

# LAWS OF TRINIDAD AND TOBAGO

## INDICTABLE OFFENCES (PRELIMINARY ENQUIRY) ACT

### CHAPTER 12:01

#### Act

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**Note**  
**on**  
**Subsidiary Legislation**

This Chapter contains no subsidiary legislation.

**Note**  
**on**  
**Revision Date**

As this Act was amended by the Law Revision (Miscellaneous Amendments) (No. 1) Act 1979 (Act 45 of 1979), this Chapter has been revised up to 31st December 1979, instead of the normal revision date (31st December 1977).

**CHAPTER 12:01**

**INDICTABLE OFFENCES (PRELIMINARY ENQUIRY)  
ACT**

**ARRANGEMENT OF SECTIONS**

**SECTION**

1. Short title.
2. Interpretation.
3. Compelling appearance of accused person.
4. Magistrate may enquire into suspected offence.

**SEARCH WARRANT**

5. Power to issue search warrant.

**COMPLAINT**

6. Reception of complaint.

**SUMMONS TO ACCUSED PERSON**

7. Issue, contents, and service of summons.

**WARRANT FOR APPREHENSION OF ACCUSED PERSON**

8. Issue of warrant of apprehension in first instance.
9. Magistrate may direct security to be taken.

**PROCEEDINGS ON APPEARANCE OF ACCUSED PERSON**

10. Disposal of person apprehended upon warrant.

**IRREGULARITIES**

11. Irregularity in summons, warrant, service or arrest.

**WITNESSES**

12. Application of law with respect to summoning etc. of witnesses.

LOCAL EXAMINATION AND MEDICAL INSPECTION

13. Making of local inspection and examination of injured person.

PROCEEDINGS AT PRELIMINARY ENQUIRY

14. Adjournment.
15. Custody of accused during adjournment.
16. Taking of evidence for prosecution.
17. Cautioning of accused.
18. Taking of evidence for defence.
19. Marking of exhibits.
20. Deposition of witness unable to attend.
21. Binding over to give evidence.
22. Magistrate may consult Director of Public Prosecutions.

DISCHARGE: COMMITTAL FOR TRIAL.

23. Discharge or committal for trial of accused.
24. Copy of depositions for accused person.

PROCEEDINGS SUBSEQUENT TO COMMITTAL

25. Transmission and custody of documents and exhibits relating to a case.
26. Where deposition lost or destroyed.
27. D.P.P. may refer back case for further evidence.

COMMITTAL FOR SENTENCE

28. Accused admitting guilt at preliminary enquiry to be further cautioned and may be committed for sentence.

BAIL

29. Right of accused to bail.
30. Committal of accused pending preliminary enquiry.
31. Bail on committal for trial.
32. Conveying accused to prison after committal.
33. Bailing of accused after committal.
34. Court or Judge may bail accused.
35. Apprehension of accused person on bail but about to abscond.
36. Amount of bail.
37. Bail of married woman or infant.
38. Power to revoke or require higher bail.

PLACE OF COMMITMENT

39. Place of commitment.

EVIDENCE

40. Reading of depositions at trial.  
41. Report of Chemist.

PUBLICATION OF PROCEEDINGS

42. Restriction on publication of report of preliminary enquiry.

FIRST SCHEDULE.  
SECOND SCHEDULE.

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**CHAPTER 12:01**

**INDICTABLE OFFENCES  
(PRELIMINARY ENQUIRY) ACT**

**An Act Relating to Preliminary Enquiries into Indictable  
Offences by Magistrates.**

1950 Ed.  
Ch. 4 No. 1.  
12 of 1917.

[29TH MAY 1917]

Commencement.

1. This Act may be cited as the Indictable Offences (Preliminary Enquiry) Act.

Short title.

2. (1) In this Act "Court" means the High Court or a Judge of the Court.

Interpretation.

(2) For the purposes of this Act, Justices shall have and exercise concurrent jurisdiction with the Magistrates to issue summonses, warrants, and other process of court, to grant bail and to fix the amount, to take recognisances, and to bind over parties and witnesses, and to administer oaths.

Jurisdiction of Justices.

3. Any Magistrate may issue a summons or warrant under this Act to compel the appearance before him, for the preliminary examination, of any person accused of having committed in any

Compelling appearance of accused person.

place, whether within or outside of Trinidad and Tobago any indictable offence triable, according to the law for the time being in force, in Trinidad and Tobago.

Magistrate may enquire into suspected offence.

4. (1) Where a Magistrate believes that—

- (a) an indictable offence has been committed within the limits of his jurisdiction; or
- (b) there is reasonable ground for enquiring whether an indictable offence has been committed; or
- (c) in either of the cases mentioned in paragraphs (a) and (b) there is reasonable ground for enquiring by whom the indictable offence has been committed,

he may, whether any person is charged or not—

- (i) summon to appear before him any person whom he believes is capable of giving material evidence concerning the offence;
- (ii) examine that person upon oath concerning the offence; and
- (iii) if he thinks fit, bind that person by recognisance to attend and give evidence within the next twelve months if called upon by any Magistrate or by the Court, unless that person can show some reasonable excuse to the contrary.

(2) Where a person so summoned neglects to attend, or refuses without lawful excuse to take the oath, or, having taken the oath, to answer any question concerning the offence which may then be put to him, or to enter into the recognisance mentioned in subsection (1), he may be dealt with in the same manner as a witness may be dealt with who neglects or refuses to attend or give evidence, or who refuses to be bound by recognisance to give evidence, after having been served with a summons for that purpose.

#### SEARCH WARRANT

Power to issue search warrant.

