencement of this Act any criminal cause has been commenced in any Court -

(a) if the trial of that cause has not commenced, or if it has commenced before the District Court but that Court has no jurisdiction under this Act to try it, it shall be dealt with by the District Court as though it had been freshly commenced under this Act; and

(b) if the trial of that cause has been commenced in the Supreme Court or is a cause which the District Court has jurisdiction under this Act to try and it has been commenced in the District Court the trial shall be completed by the Court in which it has been commenced, but subject to the provisions of this Act.

SAVINGS

222. Notwithstanding the provisions of sections 219

and 220 of this Act, every order of a Court lawfully made, and every summons, warrant and other process of any Court lawfully issued, in Nauru in exercise of such Court's criminal jurisdiction before the commencement of this Act shall continue to have full force and effect as though the written law under which it was made or issued were still in force in Nauru.

SCHEDULE

(Sections 93 and 182)

FORMS RELATING TO INFORMATIONS AND CHARGES

PART I - TITLES

No. 1 - In the Supreme Court:

In the Supreme Court of Nauru

The Republic against A.B. (and C.D.)

No. 2 - In the District Court:

In the District Court of Nauru

The Republic against A.B. (and C.D.)

PART II - INFORMATION

At the sessions to be held at Yaren on the day of 19 .

Y.Z., Director of Public Prosecutions for the Republic of Nauru (W.X., a public prosecutor duly authorised by the Director of Public Prosecutions to prosecute for the Republic in this behalf) informs the Court that A.B. (and C.D.) did commit the offence of -

(STATE THE OFFENCE ALLEGED AND THE PROVISION OF THE WRITTEN LAW CONTRAVENED OR, IF APPROPRIATE, THAT IT IS CONTRARY TO THE COMMON LAW)

In that he (they) did on the day of 19 , at in Nauru (in the territorial waters of Nauru) (RECITE IN ACCORDANCE WITH THE PROVISIONS OF SECTION 93 OF THIS ACT THE ACT OR OMISSION ALLEGED TO CONSTITUTE THE OFFENCE)

(To be signed) Y.Z. OR W.X.

Director of Public Prosecutions — Public Prosecutor

PART III - CHARGE

A.B. (and C.D.) is (are) charged that he (they) did commit the offence of -

(STATE THE OFFENCE ALLEGED AND THE PROVISION OF THE WRITTEN LAW CONTRAVENED OR, IF APPROPRIATE, THAT IT IS CONTRARY TO THE COMMON LAW)

In that he (they) did on the day of 19 , at in Nauru (in the territorial waters of Nauru) (RECITE IN ACCORDANCE WITH THE PROVISIONS OF SECTION 93 OF THIS ACT THE ACT OR OMISSION ALLEGED TO CONSTITUTE THE OFFENCE)

(To be signed) S.T.
(State rank of police officer)

U.V.
Magistrate