5. (1) Any Magistrate who is satisfied by proof on oath that there is reasonable ground for believing that there is in any building, ship, vessel, carriage, box, receptacle, or place—

- (a) anything upon or in respect of which any indictable offence has been or is suspected to have been committed; or

- (b) anything which there is reasonable ground for believing will afford evidence as to the commission of any such offence; or
- (c) anything which there is reasonable ground for believing is intended to be used for the purpose of committing any indictable offence against the person,

may at any time issue a warrant under his hand authorising any constable to search such building, ship, vessel, carriage, box, receptacle, or place for any such thing, and to seize and carry it before the Magistrate issuing the warrant or some other Magistrate, to be dealt with by him according to law.

(2) Every such warrant may be issued and executed at any time, and may be issued and executed on a Sunday.

(3) When any such thing is seized and brought before any Magistrate, he may detain it or cause it to be detained, taking reasonable care that it is preserved until the conclusion of the enquiry; and if any person is committed for trial, he may order it further to be detained for the purpose of evidence on the trial.

Detention of articles seized.

(4) Except in the cases mentioned in this Act, where a person is not committed for trial, the Magistrate shall direct the thing seized to be restored to the person from whom it was taken unless he is authorised or required by law to dispose of it otherwise.

(5) Where under any such warrant, there is brought before any Magistrate any forged bank note, bank note paper, instrument, or other thing, the possession of which, in the absence of lawful excuse, is an indictable offence according to any written law for the time being in force, the Court, if such person is committed for trial, or, if there is no commitment for trial, the Magistrate, may cause such thing to be defaced or destroyed.

Destruction of forged bank notes, etc.

(6) Where, under any such warrant, there is brought before any Magistrate any counterfeit coin or other thing, the possession of which, with knowledge of its nature and without lawful excuse, is an indictable offence according to any Act for the time being in force, every such thing shall be delivered up to the Commissioner of Police or to any person authorised by him to receive the same, as soon as it has been produced in evidence or as soon as it appears that it will not be required to be produced.

Disposal of counterfeit coin, etc.

(7) If the thing to be searched for is gunpowder or any other explosive or dangerous or noxious substance or thing, the person making the search shall have the same powers and protec-

Search for and disposal of gunpowder etc.

tion as are given by any Act for the time being in force to any person lawfully authorised to search for any such thing, and the thing itself shall be disposed of in the manner directed by the Act, or, in default of such direction, as the Commissioner of Police may order.

## COMPLAINT

Reception of  
complaint.  
[45 of 1979].

6. Where a complaint is made to a Magistrate or Justice of the Peace that an indictable offence has been committed by any person whose appearance he has power to compel, the Magistrate or Justice of the Peace shall consider the allegations of the complainant, and if he is of opinion that a case for so doing is made out, he shall issue a summons or warrant in accordance with this Act and the Magistrate or Justice of the Peace shall not refuse to issue such summons or warrant on the ground only that the alleged offence is one for which an offender may be arrested without warrant.

## SUMMONS TO ACCUSED PERSON

Issue, contents,  
and service of  
summons.

7. (1) A Magistrate may issue a summons although there is no complaint in writing or upon oath.

(2) The summons shall be directed to the accused person and shall require him to appear at a certain time and place to be mentioned in the summons.

(3) No such summons shall be signed in blank.

(4) Every such summons shall be served by a constable upon the accused person, either by delivering it to him personally or if he cannot be found by leaving it with some person for him at his last or most usual place of abode.

(5) The constable who served the summons shall attend at the time and place mentioned in the summons for the appearance of the accused person, in order, if necessary, to prove the service; but the Magistrate before whom the accused person ought to appear may in his discretion receive proof of the service by affidavit and such affidavit may be made before any Magistrate.

## WARRANT FOR APPREHENSION OF ACCUSED PERSON

8. (1) Where there is a complaint in writing and upon oath, a Magistrate may, if he is of opinion that a case for so doing is made out, issue a warrant for the apprehension of the accused person. The warrant may be issued and executed at any time and may be issued and executed on a Sunday.

Issue of  
warrant of  
apprehension  
in first instance.

(2) The fact that a summons has been issued shall not prevent any Magistrate from issuing the warrant at any time before or after the time mentioned in the summons for the appearance of the accused person; and where the service of the summons for the appearance of the accused person is proved and the accused person does not appear, or where it appears that the summons cannot be served, the warrant may issue.

(3) The Magistrate who would have heard the charge if the person summoned had appeared may issue the warrant, either on complaint in writing and upon oath taken before himself, or on complaint in writing and upon oath taken before another Magistrate, either before or after the summons was issued.

9. (1) A Magistrate issuing a warrant under this Act for the arrest of any person in respect of any offence other than murder or treason shall, if in his opinion such person should be admitted to bail on his arrest, by endorsement on the warrant direct that if the person executes a bond with sufficient sureties for his attendance before a Magistrate at a specified time and thereafter until otherwise directed by the Magistrate, the officer in charge of the Police Station to which the person is brought on his arrest shall take the security and release the person from custody.

Magistrate may  
direct security  
to be taken.

(2) The endorsement shall state—

- (a) the number of sureties;
- (b) the amount in which the sureties 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 Magistrate.

(3) The officer in charge of any Police Station to which the person is brought on his arrest shall comply with the directions endorsed on the warrant of arrest and whenever security is taken under this section he shall forward the bond to the Magistrate.

## PROCEEDINGS ON APPEARANCE OF ACCUSED PERSON

Disposal of person apprehended upon warrant.

10. (1) When any person is apprehended upon a warrant, he shall be brought before a Magistrate as soon as practicable after he is arrested, and the Magistrate shall either proceed with the preliminary enquiry or postpone the enquiry to a future time, in which latter case he shall either commit the accused person to prison, or admit him to bail, or permit him to be at large on his own recognisance, in accordance with this Act.

Accused may have assistance of legal adviser.

(2) Every accused person is entitled as of right to the presence and assistance of his legal adviser, and while under remand shall be allowed the access of his legal adviser at all reasonable times.

## IRREGULARITIES

Irregularity in summons, warrant, service, or arrest.

11. (1) No irregularity or defect in the substance or form of the complaint, summons, or warrant, and no variance between the charge contained in the summons or warrant and the charge contained in the complaint, or between any of them and the evidence adduced on the part of the prosecution at the preliminary enquiry, shall affect the validity of any proceeding at or subsequent to the hearing.

(2) Where any accused person is before a Magistrate, whether voluntarily or upon summons, or after being apprehended with or without warrant, or while in custody for the same or any other offence, the preliminary enquiry may be held notwithstanding—

- (a) any irregularity, illegality, defect or error in the summons or warrant, or the issuing, service or execution of the same;
- (b) the want of any complaint upon oath; or
- (c) any defect in the complaint, or any irregularity or illegality in the arrest or custody of the accused person.

(3) The Magistrate may, if he thinks that the ends of justice require it, adjourn the hearing of the case, at the request of the accused person, to some future day and in the meantime remand the accused person or admit him to bail.

(4) Where the hearing is adjourned under subsection (3), the accused person shall not be committed to prison unless,

before his committal, a complaint in writing and upon oath is taken.

#### WITNESSES

12. Subject to this Act, the law for the time being in force with respect to witnesses on the hearing of a complaint for an offence punishable on summary conviction in a Magistrate's Court shall, *mutatis mutandis*, apply to witnesses on the holding of a preliminary enquiry before a Magistrate with respect to an indictable offence, and any such witness who, without reasonable excuse, refuses to sign his deposition or to enter into a recognisance may be dealt with in accordance with the provisions of this Act.

Application of law with respect to summoning, etc. of witnesses.

#### LOCAL EXAMINATION AND MEDICAL INSPECTION

13. (1) The Magistrate holding a preliminary enquiry shall make or cause to be made such local inspection as the circumstances of the case may require; and, in a case of homicide or serious injury to the person, the Magistrate shall cause the body of the person killed or injured to be examined by a duly qualified medical practitioner, if any such can be had, and if not, then by the most competent person that can be obtained, and the deposition of the medical practitioner or other person shall then be taken from him if necessary.

Making of local inspection and examination of injured person.

(2) Every medical practitioner or other person as above who refuses or neglects, without reasonable excuse, to comply with any order or direction of a Magistrate given under this section is liable on summary conviction to a fine of four hundred dollars.

#### PROCEEDINGS AT PRELIMINARY ENQUIRY

14. (1) A Magistrate may from time to time adjourn a preliminary enquiry if he considers it expedient to do so.

Adjournment.

(2) Such an adjournment shall be made to a certain time and place.

(3) Unless the person remanded and the prosecutor consent, an adjournment shall not be for longer than ten clear days, but where no court is to be held within the ten days then the

adjournment may be fixed for the next day on which the Magistrate holds a court at the place where the order is made.

(4) Where a Magistrate is satisfied that an accused person who has been remanded is, by reason of illness or accident, unable to appear personally before the court at the adjournment pursuant to subsections (2) and (3), the Magistrate may, in the absence of the accused person, order him to be further remanded for such time as may be considered reasonable.

Custody of  
accused during  
adjournment.

15. During such adjournment the Magistrate may, subject to the provisions as to bail hereinafter contained, commit the accused person by warrant to prison.

Taking of  
evidence for  
prosecution.

16. (1) When an accused person is before a Magistrate holding a preliminary enquiry, the Magistrate shall take or cause to be taken down in writing the evidence of the witnesses on the part of the prosecutor apart from each other, unless the Magistrate thinks it is necessary or conducive to the ends of justice that any of the witnesses should be permitted or required to be present during the whole or any part of the examination of any of the other witnesses.

(2) The evidence of each such witness shall be given in the presence of the accused person, or, if taken in his absence, shall be read over to the accused in the presence of the witness; and the accused person is entitled to cross-examine him.

(3) The evidence of every such witness shall be taken down in writing in the form of a deposition.

(4) Such deposition shall be read over to the witness and shall be signed by the witness and the magistrate; or if the witness refuses to sign or is incapable of signing, then by the Magistrate; the accused person, the witness, and the Magistrate being all present together at the time of such reading and signing.

(5) Any witness who refuses, without reasonable excuse, to sign his deposition may be committed to prison by warrant by the Magistrate holding the enquiry, there to be kept until after the trial or until the witness signs his deposition before a Magistrate; but if the accused person is afterwards discharged, any Magistrate may order any such witness to be discharged.

(6) The signature of the Magistrate shall be at the end of the deposition of each witness, in such a form as to show that it is meant to authenticate the deposition.

17. (1) After the examination of the witnesses called on the part of the prosecutor has been completed, and after the depositions have been signed as mentioned above, the Magistrate shall, unless he discharges the accused person, address him in these words, or to the like effect:

Cautioning of accused.

“Having heard the evidence, do you wish to say anything in answer to the charge? Do you wish to give evidence? You are not obliged to say anything unless you wish, but if you say anything your statement will be taken down in writing, and may be given in evidence upon your trial. And I give you clearly to understand that you have nothing to hope from any promise of favour, and nothing to fear from any threat which may have been held out to you to induce you to make any admission or confession of your guilt. But that whatever you shall now say may be given in evidence upon your trial, notwithstanding such promise or threat.”

(2) Whatever the accused person then says in answer thereto, whether on oath or not, shall be taken down in writing as nearly as possible in the accused person's own words, and shall be read over to him, and shall be signed by the accused person, if he will, and by the Magistrate, and kept with the depositions of the witnesses and dealt with as mentioned below. On the trial, the statement of the accused, whether on oath or not, taken down as aforesaid, and whether signed by him or not, may be given in evidence without further proof thereof, unless it is proved that the Magistrate purporting to sign the statement did not in fact sign it.

Statement of accused.

(3) Notwithstanding anything in this section or in section 18, the Magistrate may, if he thinks fit and although the case for the prosecution has been closed, take the evidence of further witnesses for the prosecution or recall any witness for further examination.

Further evidence.

18. After the proceedings required by section 17 are completed, the Magistrate shall ask the accused person if he wishes to call any witnesses. Every witness called by the accused person who testifies to any fact relevant to the case shall be heard, and his deposition shall be taken, signed, and authenticated in the same manner as the deposition of a witness for the prosecution.

Taking of evidence for defence.

19. The Magistrate shall cause all writings and other articles exhibited by the witnesses, or any of them, to be inventoried and labelled, or otherwise marked, in the presence of the person producing them, so that they may be identified at the trial.

Marking of exhibits.

Deposition of witness unable to attend.

20. (1) Where any person capable of giving material evidence in respect of an indictable offence is, from illness, unable to attend at the place where the Magistrate usually sits, a Magistrate shall have power to take the deposition of the person at the place where the person is.

(2) The Magistrate taking the deposition may, by an order in writing under his hand, direct the Keeper of the prison having the custody of an accused person to cause him to be conveyed to the place where the examination is to be taken, for the purpose of being present when it is taken, and to be taken back to prison afterwards.

(3) Section 16 shall, so far as the same is applicable, apply to depositions taken under this section.

(4) Every deposition taken under this section shall be forwarded to the Magistrate by whom the preliminary enquiry into the indictable offence is being, or has been, held, if the deposition was taken by some other Magistrate, and the deposition shall, subject to section 40(2) be treated in all respects in the same way, and shall be considered for all purposes as a deposition taken upon the preliminary enquiry.

Binding over to give evidence.

21. (1) The Magistrate holding the preliminary enquiry shall bind over every witness for the prosecution whose deposition has been taken, and every witness for the defence not being merely a witness to the character of the accused whose evidence is, in his opinion, material, to give evidence at the trial of the accused person before the Court.

(2) Every recognisance so entered into shall specify the name and surname of the person entering into it, his occupation or profession, if any, the place of his residence, and the name and number, if any, of any street in which it may be.

(3) Such recognisance may be either at the foot of the deposition or separate from it, and shall be acknowledged by the person entering into it, and be subscribed by the Magistrate before whom it is acknowledged.

(4) Any witness who refuses, without reasonable excuse, to enter into such recognisance may be committed to prison by warrant by the Magistrate holding the enquiry, there to be kept until after the trial, or until the witness enters into such recognisance before a Magistrate; but if the accused person is afterwards discharged, any Magistrate may order any such witness to be discharged.

(5) Where a person charged before a Magistrate with an indictable offence is committed for trial and it appears to the Magistrate, after taking into account anything which may be said by the accused or the prosecutor, that the attendance at the trial of a witness who has been examined before him is unnecessary because of—

- (a) anything contained in any statement by the accused; or
- (b) the accused having pleaded guilty to the charge; or
- (c) the evidence of the witness being merely of a formal nature,

then the Magistrate shall—

- (i) if the witness has not already been bound over, bind him over to attend the trial conditionally upon notice being given to him and not otherwise; or
- (ii) if the witness has already been bound over, direct that he shall be treated as having been bound over to attend only conditionally,

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

(6) The Magistrate shall, on committing the accused for trial, inform him of his right to require the attendance at the trial of such witness and of the steps which he must take to enforce the attendance of the witness.

(7) The Director of Public Prosecutions shall at least seven days before the day fixed for the trial inform the person committed for trial of the names, addresses and occupations of the witnesses, and the Director of Public Prosecutions or the person committed for trial shall give notice to the Registrar at least four days before the day fixed for the trial that he desires any such witness to attend at the trial, and the Registrar, on receipt of the notice, shall then notify the witness that he is required to attend in pursuance of his recognisance.

22. Where a Magistrate is, during a preliminary enquiry, in doubt as to any matter arising during the enquiry, he may commit the accused person until he has consulted, and received the opinion of, the Director of Public Prosecutions in the matter.

Binding over of  
witnesses  
conditionally.  
[172/1961  
8/1962  
136/1976].

Magistrate may  
consult  
Director of  
Public  
Prosecutions.  
[172/1961  
8/1962  
136/1976].

## DISCHARGE: COMMITTAL FOR TRIAL

Discharge or  
committal for  
trial of accused.  
[172/1961  
8/1962  
136/1976  
45 of 1979].

23. (1) When all the witnesses on the part of the prosecutor and of the accused person, if any, have been heard, the Magistrate shall, if, upon the whole of the evidence, he is of opinion that no prima facie case of any indictable offence is made out, discharge him; and in such case any recognisance taken in respect of the charge becomes void.

(2) If, upon the whole of the evidence, the Magistrate is of opinion that a prima facie case for any indictable offence (whether an offence with which the accused is charged or otherwise) is made out, he shall grant his warrant for the commitment of the accused person to prison, there to be detained until brought to trial upon any indictment which may be preferred against him, or until discharged in due course of law.

First Schedule.

(3) The commitment shall be in the form in the First Schedule.

(4) Nothing herein shall be construed to prevent the Magistrate from admitting the accused person to bail if the offence charged is of a bailable nature.

(5) In every case in which a Magistrate discharges an accused person on a preliminary enquiry, he shall, if required to do so by the Director of Public Prosecutions, transmit forthwith to him the record of the proceedings, and if the Director of Public Prosecutions, on perusing and considering the evidence, is of opinion that the accused ought not to have been discharged, he may apply to a Judge of the High Court for a warrant for the arrest and committal for trial of the accused person.

(6) If the Judge is of opinion that the evidence, as given before the Magistrate, was sufficient to put the accused person on his trial, he may issue a warrant for the arrest of the accused person and for his committal to prison for trial, there to be kept until discharged in due course of law or admitted to bail, and every person so proceeded against shall be further prosecuted in the like manner as if he had been committed for trial by the Magistrate by whom he was discharged.

(7) The requisition to the Magistrate by the Director of Public Prosecutions for the record of the proceedings shall be made within three months of the discharge of the accused person and the application to the Judge for the warrant for arrest and committal for trial of the accused person shall be made within six months of the discharge of the accused person.

(8) Where an accused person has not been put upon his trial for any offence disclosed by the evidence taken at a preliminary enquiry and additional evidence of a material nature in support of any such offence becomes available, a further enquiry may be held in the like manner and with the like consequences as if it were an original preliminary enquiry.

24. Every person committed for trial, whether bailed or not shall be entitled, at any reasonable time before the trial, to have copies of the depositions and of his own statement (if any) from the Clerk of the Magistrate's Court, or, if the documents relating to the inquiry have been transmitted by the Magistrate as hereinafter provided, from the Registrar.

Copy of depositions for accused person. [45 of 1979].

#### PROCEEDINGS SUBSEQUENT TO COMMITTAL

25. (1) After the preliminary enquiry has been concluded and the warrant of commitment for trial has been made out, the Magistrate shall, without delay, transmit to the Director of Public Prosecutions the complaint, the depositions of the witnesses, the documentary exhibits thereto, the statement (if any) of the accused person, the warrant of commitment for trial, and the recognisances entered into. All exhibits, other than documentary exhibits, shall, unless the Magistrate otherwise directs, be taken charge of by the Police and shall be produced by them at the trial.

Transmission and custody of documents and exhibits relating to a case. [172/1961 8/1962 136/1976].

(2) Subject to this Act, the depositions and other documents received from the Magistrate by the Director of Public Prosecutions shall be kept by him until the indictment (if any) to which they relate is filed, and shall then be transmitted to the Registrar of the Supreme Court, who shall keep them and produce them to the Court at the trial of the accused person.

(3) A person committed for trial may be indicted for any offence for which he was committed for trial or for any offence which, in the opinion of the Director of Public Prosecutions, is disclosed by the depositions.

26. (1) Where, after the preliminary inquiry into the complaint has been concluded, the deposition of any witness is lost or destroyed, the preliminary inquiry may be re-opened or a fresh preliminary inquiry may be held into the complaint for the purpose of taking the deposition of such witness.

Where deposition lost or destroyed. [29 of 1977].

(2) Where the original of the complaint, any deposition of a

witness, any documentary exhibit thereto the statement if any, of the accused person, the warrant of committal for the trial or any recognisance entered into is lost or destroyed, then in all proceedings at the trial (whether summary or on indictment) or at a re-opened preliminary enquiry or a fresh preliminary enquiry or an enquiry under section 23(8), secondary evidence of the contents of such document may, in the discretion of the Court or Magistrate be admitted in every case in which the original document would be admissible.

(3) Without prejudice to any other method by which such fact may be proved—

(a) the fact that any document is lost or destroyed may be proved by the testimony of the officer in whose charge the document was last entrusted; and

(b) the fact that a document is a copy may be authenticated—

(i) where the document is a private document, by any evidence with which secondary evidence as to private documents may be authenticated; and

(ii) where the document is a public document, by a certified copy thereof issued by the officer to whose custody the original was entrusted.

D.P.P. may refer back case for further evidence. [172/1961 8/1962 136/1976].

27. (1) At any time after the receipt of the depositions and other documents mentioned in section 25 and before the indictment is filed, the Director of Public Prosecutions may, if he thinks fit, refer back the case to the Magistrate with directions to re-open the enquiry for the purpose of taking further evidence, and with such other directions as he may think proper. Where a case is referred back as herein provided, the enquiry shall be re-opened, and the case shall be dealt with in all respects as if the accused person had not been committed for trial.

D.P.P. may refer back case to be dealt with summarily.

(2) If, after the receipt of the depositions and other documents mentioned in section 25 the Director of Public Prosecutions is of opinion that the accused person should not have been committed for trial but that the case should have been dealt with summarily, the Director of Public Prosecutions may, if he thinks fit, refer back the case to the Magistrate with directions to deal with the case accordingly, and with such other directions as he may think proper.

(3) Any directions given by the Director of Public Prosecu-

tions under this section shall be in writing signed by him, and shall be complied with by the Magistrate: Provided that the Director of Public Prosecutions may at any time add to, alter, or revoke any such directions.

(4) When the Director of Public Prosecutions directs that an enquiry shall be re-opened or that a case shall be dealt with summarily, the following provisions shall have effect:

- (a) where the accused person is in custody, the Magistrate shall, by an order in writing under his hand, direct the Keeper of the prison having the custody of the accused person to convey him or cause him to be conveyed to the place named in the order for the purpose of being dealt with as the Magistrate may direct;
- (b) where the accused person is on bail, the Magistrate shall issue a summons for his attendance at a time and place named in the summons. If the accused person does not attend in obedience to the summons, the Magistrate shall issue a warrant for his apprehension;
- (c) thereafter the proceedings shall be continued under the provisions of this Act or of the Summary Courts Act as the case may be, and, if under the last mentioned Act in the same manner as if the Magistrate had himself formed an opinion in terms of section 94 of that Act.

Ch. 4:20.

#### COMMITTAL FOR SENTENCE

28. (1) Except when the charge is one of treason or murder, if an accused person in any of his statements referred to in section 17 says or admits that he is guilty of the charge, then the Magistrate shall further say to him the words following, or words to the like effect:

“Do you wish the witnesses again to appear to give evidence against you at your trial? If you do not, you will now be committed for sentence, instead of being committed for trial.”

Where the accused, in answer to such question, states that he does not wish the witnesses again to appear to give evidence against him, his statement shall be taken down in writing and read to him and shall be signed by the Magistrate and by the accused, if he will, and shall be kept with the depositions of the witnesses.

Accused admitting guilt at preliminary enquiry to be further cautioned and may be committed for sentence. [172/1961 8/1962 136/1976].

Answer of accused consenting to be committed for sentence to be recorded.

The witnesses may thereupon be bound over conditionally in the manner provided by section 21(5).

Committal for sentence.

(2) In any such case as is mentioned in this section, the Magistrate shall, instead of committing the accused for trial, order him to be committed for sentence before the High Court, and in the meantime, the Magistrate shall, by his warrant, commit the accused to prison to be there safely kept until the sittings of that Court, or until he is admitted to bail or delivered by due course of law.

Admissibility of statement of accused in evidence.

(3) The statement of the accused made under this section shall be received in evidence upon its mere production without further proof by the Court before which he is brought for sentence.

Transmission of proceedings and filing of indictment.

(4) The Magistrate shall, as soon after the committal as is practicable, transmit to the Director of Public Prosecutions the record or the proceedings in the manner required by section 24 and the Director of Public Prosecutions shall prefer and file in the High Court an indictment against the accused person committed for sentence.

#### BAIL

Right of accused to bail. [1 of 1955  
11 of 1961  
45 of 1979].

**29. (1)** With respect to bail, the following provisions shall have effect:

- (a) the Magistrate shall not admit to bail any person charged with treason, murder or piracy or with any offence for which death is the penalty fixed by law;
- (b) a Magistrate may, in his discretion, admit to bail any person charged with an offence that is not specified or referred to in paragraph (a);
- (c) the discretion of the Magistrate under paragraph (b), or of the Court or a Judge under section 34, shall be exercised in accordance with the principles in force in England on 30th August 1962 with respect to the discretion of the High Court of Justice when dealing with applications for bail except that where a person who has been committed for trial is in custody awaiting such trial in respect of an offence not specified or referred to in paragraph (a) and is not brought to trial within six months after his commitment the Court or Judge may, on the application of such person, admit such person to bail with a surety or sureties or upon his own recognisance to secure his appearance at his trial;

(d) where a Magistrate when committing a person for trial of an offence other than treason or murder or piracy or any other offence for which death is the penalty fixed by law, does not admit such person to bail, he shall inform such person of his right to apply for bail to a judge of the High Court.

(2) Every accused person, whether he has been committed to prison or not, shall or may, as the case may be, be admitted to bail, upon providing a surety or sureties sufficient, in the opinion of the Magistrate, to secure his appearance, or, except in a case of an arrestable offence, upon his own recognisance, if the Magistrate thinks fit. Where bail may be allowed or refused in the discretion of the Magistrate, such discretion may be exercised at any stage of the proceedings.

(3) Whenever the preliminary enquiry is for any cause adjourned or interrupted, the Magistrate holding it shall or may, as the case may be, instead of remanding the accused person to prison, admit him to bail on condition of his appearing at the time and place to which the enquiry is adjourned, or at an earlier day if so required, or without prejudice to the power of the Magistrate to vary the order at any subsequent hearing, on condition of his appearing at every time and place to which, during the course of the proceedings, the enquiry may be from time to time adjourned.

Bail on  
adjournment.

(4) If an accused person who has appeared and has been admitted to bail (either on the recognisance of sureties or on his own recognisance) to appear at any adjournment, fails to appear according to the condition of the recognisance, the Magistrate before whom he ought to have appeared may issue a warrant for his apprehension, whether there has been any complaint in writing and upon oath or not, and may also declare the recognisance to be forfeited.

(5) Where a recognisance is declared to be forfeited, any Magistrate may forthwith or at any time after the declaration issue a warrant committing any person liable, whether as principal or surety, under the recognisance to prison for any term not exceeding two months unless the amount due under the recognisance and also, if the Magistrate thinks fit, the costs of the commitment and conveying of the person to prison (the amount of such costs being ascertained and stated in the warrant) are sooner paid.

30. (1) An accused person who is not admitted to bail shall be committed for safe custody to prison, or as the case may require.

Committal of  
accused  
pending  
preliminary  
enquiry.

(2) If the Magistrate adjourns the preliminary enquiry and remands the accused person, the remand shall be by warrant.

(3) The Magistrate may, whilst the accused person is under remand and before the expiration of the period for which he has been remanded, order the accused person to be brought before him, and the Keeper of the prison shall obey the order, or, if the accused person is on bail, the Magistrate may summon him to appear at an earlier day than that to which he was remanded. If the summons is not obeyed, a warrant may issue to enforce his attendance and may be executed like any other warrant.

Bail on  
committal for  
trial.

31. (1) If an accused person who is committed for trial is admitted to bail, the recognisance of bail shall be taken in writing either from the accused person and one or more sureties or from the accused person alone, in the discretion of the Magistrate, according to the nature and circumstances of the case, and shall be signed by the accused person and his surety or sureties, if any.

(2) The condition of such recognisance shall be that the accused person shall personally appear before the Court at any time within twelve months from the date of the recognisance, to answer to any indictment that may be filed against him in the Court, and that he will not depart the Court without leave of the Court, and that he will accept service of any such indictment at some place to be named in such condition.

Second  
Schedule.

(3) The recognisance may be in the form in the Second Schedule.

Conveying  
accused to  
prison after  
committal.

32. (1) Where an accused person who is committed for trial is not released on bail, a constable shall convey him to the prison, and shall there deliver him, together with the warrant of commitment, to the Keeper of the prison, who shall thereupon give the constable a receipt for the accused person, which shall set forth the condition in which the accused person was when he was delivered into the custody of the Keeper.

(2) It shall not be necessary to address any warrant of commitment under this or any other section of this Act to the Keeper of the prison, but, upon delivery of any such warrant to the Keeper by the person charged with the execution of the warrant, the Keeper shall receive and detain the person named in the warrant (or detain him, if already in his custody) for the period and for the purpose as the warrant directs. In case of adjournments or remands, the Keeper shall bring the person, or cause

him to be brought, at the time and place fixed by the warrant for that purpose, before the Magistrate.

(3) This section shall apply to every person who is committed to prison under any provision of this Act.

33. (1) Where an accused person who is entitled to be admitted to bail, or where an accused person whom the Magistrate has power to bail and who, in his opinion, ought to be bailed, is committed to prison only because he does not, at the time of his committal for trial, procure a sufficient surety or sureties for appearing to take his trial, the Magistrate shall endorse on the warrant of commitment, or on a separate paper, a certificate of his consent to the accused person being bailed, and shall state the amount of bail which ought to be required.

Bailing of  
accused after  
committal.

(2) Any Magistrate attending or being at the prison where the accused person is confined shall, on the production of such certificate, admit him to bail accordingly, and shall order him to be discharged by a warrant of deliverance.

(3) If it is inconvenient for a surety or sureties to attend at the prison to join the accused in the recognisance of bail, the committing Magistrate may make a duplicate of such certificate.

(4) Upon the production to any Magistrate of any such duplicate certificate, the Magistrate may take the recognisance of the surety or sureties in conformity with such certificate, and shall transmit the recognisance, if and when so taken, to the Keeper of the prison.

(5) Upon such recognisance and such certificate as is mentioned in subsection (3) being produced to any Magistrate attending or being at such prison, the Magistrate may take the recognisance of the accused party, and thereupon the Magistrate shall order him to be discharged by a warrant of deliverance.

34. The Court or a Judge may at any time, on the petition of an accused person, order such person, whether he has been committed for trial or not, to be admitted to bail, and the recognisance of bail may, if the order so directs, be taken before any Magistrate.

Court or Judge  
may bail  
accused.

35. Where an accused person is bailed in the above manner, the Magistrate by whom he is bailed, or any other Magistrate, may, if he sees fit, on the application of the surety or of either of the sureties of such person, and on information being laid in writing and upon oath by the surety, or by some person in his

Apprehension  
of accused  
person on bail  
but about to  
abscond.

behalf, that there is reason to believe that the person so bailed is about to abscond for the purpose of evading justice, issue his warrant for the apprehension of the person so bailed, and afterwards, on being satisfied that the ends of justice would otherwise be defeated, commit such person when so arrested to prison until his trial, or until he produces another sufficient surety or other sufficient sureties, as the case may be, in like manner as before.

Amount of  
bail.

36. The amount of bail to be taken in any case shall be in the discretion of the Magistrate, or of the Court or the Judge by whom the order for the taking of such bail is made, but no accused person shall be required to give excessive bail.

Bail of married  
woman or  
infant.

37. If an accused person who is admitted to bail is a married woman or infant, the recognisance of bail shall be taken only from the surety or sureties.

Power to  
revoke or  
require higher  
bail.  
[172/1961  
8/1962  
136/1976].

38. (1) Where an accused person who has been admitted to bail by a Magistrate is indicted by the Director of Public Prosecutions for an offence which is not bailable by a Magistrate, the Magistrate shall, on being informed of the fact by any police officer of the First Division of the Police Service, issue his warrant for the arrest of the accused person and commit him to prison in the same manner as if he had been originally committed for trial for the offence for which he is indicted.

(2) For the purposes of this section, a person shall be deemed to be indicted when the indictment against him has been filed in the High Court.

(3) Where an accused person has been admitted to bail by a Judge or a Magistrate, and circumstances arise which, if the accused person had not been admitted to bail, would justify the Judge or Magistrate in refusing bail or in requiring bail of greater amount, the Judge or Magistrate may, on the circumstances being brought to his notice by any police officer of the First Division of the Police Service, issue his warrant for the arrest of the accused person, and, after giving the accused person an opportunity of being heard, may either commit him to prison to await trial or admit him to bail for the same or an increased amount, as the Judge or Magistrate may think just.

PLACE OF COMMITMENT

39. All persons committed to prison under this Act shall be committed to the Port-of-Spain Prison, or to such other prison within the district in which they have been committed as may have been appointed by the President.

Place of  
commitment.

EVIDENCE

40. (1) Where any person has been committed for trial for any offence, the deposition of any person taken before a Magistrate may, if the conditions set out below are satisfied, without further proof be read as evidence on the trial of that person, whether for that offence or for any other offence arising out of the same transaction or set of circumstances as that offence.

Reading of  
depositions at  
trial.

The conditions referred to above are the following:

- (a) the deposition must be the deposition either of a witness whose attendance at the trial is stated to be unnecessary in accordance with the provisions of section 21 (5), or of a witness who is proved at the trial by the oath of a credible witness to be dead, or so ill as not to be able to travel although there may be a prospect of his recovery, or incapable in consequence of his condition of mind of giving evidence, or absent from Trinidad and Tobago, or kept out of the way by the prosecutor or the State or by the accused person or by some other person on his behalf;
- (b) it must be proved at the trial, either by a certificate purporting to be signed by the Magistrate before whom the deposition purports to have been taken or by the oath of a credible witness, that the deposition was taken in the presence of the accused person or the prosecutor, as the case may be, and that he or his legal adviser had full opportunity of cross-examining the deponent;
- (c) the deposition must purport to be signed by the Magistrate before whom it purports to have been taken.

(2) In the case of a deposition taken under section 20, the provisions of subsection (1) other than paragraph (b) shall apply on its being proved at the trial either by a certificate purporting to

be signed by the Magistrate before whom the deposition purports to have been taken or by the oath of a credible witness—

- (a) that reasonable notice of the intention to take the deposition was served upon the person (whether accused or prosecutor) against whom it is proposed to be given in evidence; and
  - (b) that such person or his legal adviser had, or might have had, if he had chosen to be present, a full opportunity of cross-examining the deponent.
- (3) This section shall not have effect in any case in which it is proved—
- (a) that the deposition, or where the proof required by subsection (1) (b) is given by means of a certificate, that the certificate was not in fact signed by the Magistrate by whom it purports to have been signed; or
  - (b) that where the deposition is the deposition of a witness whose attendance at the trial is stated to be unnecessary as provided by section 21(5), the witness has been duly notified that he is required to attend the trial.

Report of Chief  
Chemist.

41. (1) At any preliminary examination, any document purporting to be a report from the Chief Chemist upon any matter or thing submitted to him for examination, analysis, or report may, if it bears his signature, be used as evidence.

(2) The Magistrate may presume that the signature to any such document is genuine, and that the person signing it held the office which he professed to hold at the time when he signed it.

#### PUBLICATION OF PROCEEDINGS

Restriction on  
publication of  
report of  
preliminary  
enquiry.

42. (1) No person shall print or publish or cause or procure to be printed or published, in relation to any preliminary enquiry under this Act, any particulars other than the following:

- (a) the names, addresses and occupations of the accused person and the witnesses;
- (b) a concise statement of the charge and the defence in support of which evidence has been given;
- (c) submissions on any point of law arising in the course

of the enquiry, and the decision of the Magistrate thereon.

(2) Nothing in this section shall apply to the printing or reproduction by any other method of any pleading, transcript of evidence or other documents for use in connection with any judicial proceedings or the communication thereof to persons concerned in the proceedings, or to the printing or publishing of any notice or report in pursuance of the directions of the Magistrate.

(3) A person who acts in contravention of this section is liable on summary conviction in respect of each offence to a fine of two thousand dollars or to imprisonment for four months. Penalties.

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**FIRST SCHEDULE**

Section 23(3).

**WARRANT OF COMMITMENT**

To .....(Constable), and to ....., Keeper of the Port-of-Spain Prison.

Whereas A.B. was this day charged before me the undersigned Magistrate on the complaint of ....., for that [*state shortly the offence*]:

These are therefore to command you, the said .....to take the said A.B. and him safely to convey to the Port-of-Spain Prison in the City of Port-of-Spain, and there to deliver him to the Keeper thereof, together with this precept: and I do hereby command you, the said Keeper of the said Prison, to receive the said A.B. into your custody in the said Prison and there safely keep him until he shall be thence delivered by due course of law.

Date .....

(Magistrate).

Section 31(3).

SECOND SCHEDULE

RECOGNISANCE OF BAIL ON COMMITTAL

THE STATE

*Against*

*A.B.* on the charge of *C.D.* for [*state offence briefly*].

At .....in the said Trinidad and Tobago on this .....day of .....in the year of our Lord one thousand .....of .....in the said Trinidad and Tobago, acknowledges himself to be indebted to the State, in the sum of ....., and .....of .....acknowledges himself to be indebted to the State, in the sum of .....; upon condition that, if the said .....do personally appear before the High Court, in the .....of .....to answer to any indictment that shall be presented against him in the said Court in or about the premises, within the term of twelve calendar months from the date of this acknowledgment, and do not depart the Court without leave, and do accept service of any such indictment at the residence of .....situated in .....in the .....of .....and that the said .....in the meantime be of good behaviour, and keep the peace towards the State and especially towards .....then this recognisance to be void; or else to remain in full force. And the said .....severally acknowledge themselves debtors in solidum to the State in the sums hereinbefore respectively acknowledged by them upon the property of them and each of them, to the use of the State, to be levied in due form of law, in case of default made in the condition of this recognisance or obligation.

Acknowledged by the said .....on the .....day of ....., 19 .....

Witness .....Before me, .....

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